Agenda
Minnetonka City Council
Regular Meeting, Monday, December 19, 2016
6:30 P.M.
Council Chambers

1. Call to Order
2. Pledge of Allegiance
3. Roll Call: Wiersum-Bergstedt-Wagner-Ellingson-Allendorf-Acomb-Schneider
4. Approval of Agenda
5. Approval of Minutes: December 5, 2016 regular meeting
6. Special Matters: None
7. Reports from City Manager & Council Members
8. Citizens Wishing to Discuss Matters Not on the Agenda
9. Bids and Purchases:
   A. Approval of Avolve Software purchase
      Recommendation: Approve the purchase (majority vote)
10. Consent Agenda - Items Requiring a Majority Vote:
    A. 2017 general liability insurance and workers’ compensation renewals
    B. Designation of the city’s official newspaper for 2017
    C. City manager performance pay
11. Consent Agenda - Items Requiring Five Votes:
    A. Resolution accepting gifts, donations and sponsorships given to the city
during 2016
    B. Applications for renewed precious metal and secondhand dealer licenses for
2017
12. Introduction of Ordinances: None

13. Public Hearings:
   A. Resolutions regarding utility related items:
      1) Municipal water and sanitary sewer rates;
      2) Municipal water and sanitary sewer connection fees;
      3) Recycling fee; and
      4) Stormwater rates.

      Recommendation: Hold the public hearing and adopt the resolutions (4 votes)

   B. On-Sale & Sunday On-Sale Intoxicating liquor license for Fun Eats and Drinks, LLC (dba Champps), 1641 Plymouth Road

      Recommendation: Continue the public hearing and grant the licenses (5 votes)

14. Other Business:
   A. Resolution amending loan documents executed in connection with the multifamily housing revenue obligations issued for the benefit of CHC Minnetonka Affordable Housing LLC; and authorizing the execution and delivery of an amendment document in connection with the request

      Recommendation: Adopt the resolution (majority votes)

   B. Items concerning Groveland Elementary School at 17310 Minnetonka Blvd and 3217 Groveland School Road:
      1) Conditional use permit
      2) Site and Building Plan Review
      3) Comprehensive Plan Amendment
      4) Resolution designating no parking area

      Recommendation: Adopt the resolutions approving the request (5 votes)

15. Appointments and Reappointments:
   A. Appointment to the senior citizen advisory board

      Recommendation: Approve the recommended appointment (4 votes)

16. Closed meeting as permitted by the attorney-client privilege (Minn. Stat. 13D.05, subd. 3) to discuss pending litigation

17. Adjournment
1. **Call to Order**

   Mayor Terry Schneider called the meeting to order at 6:34 p.m.

2. **Pledge of Allegiance**

   All joined in the Pledge of Allegiance.

3. **Roll Call**

   Council Members Patty Acomb, Brad Wiersum, Tim Bergstedt, Tony Wagner, Bob Ellingson, Dick Allendorf, and Terry Schneider were present.

4. **Approval of Agenda**

   Wiersum moved, Bergstedt seconded a motion to accept the agenda, with addenda to items 14B, 14C, and 14D. All voted “yes.” Motion carried.

5. **Approval of Minutes: October 10, October 24, and November 14, 2016 regular council meetings**

   Acomb moved, Allendorf seconded a motion to approve the October 10, 2016 regular council meeting minutes, as presented. All voted “yes.” Motion carried.

   Acomb moved, Allendorf seconded a motion to approve the October 24, 2016 regular council meeting minutes, as presented. All voted “yes.” Motion carried.

   Acomb moved, Allendorf seconded a motion to approve the November 14, 2016 regular council meeting minutes, as presented. Acomb, Wiersum, Wagner, Ellingson, Allendorf, and Schneider voted “yes.” Bergstedt abstained. Motion carried.

6. **Special Matters:**

   A. **Recognition of former EDAC members Benita Bjorgo and Kate Aanenson**

      Schneider read the recognitions.
7. **Reports from City Manager & Council Members**

City Manager Geralyn Barone reported on upcoming events and meetings.

Schneider reported that he along with Wiersum and Barone attended the League of Minnesota Cities Annual Meeting. There were good presentations about the dynamics of the elections and what might be expected during the next legislative session.

8. **Citizens Wishing to Discuss Matters not on the Agenda**

Hennepin County Commissioner Jan Callison reported on the county’s activities and proposed budget. She said the Ridgedale Library would close next spring for renovations. The renovations will take up to a year to complete. The service center and courts will remain open. Discussions continue with Ramsey County about a joint facility for the home school. The county is changing its organics policy in response to the state’s requirements to increase recycling. She said the SWLRT continues to move along. Three major road projects being worked on include 101 south of Highway 7; a possible reconfiguration of Minnetonka Boulevard between Tonkawood Road and Big Willow Park; and the feasibility of an off road trail along Plymouth Road between Ridgedale and Minnetonka Boulevard.

Callison said the preliminary county levy was set at a 4.49 percent increase even though it was expected the overall budget would decrease. This indicates that the areas of the budget expected to go down are not supported by property taxes. The increase is due to several things including the purchase of 40 body cameras for the sheriff’s office. She noted as jurisdictions in the county purchase body cameras it impacts the county’s budget. The county attorney and courts have to store, maintain and transcribe the videos. It is anticipated that over the next several years the cost to the county as other jurisdictions implement body cameras will be in the range of $5 million to $6 million. She reported the budget for child protection services is also increasing. In 2008 11,000 cases were reported to the county. In 2016, the number of cases was 22,000. The proposed budget includes adding around 200 staff in the child protection area. She said MNsure also is impacting the county budget. The state’s computer system remains a system that is not very robust.

Wiersum thanked Callison and the county for the Highway 101/Bushaway Road improvements.
Schneider said one of the characteristics of a county commissioner is persistence and patience and that Callison had earned her stripes for her work on the SWLRT.

Ben Jacobs, coach of Rolling Thunder, said the Minnetonka club began in March. Jay, a club member, spoke about his experiences in the club. He thanked the city for supporting Rolling Thunder and providing the Lindbergh Center as the club’s practice facility. Jacobs presented a plaque to Schneider.

9. **Bids and Purchases:** None

10. **Consent Agenda – Items Requiring a Majority Vote:**
   
   **A. General services agreements with consulting engineering firms for the period of 2017-2019**

   Allendorf moved, Acomb seconded a motion to authorize mayor and city manager to enter into general services agreements for the three-year period of 2017-2019 with Bolton & Menk, Inc.; Hansen Thorp Pellinen Olson, Inc.; Sambatek; Short Elliott Hendrickson, Inc.; SRF Consulting Group, Inc.; WSB & Associates, Inc.; Barr Engineering Company; ISG, Inc.; Kjolhaug Environmental Services Company; American Engineering Testing, Inc.; Advanced Engineering and Environmental Services, Inc.; and In-Control, Inc. All voted “yes.” Motion carried.

   **B. Twelve-month time extension of site and building plan and conditional use permit approval for Bauer’s Custom Hitches at 13118 Excelsior Boulevard**

   Allendorf moved, Acomb seconded a motion to approve the twelve-month time extension. All voted “yes.” Motion carried.

   **C. Order for tobacco license violation for Scoreboard, Inc. (dba Scoreboard Grill & Bar)**

   Allendorf moved, Acomb seconded a motion to approve issuing the Finding of Fact, Conclusion, and Order. All voted “yes.” Motion carried.

   **D. Resolution to adjust 2017 non-union employee salaries and benefits**

   Allendorf moved, Acomb seconded a motion to adopt resolution 2016-131 authorizing the 2017 non-union employee salary and benefit adjustments. All voted “yes.” Motion carried.
11. Consent Agenda – Items requiring Five Votes: None

12. Introduction of Ordinances:
   
   A. Ordinance amending section 2.06 of city charter
      
      City Attorney Corrine Heine gave the staff report.
      
      Bergstedt noted the staff report indicated the charter commission felt the proposed language was flexible enough so if the mayor or a council member knows he/she will be gone for 90 days or more, the council, with the agreement of that council member, could make the appointment for the 90 day period. Heine confirmed that was correct.

      Wiersum moved, Bergstedt seconded a motion to introduce the ordinance. All voted “yes.” Motion carried.
   
   B. Items concerning Crest Ridge Senior Living at 10955 Wayzata Boulevard:
      
      1) Comprehensive guide plan amendment;
      2) Major amendment to an existing master development plan; and
      3) Site and building plan review

      City Planner Loren Gordon gave the staff report.

      Wagner said historically, because the project had been somewhat controversial, the notification area included the southwest area of the Sherwood Forest neighborhood. He questioned if notices should be sent to those residents. He indicated he could inform the homeowner association.

      Allendorf said residents’ comments indicated a request for screening to the east. He said it appeared the proposed building appeared friendlier to those neighbors than the parking structure that was in the approved plan. Gordon agreed and said the neighbors have always had concerns about the buffer edge along the common property line. The previous approvals included a 50 foot landscape area. This plans removes the parking ramp.

      Bergstedt said when the concept plan was reviewed he thought it was a great proposal by a well-respected developer. There definitely was a need for this type of housing. The proposal would have less traffic than many other uses, would have a much more residential look, and was close to many needed services.
Wiersum said the choice of use was between an office building, and none had come forward, and senior living. The challenge looking forward was the need for more senior living space and where it would be located. This use would generate far less traffic than an office would. He thought it was a great site and it would be a very nice facility that would be gentle to the neighbors to the east.

Acomb said she had received comments from residents about the need to add another senior building. She asked staff earlier in the day to provide information about the number of Minnetonka residents moving into some of the other senior facilities that were being built. She was happy to hear that 40 percent of the residents due to move into the Applewood development were Minnetonka residents. This indicated that senior living facilities were fulfilling a need for residents.

Schneider noted that some of the senior living facilities with services had a long waiting list.

Wagner moved, Allendorf seconded a motion to introduce the ordinance and refer it to the planning commission. All voted “yes.” Motion carried.

13. Public Hearings:

   A. On-sale 3.2% malt beverage license for The Bunker Indoor Golf Center

   Barone gave the staff report.

   Schneider opened the public hearing at 7:13 p.m. No one spoke.

   Bergstedt moved, Allendorf seconded a motion to continue the public hearing to January 9, 2017. All voted “yes.” Motion carried.

14. Other Business:

   A. Resolution amending council policy 12.5 regarding antennas on water towers

   Heine gave the staff report.

   Allendorf moved, Wiersum seconded a motion to adopt resolution 2016-132 amending the policy. All voted “yes.” Motion carried.
B. Applications for renewed liquor licenses for 2017

Community Development Director Julie Wischnack gave the staff report.

Allendorf said the one number that jumped out at him was the number of calls to the Lakeshore Grill. He asked if the number included all the calls to Macy’s. Wischnack said that was the difficulty with the numbers for the liquor licenses for establishments at Ridgedale. That data needed to be looked at more closely to determine what the calls were in response to. She said this was likely the case for the Lakeshore Grill.

Wagner moved, Acomb seconded a motion to approve the licenses. All voted “yes.” Motion carried.

C. Concept Plan for development of the properties at 1911 and 1935 Linner Road

Zehnder Homes withdrew the plan.

D. Items relating to the 2017 operating budget and tax levies

Barone gave the staff report.

Dave Paulson, a Minnetonka resident, asked if it was correct the Municipal Cost Index over the last 20 years had increased around half of what Minnetonka’s budget or levy had increased over the same period of time. Staff confirmed this was correct. He suggested the index might be a good benchmark to use. He noted the Community Investment Fund was up $1.7 million from the last budget document available on the city’s website. He asked if the fund was being fully exploited for what it could be used for such as paying off the bonds for the voter approved park referendum. Schneider said the Community Investment Fund was basically an endowment fund and was not meant to reduce property taxes. It was meant to be available for special projects that normally wouldn’t be paid for by property taxes.

Paulson said he spent time searching the city’s website for information to answer some of his questions. He said the information he found was more promotional than informational. There was a chasm between the explanations staff provided and what he could find easily on the website. He suggested adding something between the entire budget document and information comparing the cost of city services with a resident’s cable bill.

Schneider said he appreciated Paulson’s comments. He noted most residents don’t want to dig into the details of the budget and that at one
time a committee was setup to review and comment on the budget. People did not attend the meetings. He suggested Paulson sign up for the city’s citizen academy, which provides detailed presentations from each department. He said another alternative was for Paulson to meet with city staff to walk through the budget details.

Paulson noted there were only a few other residents in the council chambers as the budget was being discussed. People did not want to invest the time. He hoped for a little more analysis on the website geared toward the average resident. He thought there was a gap that could be filled by a little more data that was easier to find on the website.

Wiersum said he had read Paulson’s emails and the part that resonated most with him was the subject of informing versus persuading. He said as the city tries to explain property taxes and the budget to its residents he liked the idea of informing and explaining versus selling an increase. He thought the city did a pretty good job explaining why the property tax increase was reasonable but it did not do a good job explaining how the complicated property tax system works.

Paulson said paying $54 more in property taxes would hurt those on a fixed income or in a tight situation. He questioned had the money used to establish the Community Investment Fund years ago, been invested instead for the purchase of land, if the appreciation on the land may have been more than the interest rate.

Wiersum moved, Bergstedt seconded a motion to adopt the resolution 2016-133 adopting a budget for the Year 2017, a revised budget for 2016, amending the current Capital Improvement Program to be consistent with these budgets, and setting a tax levy for the Year 2016, collectible in 2017; and resolution 2016-134 setting a tax levy in the Bassett Creek Watershed Management Tax District for the Year 2016, collectible in 2017.

Bergstedt noted the action being taken was the end of a long budget process. He said he hoped that given the small turnout and lack of council questions didn’t leave people with the impression that the budget was being approved rapidly or cavalierly. He said approving the budget was arguably the most important decision the council makes every year. The city was trying to provide all the services residents expect and deserve at a fiscally responsible cost.

All voted “yes.” Motion carried.

15. Appointments and Reappointments: None
16. Adjournment

Acomb moved, Wiersum seconded a motion to adjourn the meeting at 8:00 p.m. All voted “yes.” Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk
City Council Agenda Item #9A
Meeting of December 19, 2016

Description  Approval of Avolve Software purchase

Recommendation  Approve the purchase

Background

At its December 5, 2016 meeting, the city council approved the budget to purchase and implement a new software for the community development department at a total price of $107,000. While the software, called Avolve, will involve multiple departments, the community development division will oversee its full implementation to improve the workflow for permitting and customer service. The purchase was originally appropriated as part of the 2016 amended capital budget with monies from the Technology Fund.

In order to obtain a significant cost discount, staff revised the 2016 budget to authorize a temporary interfund loan using the Development Fund for a portion of the purchase ($82,000) with the remainder to be financed with the current community development department budget (General Fund). In 2017 and 2018, associated new equipment costs for the system and payback of the loan will be financed with the adopted Technology Fund capital budget for the system and the current level operating budget of the department (General Fund).

Staff Recommendation

Approve the contract to purchase Avolve Software.

Submitted through:
    Geralyn Barone, City Manager

Originated by:
    Julie Wischnack, AICP, Community Development Director
AVOLVE SOFTWARE SALES ORDER

After signing this Avolve Software Order From ("Software Sales Order"), please either mail or fax to Avolve Software Corporation, 4835 E. Cactus Road, Suite 420, Scottsdale, Arizona 85254, e-mail scanned image to aslip@avolvesoftware.com

Order Date: 12-9-16

CUSTOMER INFORMATION

<table>
<thead>
<tr>
<th>Customer Name</th>
<th>City of Minnetonka, Minnesota</th>
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<tbody>
<tr>
<td>Customer Mailing Address</td>
<td>14600 Minnetonka Blvd</td>
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</table>

| City: Minnetonka | State: MN | Zip: 55345 |

CUSTOMER CONTACTS

<table>
<thead>
<tr>
<th>Name: Julie Wischnack, Community Development Director</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phone: 952-939-8282</td>
</tr>
<tr>
<td>E-mail: <a href="mailto:jwischnack@eminnetonka.com">jwischnack@eminnetonka.com</a></td>
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5-YEAR LEASE SUBSCRIPTION

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<tr>
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<td>Each</td>
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<td></td>
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<td>BIC Building Workflow</td>
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<td>Unlimited Users</td>
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<td>Web Based Training</td>
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<td>Introduction to ProjectDox</td>
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<td>Approval Process Training for</td>
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<td>Administrators and Coordinators</td>
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<td>Approval Process Training for</td>
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5-Year Package Total: $105,000.00

Total Invoiced on Signing: $105,000.00
Project Plan Stages will Include:

- Installation
- Orientation and Configuration Sessions
- Configuration and Integration
- Training
- User Acceptance Testing
- Soft Launch
- Post Soft Launch

Specific Terms and Conditions:

1. Pricing will expire 12/31/16
2. 5 year commitment on Financed Lease
3. LOGIS will be responsible for Tier One Support
4. LOGIS will be responsible for PIMS Integration
5. Additional configuration available and will require a Discovery

To be invoiced upon customer signature to LOGIS. Payment is due 30 days from date of invoice. 1.5% service charge per month will be applied after 30 days of invoice date (18% per annum). Travel and Expenses are not included in this total.

Notes:

EFT Remittance:
Avolve Software / Compass Bank
Routing #: 122105744
Account #: 2519753300

Authorized Business Unit(s): Community Development Department
License Term (if applicable): 5-Year Subscription (LOGIS)
Payment Method: EFT

Schedules: The following Schedules are hereby incorporated by reference into this Software Sales Order.

<table>
<thead>
<tr>
<th>Schedule A</th>
<th>General Terms and Conditions</th>
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IN WITNESS WHEREOF, the parties hereto, each by a duly authorized representative, have executed this Software Sales Order as of the Order Date first set forth above:

<table>
<thead>
<tr>
<th>Customer: City of Minnetonka, Minnesota</th>
<th>Avolve Software Corporation</th>
</tr>
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<tbody>
<tr>
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<td>Signature:</td>
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**Schedule A – General Terms and Conditions**

**SOFTWARE LICENSE AND SUPPORT AGREEMENT**

**General Terms and Conditions (GTCs)**

1. **DEFINITIONS.**

1.1 “**Add-on**” means any custom application code authorized to be developed using Avolve APIs as set forth in the documentation accompanying such API and these GTCs.

1.2 “**Agreement**” means these GTCs, the Software Sales Order, the SOW or other agreement referencing these GTCs. All such components are integral to the agreement, and collectively are referred to herein as the “Agreement”.

1.3 “**API**” means Avolve’s application programming interfaces, as well as other Avolve code and database elements that allow other software products to communicate with or call on Avolve Software provided under this Agreement.

1.4 “**Avolve Materials**” means any software, programs, tools, systems, data, or other materials made available by Avolve to Licensee in the course of the performance under this Agreement including, but not limited to, the API, Software and Documentation, as well as any information, materials or feedback provided by Licensee to Avolve relating to the Software and Documentation.

1.5 “**Avolve Support**” means the support set forth in Exhibit A to these GTCs, and may be purchased for an additional fee. Avolve has no obligation to provide any Avolve Support and, in particular, no Avolve Support (including no bug fixes or updates) will be available after the end of life of the applicable Software version. Avolve reserves the right to provide some or all Avolve Support from locations, and/or through use of third party providers, located worldwide.

1.6 "**Business Unit**" means a logical element, or segment, of the Licensee representing a specific business function, as existing on the effective date of the license grant. Business Units may be referred to as a department, group, division or functional area.

1.7 "**Confidential Information**" means, with respect to Avolve, all information which Avolve protects against unrestricted disclosure to others, including but not limited to: (a) the Software and Documentation and other Avolve Materials, including without limitation the following information regarding the Software: (i) computer
software (object and source codes), programming techniques and programming concepts, methods of processing, system designs embodied in the Software; (ii) benchmark results, manuals, program listings, data structures, flow charts, logic diagrams, functional specifications, file formats; and (iii) discoveries, inventions, concepts, designs, flow charts, documentation, product specifications, application program interface specifications, techniques and processes relating to the Software; (b) the research and development or investigations of Avolve; (c) product offerings, content partners, product pricing, product availability, technical drawings, algorithms, processes, ideas, techniques, formulas, data, schematics, trade secrets, know-how, improvements, marketing plans, forecasts and strategies; and (d) any information about or concerning any third party (which information was provided to Avolve subject to an applicable confidentiality obligation to such third party). With respect to Licensee, “Confidential Information” means all information which Licensee protects against unrestricted disclosure to others and which (i) if in tangible form, Licensee clearly identifies as confidential or proprietary at the time of disclosure; and (ii) if in intangible form (including disclosure made orally or visually), Licensee identifies as confidential at the time of disclosure, summarizes the Confidential Information in writing, and delivers such summary within thirty (30) calendar days of any such disclosure.

1.8 "Documentation" means Avolve’s standard end user documentation which is delivered or made available to Licensee with the Software under this Agreement.

1.9 “Highly Sensitive Information” means an individual’s first name or first initial and last name, or in the case of a business entity, the name of the entity, in combination with any one or more of the following data elements: (1) social security number or taxpayer identification number; (2) driver’s license or Minnesota identification card number; or (3) account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual’s or business entity’s financial account.

1.10 “Intellectual Property Rights” means patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.

1.11 "Licensee" means the specific legal entity set forth on the Software Sales Order.

1.12 "License Term" means the time period that the Software is licensed to Licensee, as specified on the Software Sales Order.

1.13 "ProjectDox® Instance" means Avolve’s proprietary core application and software framework for enhanced electronic plan submission, and review and collaboration built upon a multi-tier cluster hardware architecture consisting of web server(s), application server(s), and job processor(s) that supports the processing of the API.

1.14 "Software" means (i) the API, ProjectDox® Instances and/or other software licensed to Licensee under this Agreement as specified on the applicable Software Sales Orders, as developed by or for Avolve and delivered to Licensee hereunder; (ii) any new releases thereof made available to Licensee as part of Avolve Support and (iii) any complete or partial copies of any of the foregoing.

1.15 "Software Sales Order” means the sales order, sales agreement, purchase order or like conveyance document for the Software, related Avolve Support and/or other services ordered by Licensee thereunder.

1.16 "SOW" means those statements-of-work which the parties may enter into from time-to-time for professional services on terms mutually agreed to in writing between the parties in the SOW, including, without limitation, scope of services, expected deliverables, milestone dates, acceptance procedures and criteria, fees and other such matters. No SOW shall be binding until executed by both parties. Unless expressly stated otherwise in a SOW, all fees are in United States dollars.
1.17 "**Territory**" means the world except for those countries prohibited by United States’ export laws, and further subject to Section 12.4 of the GTC.

1.18 "**Use**" means to activate the processing capabilities of the Software, load, execute, access, employ the Software, or display information resulting from such capabilities.

1.19 “**User**" means authorized Licensee employees and third parties that require access to the Software in connection with Licensee’s internal business operations, such as Licensee’s administrators, contractors, reviewers, and applicants.

2. **SOFTWARE AND SERVICES.**

2.1 **License.**

2.1.1 **Software.** Subject to Licensee’s compliance with all the terms and conditions of this Agreement, Avolve grants to Licensee a non-exclusive, non-transferable, non-sublicensable (except for the limited right to allow Users to Use set forth in this Section 2.1.1) license during the License Term to Use the Software, Documentation, and other Avolve Materials to run Licensee’s internal business operations and to provide internal training and testing for such internal business operations, solely for the specific Business Unit(s) as further set forth in the Software Sales Order. Should Licensee desire to reorganize any such Business Unit, it shall provide Avolve written notice as soon as possible following the determination of reorganization, so that Avolve may review the planned reorganization to determine if it is consistent with the Business Unit limitation in this license grant and, if not, what additional fees will be required due to Licensee's reorganization to include additional Business Units.

2.1.2 **Restrictions.** Licensee will, and will ensure that its Users, only use the Software in accordance with the Documentation. Licensee will not, and will ensure that its Users do not: (i) copy or duplicate the Software in excess of the number of licenses purchased (for production use) or otherwise authorized under this Agreement (for non-production use); (ii) use the Avolve Materials to provide services to third parties (e.g., business process outsourcing, service bureau applications or third party training); (ii) assign, sublicense, sell, lease, loan, resell, sublicense or otherwise distribute or transfer or convey the Avolve Materials, or pledge as security or otherwise encumber Licensee’s rights under this Agreement; (iii) make any Use of or perform any acts with respect to the Avolve Materials other than as expressly permitted in accordance with the terms of this Agreement; or (iv) use Software components other than those specifically identified in the Software Sales Order and then only as part of the Software as a whole, even if it is also technically possible for Licensee to access other Software components; or (v) modify, further develop or create any derivative works of, disassemble, decompile, reverse engineer or otherwise attempt to obtain or perceive the source code from which any part of the Software is compiled or interpreted, or access or use the Software in order to build a similar or competitive product or service; (vi) distribute the Software in any form other than the form delivered by Avolve to Licensee or otherwise permitted under this Agreement; or (vii) publish any results of benchmark tests run on the Software. Licensee acknowledges that nothing herein will be construed to grant Licensee any right to obtain or use the source code. Licensee acknowledges that the Software may contain self-reporting technology by which Avolve may receive information deemed relevant by Avolve to providing Avolve Support, improving the Avolve Materials, monitoring compliance, and any other purposes as determined by Avolve in its reasonable discretion. Licensee shall not tamper with or attempt to disable such self-reporting technology. Licensee agrees to take all commercially reasonable steps to ensure that Users abide by the terms of this Agreement and expressly agrees to indemnify Avolve, its officers, employees, agents and subcontractors from and against all claims, liabilities, losses, damages and costs (including reasonable attorney fees) suffered by Avolve arising from a breach by the User of the conditions of this Agreement.

2.1.3 **High-Risk Activities.** The Software is not fault-tolerant and is not designed, manufactured, or intended for use or resale as online control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines or weapons systems, in which the failure of the Software or derived binaries could lead directly to death, personal injury, or severe physical or environmental damage (collectively, "**High Risk Activities**"). Licensee shall not use the Software for any High Risk Activities.
2.1.4 **Third Party Components.** The Software and its component parts are protected by copyright and other propriety rights of Avolve and one or more third party software vendors (including Open Text Corporation ("OTC") (all such third party vendors, including without limitation Oracle and OTC, shall be referred to herein as "third party vendors" or "third party software vendors"). Licensee may be held directly responsible by such third party vendors for acts relating to the Software component parts that are not authorized by this Agreement. Licensee’s use of such third party software is limited to only in conjunction with the Software and Licensee acknowledges that it is not allowed to modify such third party software or use it independent from the Software. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE LICENSEE WAIVES, AND WILL CAUSE ITS USERS TO WAIVE, ALL CLAIMS AND CAUSES OF ACTION AGAINST SUCH THIRD PARTY SOFTWARE VENDORS THAT ARISE UNDER THIS AGREEMENT.

2.1.5 **Copies.** Licensee may make one copy of the Software for back-up/archival purposes only, if the copy contains all of the original Software's proprietary notices. For the avoidance of any doubt, unless expressly set forth otherwise in the applicable Software Sales Order, such additional copy may not be run concurrently, either in production mode to increase performance or in a non-production mode for testing, development or any other purpose. Should Licensee desire to run additional copies of the Software concurrently, additional license rights must be purchased by Licensee.

2.1.6 **Ownership.** Licensee acknowledges and agrees that Licensor owns all right, title, and interest in and to all intellectual property rights (including all derivatives or improvements thereof) in the Software and any suggestions, enhancements requests, feedback, recommendations or other information provided by Licensee or any of its Users related to the Software. Licensee’s rights in the Software, updates (provided Licensee has purchased Avolve Support), and the related materials supplied by the Licensor pursuant to this Agreement are strictly limited to the right to use the proprietary rights in accordance with the terms of this Agreement. No right of ownership, expressed or implied, is granted under this Agreement.

2.1.7 **API Use.** Provided that Licensee has been authorized by Licensee in writing to build Add-Ons (which authorization may be withdrawn by Avolve at any time upon written notice to Licensee), Licensee may use the API to create custom Add-Ons solely as set forth in Section 6 below. While Avolve currently does not charge for use of the API, Avolve reserves the right to charge a fee for the use of the API in the future. Should Avolve implement a fee for the API, prior written notice will be given to Customers who are currently using the API.

2.1.8 **Approved Hardware.** Licensee agrees to install the Software only on information technology devices (e.g. servers, hard disks, central processing units or other hardware) identified by Licensee pursuant to this Agreement and that has been previously approved by Avolve in writing or otherwise officially made known to the public by Avolve as appropriate for Use or interoperation with the Software (the “Designated Unit”).

2.2 **Outsourcing Services.** With Avolve’s prior written consent, Licensee may permit services providers to access the Software solely for the purpose of providing facility, implementation, systems, application management or disaster recovery services to Licensee in connection with the business of Licensee for which the Software is herein licensed. Licensee agrees to be responsible to Avolve for the conduct of Licensee’s services providers to the same extent that Licensee is responsible to Avolve hereunder for the conduct of Licensee’s employees.

2.3 **Services.** Avolve may provide Avolve Support or other professional services from time to time as mutually agreed upon by the parties from time to time in a Software Sales Order and/or SOW.

3. **VERIFICATION.** Avolve shall be permitted to audit (at least once annually and in accordance with Avolve standard procedures, which may include on-site and/or remote audit) the usage of the Avolve Materials. Licensee shall cooperate reasonably in the conduct of such audits. In the event an audit reveals that (i) Licensee underpaid license fees and/or Avolve Support fees to Avolve and/or (ii) that Licensee has Used the Software in excess of the license quantities or levels stated in the Software Sales Order, Licensee shall pay such underpaid fees and/or for such excess usage based on Avolve List of Prices and Conditions Software and Support governing use in effect at the time of the audit, and shall execute an additional Software Sales Order in accordance with the terms of this Agreement to affect the required licensing of any additional quantities or levels. Reasonable costs of Avolve’s audit shall be paid by Licensee if the audit results indicate usage in excess of the licensed quantities or levels.
Avolve reserves all rights at law and equity with respect to both Licensee’s underpayment of License fees or Avolve Support fees and usage in excess of the license quantities or levels.

4. **PRICE, PAYMENT, AND DELIVERY.**

4.1 Fees. Licensee shall pay to Avolve license fees for the Software and fees for Avolve Support as set forth on the Software Sales Order(s) hereto, as well as any professional service fees set forth on any SOWs. All fees, unless expressly stated otherwise on the applicable Software Sales Order, shall be in United States dollars. Any fees not paid when due, which unless otherwise specified in the applicable Software Sales Order or SOW will be thirty (30) calendar days from invoice, shall accrue interest at the rate of 18% (eighteen percent) per annum, but not to exceed the maximum amount as allowed by law. All fees are due in advance, irrevocable and non-refundable (except as expressly set forth otherwise in this Agreement). Licensee agrees to provide Licensor with complete and accurate billing and contact information.

4.2 Taxes. Fees and other charges described in this Agreement do not include federal, state or local sales, foreign withholding, use, property, excise, service, or similar transaction taxes (“Tax(es)”) now or hereafter levied, all of which shall be for Licensee’s account. Any applicable direct pay permits or valid tax-exempt certificates must be provided to Avolve prior to the execution of this Agreement. If Avolve is required to pay Taxes, Licensee shall reimburse Avolve for such amounts. Licensee hereby agrees to indemnify Avolve for any Taxes and related costs, interest and penalties paid or payable by Avolve.

4.3 Delivery of the Software; Installation. Avolve will deliver the Software either by making it available for electronic download or by physical delivery of media to Licensee. Risk of loss passes at the time of such electronic or physical delivery. Licensee agrees and understands that the calculation of Taxes may be affected by the delivery method and delivery location of the Software and corresponding Avolve Support. Licensee agrees to promptly, following initial delivery of the Software, but in all cases within ninety (90) days, to provide Avolve with reasonable access to Licensee’s facilities and systems in order for Avolve to initially install the Software. Unless agreed to in writing by Avolve, Licensee understands that it is not authorized to conduct the initial installation of the Software. For the avoidance of any doubt, all installation services are professional services provided by Avolve under a SOW.

5. **TERM.**

5.1 Term. Except as set forth otherwise in Section 5.3 below or if terminated earlier in accordance with this Section 5, this Agreement shall commence on the Effective Date and shall continue for the longer of either (a) the expiration of the License Terms set forth on all the Software Sales Order or (b) the completion of all professional services under all SOWs.

5.2 Termination. In addition to any termination rights that may be set forth in a specific Software Sales Order or SOW, either party may terminate this Agreement immediately upon written notice in the event that the other party materially breaches this Agreement and thereafter has failed to cure such material breach (or commenced diligent efforts to cure such breach that are reasonably acceptable to the terminating party) within thirty (30) days after receiving written notice thereof.

5.3 End of Term Duties. Upon any termination of the Agreement hereunder (which would terminate all existing License Terms and SOWs), (a) Licensee and its Users shall immediately cease Use of all Avolve Materials and Confidential Information and (b) Avolve shall immediately cease all professional services. Within thirty (30) days after any termination, Licensee shall irrevocably destroy or upon Avolve’s request deliver to Avolve all copies of the Avolve Materials and Confidential Information in every form, except to the extent it is legally required to keep it for a longer period in which case such return or destruction shall occur at the end of such period. Licensee must certify to Avolve in writing that it has satisfied its obligations under this Section 5.3. Sections 2.1.4, 2.1.6, 3, 4.1, 4.2, 5, 6.1, 8 - 10, 12.1 - 12.3, 12.5, 12.6, and 12.8-12.11 shall survive such termination. In the event of any termination hereunder for a cause other than Licensor’s material breach of this Agreement, Licensee shall not be entitled to any refund of any payments made by Licensee. Termination shall not relieve Licensee from its obligation to pay fees that remain unpaid.
6. **Add-Ons.**

6.1 Conditioned on Licensee’s compliance with the terms and conditions of this Agreement, Licensee may make Add-ons to the Software in furtherance of its permitted Use under this Agreement, and shall be permitted to use Add-ons with the Software in accordance with the License grant to the Software set forth in Section 2.1.1 herein. All Add-ons developed by Avolve (either independently or jointly with Licensee or other third parties) and all rights associated therewith shall be the exclusive property of Avolve. Licensee agrees to execute those documents reasonably necessary to secure Avolve’s rights in the foregoing. All Add-ons developed by or on behalf of Licensee without Avolve’s participation (“Licensee Add-on”), and all rights associated therewith, shall be the exclusive property of Licensee subject to Avolve’s rights in and to the Software; provided, Licensee shall not commercialize, market, distribute, license, sublicense, transfer, assign or otherwise alienate any such Licensee Add-ons. Avolve retains the right to independently develop its own Add-ons to the Software, and Licensee agrees not to take any action that would limit Avolve’s sale, assignment, licensing or use of its own Software or Add-ons thereto.

6.2 Any Licensee Add-on must not (and subject to other limitations set forth herein): enable the bypassing or circumventing any of the restrictions set forth in this Agreement and/or provide Licensee with access to the Software to which Licensee is not directly licensed; nor permit mass data extraction from Software to any non-Avolve software, including use, modification saving or other processing of data in the non-Avolve software; nor unreasonably impair, degrade or reduce the performance or security of the Software; nor render or provide any information concerning Avolve software license terms, Software, or any other information related to Avolve products.

6.3 Add-ons are excluded from Avolve Support. Licensee may purchase support from Avolve for Add-ons as professional services under an SOW.

7. **WARRANTY.**

7.1 **Warranty.** Avolve warrants that the Software will substantially conform to the specifications contained in the Documentation for thirty (30) days following the Go Live Date. The warranty shall not apply: (i) if the Software is not used in accordance with the Documentation; (ii) not initially installed within the time period set forth in Section 4.3 above, unless such failure to timely install is due solely to the fault of Avolve; or (iii) if the defect is caused by an Add-on (other than an Add-on made solely by Avolve and which is provided through Avolve Support or under warranty), Licensee or third-party software. Avolve does not warrant that the Software will operate uninterrupted or that it will be free from minor defects or errors that do not materially affect such performance, or that the applications contained in the Software are designed to meet all of Licensee’s business requirements. Provided Licensee notifies Avolve in writing with a specific description of the Software’s nonconformance within the warranty period and Avolve validates the existence of such nonconformance, Avolve will, at its option: a) repair or replace the nonconforming Software, or b) refund the license fees paid for the applicable nonconforming Software in exchange for a return of such nonconforming Software. THIS IS LICENSEE’S SOLE AND EXCLUSIVE REMEDY UNDER THIS WARRANTY.

7.2 **Express Disclaimer.** AVOLVE AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8. **INDEMNIFICATION.**

8.1 **General.** When Avolve Support or other service are provided on Licensee’s premises or at another location designated by Licensee, each party will indemnify, defend and hold harmless the other party, its officers, directors, employees, agents and affiliates from and against any claims, demands, loss, damage or expense, including reasonable attorney’s fees, (collectively, “Claims”) relating to bodily injury or death of any person or damage to tangible personal property occurring at such location in connection with the performance of the
Avolve Support or other services to the extent proximately caused by the gross negligence or willful acts or omissions of the indemnifying party, its officers, directors, employees, agents and affiliates.

8.2 Infringement. If a third party makes a claim against the Licensee that any Use of the Software in accordance with the terms of this Agreement infringes such third party's intellectual property rights, Avolve, at its sole cost and expense, will defend Licensee against the claim and indemnify Licensee from the damages, losses, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by Avolve, provided that Licensee: (i) notifies Avolve promptly in writing of the claim; (ii) gives Avolve sole control of the defense and any settlement negotiations; and (iii) gives Avolve reasonable assistance in the defense of such claim. If Avolve believes or it is determined that the Software has violated a third party’s intellectual property rights, Avolve may choose to either modify the Software to be non-infringing or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, Avolve may terminate Licensee’s use rights and refund any unused, prepaid fees Licensee may have paid to Avolve. Avolve will not indemnify the Licensee to the extent that the alleged infringement arises from (1) the combination, operation, or use of the Software with products, services, information, materials, technologies, business methods or processes not furnished by Avolve (including without limitation use on other than a Designated Unit); (2) modifications to the Software, which modifications are not made by Avolve; (3) failure to use updates to the Software provided by Avolve; or (4) use of Software except in accordance with any applicable user documentation or specifications.

8.3 THE PROVISIONS OF THIS SECTION 8 STATE THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF AVOLVE AND ITS LICENSORS TO LICENSEE, AND IS LICENSEE’S SOLE REMEDY, WITH RESPECT TO THE INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS.

9. LIMITATIONS OF LIABILITY.

In no event will Avolve or its licensors be liable for special, indirect, incidental, consequential, or exemplary damages, including, without limitation, legal fees and any damages resulting from loss of use, loss of profits, loss of data, interruption of business activities, or failure to realize savings arising out of or in connection with this Agreement, including without limitation supply, use or performance of the Software and the provision of the Avolve Support and other services. Except for direct damages and expenses associated with Avolve’s obligation to indemnify Licensee pursuant to Section 8.2, Avolve’s aggregate, cumulative liability for damages and expenses arising out of this Agreement, whether based on a theory of contract or tort, including negligence and strict liability, will be limited to the amount of fees received by Avolve under this Agreement. Such fees reflect and are set in reliance upon this limitation of liability. The limited remedies set forth in this Agreement shall apply notwithstanding the failure of their essential purpose.

10. CONFIDENTIALITY.

10.1 Use of Confidential Information. Confidential Information shall not be reproduced in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information of the other shall remain the property of the disclosing party and shall contain any and all confidential or proprietary notices or legends which appear on the original. With respect to the Confidential Information of the other, each party: (a) shall take commercially reasonable steps to keep all Confidential Information strictly confidential; and (b) shall not disclose any Confidential Information of the other to any person other than its bona fide individuals whose access is necessary to enable it to exercise its rights hereunder. Confidential Information of either party disclosed prior to execution of this Agreement shall be subject to the protections afforded hereunder.

10.2 Exceptions. The above restrictions on the use or disclosure of the Confidential Information shall not apply to any Confidential Information that: (a) is independently developed by the receiving party without reference to the disclosing party’s Confidential Information, or is lawfully received free of restriction from a third party having the right to furnish such Confidential Information; (b) has become generally available to the public without breach of this Agreement by the receiving party; (c) at the time of disclosure, was known to the receiving party free of restriction; (d) the disclosing party agrees in writing is free of such restrictions; or (e) is determined by the
Minnesota Department of Administration or a Minnesota district court to be public data under the Minnesota Government Data Practices Act.

10.3 Confidential Terms and Conditions; Publicity. Licensee shall not disclose the terms and conditions of this Agreement related to pricing contained to any third party unless restricted from conforming to non-disclosure by governmental statute and/or ordinance. Licensor may identify Licensee on its customer lists and list Licensee as a customer in its marketing and advertising materials, and reproduce Licensee's company name, logo, trademark, trade name, service mark, or other commercial designations, solely in connection therewith. If requested by Licensor during the first two years of this Agreement, Licensee agrees to timely execute the following activities: Press Release, Case Study Testimonial, ROI Benchmarking Study, Client Referrals.

10.4 Data Security. In addition to and without prejudice to the confidentiality terms set forth in this Section 10, the following additional data security provisions shall apply to any Highly Sensitive Information provided by Licensee to Avolve.

   a. Disclosure. Licensee shall use its best efforts to limit disclosure of Highly-Sensitive Information to Avolve and only provide Highly-Sensitive Information to Avolve with the prior written consent of either Avolve’s Chief Executive Officer or Chief Financial Officer. Prior to disclosure of any Highly-Sensitive Information, Avolve and the Licensee shall agree in writing to the procedures surrounding the disclosure, including any encryption requirements and the mechanism of disclosure.

   b. Data Security Safeguards. Avolve has implemented and maintains an information security program that incorporates administrative, technical, and physical safeguards designed to protect the security, confidentiality, and integrity of Highly-Sensitive Information provided by Licensee to Avolve in accordance with this Section 10.4.

   a. Data Security Breach. Avolve will notify Licensee promptly and in no event later than one (1) business day following Avolve’s discovery of a Data Security Breach (defined below) and shall (i) undertake a reasonable investigation of the reasons for and the circumstances surrounding such Data Security Breach and (ii) reasonably cooperate with Licensee in connection with such investigation, including by providing Licensee with an initial summary of the results of our investigation as soon as possible, but in all cases within two (2) business days after the date Avolve discovered or reasonably suspected a Data Security Breach, and then regular updates on the investigation as it progresses; (iii) not make any public announcements relating to such Data Security Breach without Licensee’s prior written approval, which shall not be unreasonably withheld; (iv) use commercially reasonable efforts to take all necessary and appropriate corrective action reasonably possible on our part designed to prevent a recurrence of such Data Security Breach; (v) collect and preserve evidence concerning the discovery, cause, vulnerability, remedial actions and impact related to such Data Security Breach, which shall meet reasonable expectations of forensic admissibility; and (vi) if requested by Licensee, at Licensee’s cost, provide notice to individuals or entities whose Confidential Information was or may have been affected in a manner and format specified by Licensee. In the event of any Data Security Breach caused by Avolve, Licensee shall have, in addition to all other rights and remedies available under this Agreement, law and equity, the right to terminate the Agreement upon thirty (30) days prior written notice. For purposes of this Agreement, the term “Data Security Breach” shall mean any of the following occurring in connection with Highly-Sensitive Information (provided that Licensee has sent the Highly-Sensitive Information to Avolve pursuant to the terms of this Section 10.4 using the secure transfer protocols agreed upon by the parties) in connection with Licensee’s use of the Software: (a) the loss or misuse of Highly-Sensitive Information; and (b) disclosure to, or acquisition, access or use by, any person not authorized to receive Highly-Sensitive Information, other than in circumstances in which the disclosure, acquisition, access or use is made in good faith and within the course and scope of the employment with Avolve or other professional relationship with Avolve and does not result in any further unauthorized disclosure, acquisition, access or use of Highly-Sensitive Information.
11. **ASSIGNMENT.** Licensee may not, without Avolve’s prior written consent, assign, delegate, pledge, or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement, or the Avolve Materials or Avolve Confidential Information, to any party, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation.

12. **GENERAL PROVISIONS.**

12.1 **Severability.** It is the intent of the parties that in case any one or more of the provisions contained in this Agreement shall be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

12.2 **No Waiver.** If either party should waive any breach of any provision of this Agreement, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision hereof.

12.3 **Counterparts.** This Agreement may be signed in two counterparts, each of which shall be deemed an original and which shall together constitute one Agreement.

12.4 **Regulatory Matters.** The Software, Documentation and Avolve Materials are subject to the export control laws of various countries, including without limit the laws of the United States. Licensee agrees that it will not submit the Software, Documentation or other Avolve Materials to any government agency for licensing consideration or other regulatory approval without the prior written consent of Avolve, and will not export the Software, Documentation and Avolve Materials to countries, persons or entities prohibited by such laws. Licensee shall also be responsible for complying with all applicable governmental regulations of the country where Licensee is registered, and any foreign countries with respect to the use of the Software, Documentation or other Avolve Materials by Licensee and/or its Affiliates.

12.5 **Governing Law; Limitations Period.** This Agreement and any claims arising out of or relating to this Agreement and its subject matter shall be governed by and construed under the laws of State of Arizona without reference to its conflicts of law principles. In the event of any conflicts between foreign law, rules, and regulations, and United States law, rules, and regulations, United States law, rules, and regulations shall prevail and govern. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The Uniform Computer Information Transactions Act as enacted shall not apply. Licensee must initiate a cause of action for any claim(s) arising out of or relating to this Agreement and its subject matter within one (1) year from the date when Licensee knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

12.6 **Notices.** All notices or reports which are required or may be given pursuant to this Agreement shall be in writing and shall be deemed duly given when delivered to the respective executive offices of Avolve and Licensee at the addresses first set forth in any Software Sales Order or Sales agreement. Where in this section 12.6 or elsewhere in this Agreement written form is required, that requirement can be met by facsimile transmission, exchange of letters or other written form.

12.7 **Force Majeure.** Any delay or nonperformance of any provision of this Agreement (other than for the payment of amounts due hereunder) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.

12.8 ** Entire Agreement.** This Agreement constitutes the complete and exclusive statement of the agreement between Avolve and Licensee, and all previous representations, discussions, and writings are merged in, and superseded by this Agreement and the parties disclaim any reliance on any such representations, discussions and writings. This Agreement may be modified only by a writing signed by both parties. This Agreement shall prevail over any additional, conflicting, or inconsistent terms and conditions which may appear on any purchase order or
other document furnished by Licensee to Avolve. This Agreement shall prevail over any additional, conflicting or inconsistent terms and conditions which may appear in any clickwrap end user agreement included in the Software. Signatures sent by electronic means (facsimile or scanned/sent via e-mail) shall be deemed original signatures. This Agreement does not create any partnership, joint venture or principal and agent relationship.

12.9 **Independent Contractor.** Avolve is an independent contractor and not an employee of the Licensee. Any personnel performing services under this Agreement on behalf of Avolve shall at all times be under Avolve’s exclusive direction and control. Avolve shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of services under this Agreement and as required by law. Avolve shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, and worker’s compensation insurance.

12.10 **Hierarchy.** The following order of precedence shall be applied in the event of conflict or inconsistency between provisions of the components of this Agreement: (i) GTCs and (ii) the applicable Software Sales Order, Avolve Support Terms or SOW. Notwithstanding the foregoing, if any part of a Software Sales Order, Avolve Support Terms or SOW expressly states that it shall control over the GTCs, it shall so control.

12.11 **United States Federal Governmental Users.** The Software and Documentation are "commercial items" as that term is defined in 48 C.F.R. 2.101 (October 1995) consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 (September 1995). Consistent with 48 C.F.R. 12.212 and with 48 C.F.R. 227.7202-1, 227-7202-3 and 227-7202-4 (June 1995), if the Licensee is the U.S. Government or any department or agency of the U.S. Government, the Software and Documentation are licensed under this Agreement (i) only as a commercial item, and (ii) with only those rights as are granted to all other end-users pursuant to the terms and conditions of this Agreement.
These Avolve Support Terms ("SLA") defines the maintenance and support services ("Avolve Support") which Avolve Software Corporation ("Avolve") shall provide to any customer ("Customer") who is entitled pursuant to a separate written sales order (the “Sales Order”) with Avolve to Avolve Support. This SLA defines Avolve Support for both traditional licensees (“Licensees”) of Avolve software (the “Software”) and users (“Cloud Users”) of the Avolve hosted, software-as-a-service solution (“Avolve Cloud”). For the avoidance of any doubt, customers who have not purchased Avolve Support and customers who are not current on their fees are not entitled to Avolve Support. This SLA, together with the Sales Order and the Avolve General Terms and Conditions, represents Customer’s Agreement (as such term is defined in the Avolve General Terms and Conditions).

1. **Standard and Supplemental Maintenance.** Avolve currently offers two levels of Avolve Support, standard and supplemental.

   1.1. Standard Avolve Support refers to all maintenance and support services standardly provided by Avolve to current customers for the standard, not-customized Software. The following are included in standard Avolve Support:

   (a) New releases of Software within an integer version of said Software (e.g. all 8.X versions of ProjectDox);
   (b) Patches and “hot fixes” within the integer version of said Software;
   (c) Phone, email and trouble-ticket reporting systems for Software within the integer version of said Software in accordance with this SLA;
   (d) Integrations to third-party software and systems defined by Avolve as “Standard Integrations”; and
   (e) (Avolve) ProjectDox Workflows and eForms defined by Avolve as “Best-in-Class,” or otherwise designated by Avolve as “standard derivatives” of Best-in-Class workflows and eForms. A standard derivative workflow and or eForm is considered that which can be reasonably implemented by way of features and functions included in the Software, and for which additional, custom software code development is not required.

   For the avoidance of any doubt, standard Avolve Support does NOT include upgrades to a future integer version of the Software (e.g. ProjectDox version 8.X to version 9.X). Avolve reserves the right to charge an additional fee when Customers are upgrading from one major release to another. When applied, such additional fee will be determined based on (a) number of upgrade versions, (b) the complexity of customization, and (c) the complexity of add-ons and integrations of Avolve or third-party products/systems.

   1.2. Supplemental Avolve Support refers to all maintenance and support services provided outside of, or beyond, standard Avolve Support. Examples of Supplemental Avolve Support include:

   (a) Support for non-standard or customized Software features;
   (b) Non-Standard integrations to third party software and systems;
   (c) Workflows and eForms not covered under standard Avolve Support, including those that are developed under a statement of work;
   (d) Predetermined and/or pre-scheduled modifications to third party software and/or systems;
   (e) Support for any exclusions set forth in Section 8 (Exclusions) below.

2. **Avolve Support Fees.** Unless set forth otherwise on the applicable Sales Order, standard Avolve Support fees shall be calculated at twenty percent (20%) of the applicable Software license fees. Unless set forth otherwise in the applicable Sales Order, supplemental Avolve Support fees are at Avolve's then current rates.
3. **Portal.** Avolve will provide reasonable portal support for problem determination and resolution for problems arising during normal operation of the Software (for Licensees) or normal operation of Avolve Cloud (for Cloud Users). Avolve may require the Customer to provide a written assistance request describing the problem. All issues MUST be reported via the portal.

   **Support Portal:** [http://support.avolvesoftware.com](http://support.avolvesoftware.com)

   Upon first entering the portal, the Customer may request a login and Avolve limits logins to one agent per Customer. After a login is received, the Customer may enter, track, update, and report on trouble ticket as well as communicate with Avolve helpdesk staff via phone, email, web meeting, and/or ticket notes. Also, Help, FAQs, Documentation, and a Knowledge-base are available at the above portal as well.

4. **Support Hours.**

   4.1. Licensees with a standard support contract and Cloud Users will receive assistance during Avolve’s normal working hours of 7:00 a.m. through 5:00 p.m., Monday through Friday (excluding standard holidays), Arizona Standard Time.

   4.2. Avolve, in its sole discretion, may offer premium support contracts, which would entitle the purchasing customer to additional support hours and/or other benefits beyond those set forth in this SLA (“Premium Support”). If purchased by a customer, Premium Support terms will be set forth in the applicable Sales Order.

5. **On-Site Emergency Support.** Customer may request Avolve to provide on-site emergency operational support services as a separate and distinct billable service.

6. **Releases Included.** Avolve Support for Licensees of the Software includes all minor and maintenance releases. Avolve reserves the right to charge upgrade fees for major releases or major ancillary program components. Additionally, some features may or may not be activated based on license terms.

   6.1. For the purposes of this SLA, (i) “maintenance releases” shall mean such bug fixes and/or platform updates that are designated by an increment in the last decimal of the release i.e. n.n.1 by Avolve; (ii) “minor releases” shall mean such bug fixes, platform updates, and/or minor product enhancements that are designated by an increment in the second decimal of the release i.e. n.1.n by Avolve; and (iii) “major releases” shall mean such bug fixes, platform updates, and major product enhancements and/or new features that are designated by an increment in the whole number of the release i.e. 1.n.n by Avolve.

   6.2. To the extent applicable, all Avolve Support provided to Customer (including all maintenance releases, minor releases, and major releases) shall be subject to the applicable license agreement between Avolve and Customer.

7. **Problem Determination and Resolution.** Avolve resources will be allocated to resolve reported problems based on the severity level set forth in the table below and Avolve will use commercially reasonable efforts to provide a prompt acknowledgement, acceptable resolution, workaround, or a plan for the provision of a resolution or acceptable workaround in the timeframe set forth in the table below:
<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Definition</th>
<th>Acknowledgement</th>
<th>Resolution Commitment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Priority 1 High</td>
<td>An error that causes a catastrophic failure substantially impacting Customer’s business.</td>
<td>1 Hour</td>
<td>Avolve and Customer will commit full-time resources during normal business hours for problem resolution, to obtain workaround, or reduce the severity of the error.</td>
</tr>
<tr>
<td>Priority 2 Medium</td>
<td>An error that causes Avolve product to fail without significant business impact. Causes a substantial reduction in performance.</td>
<td>24 Hours</td>
<td>Avolve and Customer will commit full-time resources during normal business hours for problem resolution, to obtain a workaround, or reduce the severity of the error.</td>
</tr>
<tr>
<td>Priority 3 Low</td>
<td>An error that causes only minor impact on use of the product.</td>
<td>72 Hours</td>
<td>LOGIS and Customer will commit resources during normal business hours for problem resolution.</td>
</tr>
<tr>
<td>Questions / Enhancement Requests</td>
<td>A service request for a new feature, additional documentation, or an explanation of product functionality.</td>
<td>Within 5 Business Days</td>
<td>Avolve and Customer will provide resources during normal business hours to address request. Enhancement requests will be logged and sent to Avolve Development for review and possible incorporation into ProjectDox.</td>
</tr>
</tbody>
</table>

(a) Acknowledgement. Once a problem has been reported, Customer will receive an acknowledgement via email, phone or the support portal, as to the receipt of the problem as reported and a confirmation of the problem severity. Avolve will begin the process of problem determination and resolution at this point.

(b) Status Updates. During the problem determination and resolution process, Customer may receive regular communications, via email, phone or the support portal, as to the status of the problem determination and resolution.

(c) Resolution. In response to the problem reported, Customer will receive, as appropriate, one of the following resolutions: an existing correction, a new correction, a viable workaround, or a plan on how the problem will be addressed.

(d) Severity Re-classification. If Customer determines that a previously reported and in-progress issue’s severity needs to be re-classified or escalated, Customer should issue a new call or email to the Technical Support Team.

8. Exclusions. Avolve will have no obligation to support the following, pursuant to the terms of this Agreement:

8.1. Software or Avolve Cloud use not covered by an active support contract and/or not in compliance with a valid agreement with Avolve. A support contract must cover all Software licenses purchased. Avolve Cloud Users are entitled to Avolve Support as part of their use fee.

8.2. Software or Avolve Cloud that is altered or modified other than as approved in writing by Avolve.

8.3. Any Software that is either not within the current major (integer) release or is more than two (2) minor releases back from the current minor release within the major (integer) release.
8.4. Problems caused by misuse or misapplication of the Software or Avolve Cloud, including any anomalies and/or failures in test or production operating environments that impact the Software or Avolve Cloud and are determined to have their cause due to unwarranted Customer decisions, actions, system configuration/ modification, policies and/or procedures.

8.5. Software installed on any computer hardware/software configurations not supported by Avolve.

8.6. Problems caused by Licensee custom application code authorized to be developed using Avolve APIs as set forth in the documentation accompanying such API and Licensee’s Agreement.

8.7. Problems caused by updates or upgrades of 3rd party applications that are integrated with ProjectDox.

8.8. Services required to implement any updates, upgrades or releases on Customer’s network, as well as all other operational support issues, are not included with Avolve Support. Such additional services may be purchased for an additional fee.

8.9. All Training programs, regardless of software version updates and/or upgrades.

8.10. Operational Support including but not limited to: (a) Windows configuration issues; (b) SQL Database maintenance and or tuning; (c) VMWare tuning or configuration; (d) Firewall configuration; (e) Network performance; (f) End-User browser support; (g) User-modified and new workflows or eForms.

8.11. Add-ons (as such term is defined in the Customer’s Agreement).

8.12. Any other reasons set forth in the Customer’s Agreement.

Avolve, in its sole discretion, shall determine whether any of the foregoing exclusions are applicable to Customer. Any services provided for exclusions shall be paid by Customer at Avolve’s then-current rates, as well as all travel and other expenses incurred by Avolve in providing such services.

9. **Customer’s Obligations for Operational Support.**

9.1. Contact Person(s). Customer will designate up to two (2) contact person(s) (or such other replacement individuals as Customer may designate in writing) (each a “Contact Person”), who shall be the sole contacts for the coordination and receipt of the Support Services set forth in this SLA. Each Contact Person shall be knowledgeable about, as applicable, the Software and/or Avolve Cloud. If Avolve is unable to contact any designated Contact Person through the specified means for a period of time and such contact would be helpful for performing the Support Services, Avolve may refuse to perform the Support Services until Avolve is able to contact a designated Contact Person, in which case the times for resolution set forth in Section 5 will be suspended for such period of time.

9.2. Remote Access. For the purpose of problem determination and analysis, Customer will provide, as necessary and at Customer’s discretion, the Technical Support Team with remote access capabilities into Customer’s system’s running the Software.

9.3. Supporting Data. Customer will provide reasonable supporting data to aid in the identification and resolution of the issue.

9.4. Installation. Unless otherwise instructed by Avolve, Customer will be responsible for installing any error correction, update or upgrade.
10. **Term.** The term of this agreement shall be as set forth on the Sales Order associated with this SLA and shall continue unless terminated pursuant to the terms of the Agreement.

11. **Fees / Termination / Renewal.** Customer shall pay Avolve the applicable fee as listed on the Sales Order for all Software or Avolve Cloud use rights for which Customer purchased (the “Fees”). Fees will be billed and due as provided for in the Agreement. Fees are paid in advance and are irrevocable and non-refundable (except for the limited credit right set forth in Section 10 below and if set forth expressly otherwise in the Agreement). If Licensee fails to pay all Fees by the due date, this SLA, and all Avolve Support provided for under it, may be immediately terminated, without notice, by Avolve. Alternatively, Avolve, in its sole discretion, may elect to continue to provide Avolve Support and assess interest at a rate of up to 18% per annum, not to exceed the minimum amount allowed by law. To reinstate or renew Avolve Support (if reinstatement is allowed by Avolve at its sole discretion), Customer must pay in advance and in full all Fees that were considered in arrears at that time.

12. **Credits.** Should Avolve fail to meet any of the commitments set forth in this SLA, as customers sole and exclusive remedy:

12.1. **Licensees.** Licensees of Software shall be entitled to receive a service credit of 1% of the licensee’s monthly prorated support fees, per incident in a given month, up to a maximum 50% of monthly prorated support fee payable by the customer. The amount of compensation may not exceed 50% of the licensee’s monthly support fee. This means that if a customer has two (2) incidents in which Avolve failed to respond within the time frame stated, they are entitled to receive a service credit of 4% of the prorated monthly support fee.

12.2. **Cloud Users.** Cloud Users of Avolve Cloud shall be entitled to receive a service credit of 1% of the Cloud User’s monthly prorated use fees (i.e. excluding the hosting fees), per incident in a given month, up to a maximum of 50% of the Cloud User’s monthly prorated use fees.

12.3. **Requesting a Credit.** As outlined in this SLA, Avolve shall issue a service credit to Customer’s account if Avolve does not meet the guaranteed response time limits mentioned in the SLA. The Service Credit will be applied to the clients next invoice that is due, after the credit has been requested and approved by a member of the Avolve Management staff. In order for a customer to receive a credit on their account, the customer must request the service credit within seven (7) business days of the incident in which the response time was not met. This credit request must come from the authorized e-mail account for the customer’s account, and must be submitted directly in the form of a ticket via the customer’s portal account. The ticket must include the customer’s account information, and the Ticket Number in which the response time was not met by Avolve’s Support Department. Since all response times are checked through the Ticket Helpdesk System, there will need to be a Ticket Number mentioned and/or the dates and times that the incident(s) occurred. The Service Credit Request will be reviewed by a member of Avolve’s Management staff to make sure the request is valid, and the customer will receive notification of a Service Credit approval or denial. If a Service Credit Request has been approved, the Service Credit will be applied to the customers next due invoice.
IN WITNESS WHEREOF, the parties hereto, each by a duly authorized representative, have executed this agreement as of 12-9-2016 ("Effective Date"):

<table>
<thead>
<tr>
<th>Customer: City of Minnetonka, Minnesota</th>
<th>Avolve Software Corporation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signature:</td>
<td>Signature:</td>
</tr>
<tr>
<td>Printed:</td>
<td>Printed:</td>
</tr>
<tr>
<td>Title:</td>
<td>Title:</td>
</tr>
<tr>
<td>Date:</td>
<td>Date:</td>
</tr>
</tbody>
</table>
City Council Agenda Item #10A  
Meeting of December 19, 2016

Brief Description: 2017 general liability insurance and workers' compensation renewals

Recommended Action: Authorize renewal of policies as outlined

Background
The city council is being asked to review the proposed insurance package for the city’s 2017 policy term, and formally authorize the coverage options for the package policies and workers’ compensation policy as outlined by staff.

LMCIT Program
The city has been with the League of Minnesota Cities Insurance Trust (LMCIT) since the early 1980s. The program continues to offer the broadest coverage for municipal operations at very reasonable rates. LMCIT also offers a program for return of excess premiums based on successful experience ratings, and the city continues to receive dividends for the general liability program. Staff recommends that the city remain in the LMCIT program.

Package Policies
The coverage provided by the package policies are:

**General Liability**, which provides coverage when the city is liable for incidents such as sewer backups, injuries incurred on city property, employee actions, errors and omissions for elected officials, Open Meeting Law, and Inland Marine (coverage for vehicles not licensed for road use, such as the Zamboni).

**Property**, which provides coverage for physical losses to city-owned facilities. Coverage is purchased for replacement of structures and contents due to damage by fire or acts of nature.

**Automobile**, which provides liability and physical damage coverage for all city vehicles.

Premiums and Recommended Coverage

**Premiums**
The city’s general liability premium decreases from $365,458 to $345,912. The primary factor for the decrease was a drop in the city’s liability rating. This rating is based on the actual cost of the city’s liability claims during a three year period.

Staff recommends the city stay with the $25,000 per claim and $150,000 annual deductibles.
Open Meeting Law
Staff recommends that the city continue with the Open Meeting Law coverage at 100% coverage.

Waiver of Statutory Limits
LMCIT writes its coverage to mirror the liability caps for governmental agencies. Staff continues to recommend that the city not waive those statutory limits.

These premiums are paid from the Insurance Fund, and a sufficient balance is maintained in that fund for these expenses.

Workers’ Compensation

The premium quotation for renewal of the city’s worker’s compensation for the upcoming insurance year through LMCIT, minus credits for a $10,000 deductible is $582,285. The workers compensation premium in 2016 was $470,751. The increase was due in part to the city’s mod factor increasing from 0.84 to 0.96 and an increase in the LMCIT’s worker compensation rate. The mod factor relates to the frequency and severity of an employer’s claims over a three-year period, and it is used to calculate the premium. A mod factor of 1.00 is considered average for an employer’s particular industry.

The workers’ compensation premium fits within the budget allocation for the year.

Traditionally toward the end of each calendar year, the city receives a dividend check from the LMCIT. The League returns to its members funds that weren’t needed for losses, expenses or reserves. Minnetonka’s dividend for 2016 was $129,683, the largest it’s ever been. The city’s average dividend over the past 10 years is $63,313.

Recommendation

Staff recommends that the city council renew the city’s insurance policies through LMCIT for package policies with the following options:

- $25,000/$150,000 deductible for the package policies
- 100% Open Meeting law coverage
- No waiver of statutory limits

Staff recommends that the council also authorize renewal of the LMCIT workers’ compensation policy with a $10,000 deductible.

Submitted through:
   Geralyn Barone, City Manager
   Perry Vetter, Assistant City Manager

Originated by:
   David Maeda, City Clerk
Brief Description: Designation of the city’s official newspaper for 2017

Recommended Action: Designate Lakeshore Weekly News as the city’s official newspaper for 2017 legal notices

Background

The city charter requires the city council to designate a newspaper annually to publish the city’s legal notices, ordinance titles and summaries, and other official announcements. For 2017, Administrative Services has budgeted $15,000 from the Cable Fund for legal notices.

Requests for proposals for the city’s 2017 legal publication needs were sent to the Minnetonka Sun-Sailor and the Lakeshore Weekly News, with a submission deadline of Dec. 8, 2016. Both the Sun-Sailor and the Lakeshore Weekly News submitted proposals.

The Lakeshore’s primary office remains at 1001 Twelve Oaks Center Drive. This address is within the Minnetonka city limits and by state statute automatically qualifies the Lakeshore to serve as Minnetonka’s official newspaper.

The Sun-Sailor’s primary office is located at 10917 Valley View Road, Eden Prairie.

In spite of not having an office in Minnetonka, the Sun Sailor could qualify to serve as the city’s official newspaper under an exception provided in the state statute, requiring that “the publisher of the newspaper furnishes a sworn statement, verified by a recognized independent circulation auditing agent, covering a period of at least one year ending no earlier than 60 days before designation of the newspaper, stating that the newspaper’s circulation reaches not fewer than 75 percent of the households within the political subdivision.”

The Sun-Sailor’s unofficial estimate is that the newspaper is delivered to approximately 65% of households in Minnetonka. Based on this information, the Sun-Sailor doesn’t qualify as a candidate for official newspaper for 2017.

For 2017, the Lakeshore’s per-line insertion rate is the same as it was in 2016. The cost per line for first insertions is $1.06, and the cost per line for subsequent insertions is $.80. While the Lakeshore does not provide carrier delivery to homes, it distributes approximately 15,000 papers each week at 265 public locations, including Minnetonka City Hall.
City staff recommends the *Lakeshore Weekly News* be designated as the city’s official newspaper for 2017 legal notices.

**Recommendation**

Designate *Lakeshore Weekly News* as the city’s official newspaper for 2017 legal notices.

Submitted through:
- Geralyn Barone, City Manager
- Perry Vetter, Assistant City Manager

Originated by:
- Kari Spreeman, Communications and Marketing Manager
Brief Description: City manager performance pay

Recommended Action: Approve the 2016 city manager performance pay

Background

The employment contract for the city manager allows participation in the city’s merit performance management program. The merit program applies to most other city employees and the city manager is eligible to receive up to 1% of her annual base pay based on city council evaluation of her performance. The city council provided feedback on the city’s shared values and leadership and management competencies.

The percentage of lump sum merit pay is related to the percentage results of the performance evaluation. The city manager’s 2016 performance feedback score was 90% out of 100%. Therefore, I am recommending the city manager receive performance pay in the amount of $1,430.27.

Recommendation

Approve a lump sum merit pay amount of $1,430.27.

Respectfully submitted,

Terry Schneider
Mayor
City Council Agenda Item #11A
Meeting of December 19, 2016

Brief Description: Resolution accepting gifts, donations and sponsorships given to the city during 2016

Recommended Action: Adopt the resolution

Background

Council Policy 2.12 regulates the receipt and acceptance of gifts, donations and sponsorships to the city in compliance with Minnesota Statutes §465.03. The policy provides that the council must officially approve acceptance of gifts to the city by adopting a resolution.

Attached is the list of all such donations received between last year’s council acceptance and during 2016 that were not otherwise individually approved by the city council during the period. As required by the council policy, staff certified that all listed donations were an official sponsorship of an approved city program; a donation to the Richard Wilson Scholarship Fund or Parks for Tomorrow Fund; a conservation easement; or were merchandise or equipment meeting the following criteria:

- provide for a previously identified need and is for public benefit and use;
- no long-term costs exist for accepting, maintaining and disposing (if applicable) of the donation; and
- the donation is free of any quid pro quo expectations by the donor.

Volunteer time does not require specific council approval nor do advertisements supporting city enterprise funds, the latter because the monies are payment for the benefit of the advertising.

Except where the donation was anonymous, staff has acknowledged each gift, e.g. a thank you letter, printed or electronic publication of the sponsorship, etc.

Recommendation

Staff recommends the city council adopt the resolution to accept the attached list of gifts, donation and sponsorships for 2016, which have a total estimated value of $187,223.55.

Submitted through:
Geralyn Barone, City Manager

Originated by:
Merrill King, Finance Director
<table>
<thead>
<tr>
<th>Date</th>
<th>Department</th>
<th>Program</th>
<th>Donor Name, if not anonymous</th>
<th>Amount/Value</th>
<th>In-kind Description, if applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/4/2016</td>
<td>Public Works</td>
<td>Parks for Tomorrow</td>
<td>Douville Family and Friends</td>
<td>$1,542.00</td>
<td>Check - Memorial Bench</td>
</tr>
<tr>
<td>1/29/2016</td>
<td>Recreation</td>
<td>Seniors Expo/Scholarship</td>
<td>Can the Clutter</td>
<td>$120.00</td>
<td>Gift Certificate for Door Prize</td>
</tr>
<tr>
<td>3/1/2016</td>
<td>Recreation</td>
<td>Seniors Expo/Scholarship</td>
<td>North Memorial/Minnetonka Medica Center</td>
<td>$25.00</td>
<td>Credit Card</td>
</tr>
<tr>
<td>3/1/2016</td>
<td>Recreation</td>
<td>Seniors Expo/Scholarship</td>
<td>Maximzed Living</td>
<td>$25.00</td>
<td>Book for Door Prize</td>
</tr>
<tr>
<td>3/1/2016</td>
<td>Recreation</td>
<td>Seniors Expo/Scholarship</td>
<td>peterson Travel Pros</td>
<td>$25.00</td>
<td>Gift Certificate for Door Prize</td>
</tr>
<tr>
<td>3/1/2016</td>
<td>Recreation</td>
<td>Seniors Expo/Scholarship</td>
<td>Changing Lifestyle Solutions</td>
<td>$75.00</td>
<td>Check</td>
</tr>
<tr>
<td>3/1/2016</td>
<td>Recreation</td>
<td>Seniors Expo/Scholarship</td>
<td>Emerald Crest by Augustana Care</td>
<td>$75.00</td>
<td>Check</td>
</tr>
<tr>
<td>3/1/2016</td>
<td>Recreation</td>
<td>Seniors Expo/Scholarship</td>
<td>Meals on Wheels - South Shore</td>
<td>$75.00</td>
<td>Check</td>
</tr>
<tr>
<td>3/10/2016</td>
<td>Recreation</td>
<td>Seniors Expo/Scholarship</td>
<td>Vinaracuean Tours</td>
<td>$25.00</td>
<td>Check</td>
</tr>
<tr>
<td>3/10/2016</td>
<td>Recreation</td>
<td>Seniors Expo/Scholarship</td>
<td>Sit Mutual Funds</td>
<td>$50.00</td>
<td>Credit card</td>
</tr>
<tr>
<td>3/10/2016</td>
<td>Recreation</td>
<td>Seniors Expo/Scholarship</td>
<td>Lifesprk</td>
<td>$50.00</td>
<td>Check</td>
</tr>
<tr>
<td>3/10/2016</td>
<td>Recreation</td>
<td>Seniors Expo/Scholarship</td>
<td>Legacy Home Care</td>
<td>$75.00</td>
<td>Check</td>
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<tr>
<td>3/10/2016</td>
<td>Recreation</td>
<td>Seniors Expo/Scholarship</td>
<td>Landmark Tours, Inc</td>
<td>$75.00</td>
<td>Check</td>
</tr>
<tr>
<td>3/16/2016</td>
<td>Recreation</td>
<td>Richard Wilson Scholarship Fund</td>
<td>Robann Otto Mrkonich</td>
<td>$100.00</td>
<td>Check</td>
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<tr>
<td>4/20/2016</td>
<td>Recreation</td>
<td>Seniors Expo/Scholarship</td>
<td>Comforcare Home Care</td>
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<td>Credit Card</td>
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<td>4/26/2016</td>
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<td>Seniors Expo/Scholarship</td>
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<td>$25.00</td>
<td>Credit Card</td>
</tr>
<tr>
<td>5/5/2016</td>
<td>Recreation</td>
<td>Seniors Expo/Scholarship</td>
<td>Bhatti Gastroenterology Consultants</td>
<td>$25.00</td>
<td>Cash/Check</td>
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<td>5/5/2016</td>
<td>Recreation</td>
<td>Seniors Expo/Scholarship</td>
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<td>Seniors Expo/Scholarship</td>
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<td>5/5/2016</td>
<td>Recreation</td>
<td>Richard Wilson Scholarship Fund</td>
<td>Lesley Longval</td>
<td>$500.00</td>
<td>Check</td>
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<td>5/12/2016</td>
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<td>Richard Wilson Scholarship Fund</td>
<td>Robann Otto Mrkonich</td>
<td>$50.00</td>
<td>Check</td>
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<tr>
<td>6/8/2016</td>
<td>Public Works</td>
<td>Native Paint Market Eco Fun Fest</td>
<td>Rainbow Tree Care</td>
<td>$650.00</td>
<td>Arborists to staff kid's climbing event</td>
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<td>6/20/2016</td>
<td>Recreation</td>
<td>Richard Wilson Scholarship Fund</td>
<td>Robann Otto Mrkonich</td>
<td>$50.00</td>
<td>Check</td>
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<tr>
<td>6/20/2016</td>
<td>Recreation</td>
<td>Richard Wilson Scholarship Fund</td>
<td>Michael (Doobie) Kurus</td>
<td>$3,500.00</td>
<td>Check</td>
</tr>
<tr>
<td>7/21/2016</td>
<td>Police</td>
<td>Night for Neighbors</td>
<td>Gina Maria Pizza</td>
<td>$50.00</td>
<td>3 free pizza certificates</td>
</tr>
<tr>
<td>7/21/2016</td>
<td>Police</td>
<td>Night for Neighbors</td>
<td>Target - Ridgedale</td>
<td>$249.00</td>
<td>$249 in gift cards</td>
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<tr>
<td>7/21/2016</td>
<td>Police</td>
<td>Night for Neighbors</td>
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<td>$300.00</td>
<td>Ten $30 gift cards</td>
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<td>Night for Neighbors</td>
<td>Target - Hwy 101</td>
<td>$500.00</td>
<td>dollar bin and misc items</td>
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<tr>
<td>7/21/2016</td>
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<td>Night for Neighbors</td>
<td>Cargill</td>
<td>$750.00</td>
<td>750 Compass light keychains</td>
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<tr>
<td>7/21/2016</td>
<td>Police</td>
<td>Night for Neighbors</td>
<td>Mall of America</td>
<td>$150,000.00</td>
<td>10,000 mall passes (each ticket estimated value average $15)</td>
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<td>8/18/2016</td>
<td>Administration</td>
<td>Burwell House</td>
<td>Anonymous</td>
<td>$25.00</td>
<td>Cash/Check</td>
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<tr>
<td>8/19/2016</td>
<td>Public Works</td>
<td>Parks for Tomorrow</td>
<td>Joan Joyce</td>
<td>$965.00</td>
<td>Check - Memorial Bench</td>
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<tr>
<td>8/24/2016</td>
<td>Recreation</td>
<td>Music in the Park</td>
<td>Minnwest Bank</td>
<td>$500.00</td>
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<tr>
<td>9/13/2016</td>
<td>Police</td>
<td>Class &quot;A&quot; Uniforms</td>
<td>Minnetonka Lions Club</td>
<td>$1,444.96</td>
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<td>9/14/2016</td>
<td>Police</td>
<td>Police</td>
<td>Step By Step Montessori</td>
<td>$579.00</td>
<td>Gift Cards - various locations</td>
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<tr>
<td>9/23/2016</td>
<td>Public Works</td>
<td>Parks for Tomorrow</td>
<td>Minnetonka Senior Garden Club</td>
<td>$1,000.00</td>
<td>Check - Burwell Plants</td>
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<tr>
<td>9/23/2016</td>
<td>Recreation</td>
<td>Veterans Week/Senior</td>
<td>The Glenn of Hopkins</td>
<td>$75.00</td>
<td>Check (2)</td>
</tr>
<tr>
<td>9/26/2016</td>
<td>Recreation</td>
<td>Veterans Week/Senior</td>
<td>Augustana Care Services</td>
<td>$75.00</td>
<td>Check</td>
</tr>
<tr>
<td>9/28/2016</td>
<td>Recreation</td>
<td>Veterans Week/Senior</td>
<td>WestRidge</td>
<td>$75.00</td>
<td>Credit Card</td>
</tr>
<tr>
<td>10/5/2016</td>
<td>Recreation</td>
<td>Veterans Week/Senior</td>
<td>VOA/Elder Homecare</td>
<td>$75.00</td>
<td>Check</td>
</tr>
<tr>
<td>Date</td>
<td>Department</td>
<td>Program</td>
<td>Donor Name, if not anonymous</td>
<td>Amount/Value</td>
<td>In-kind Description, if applicable</td>
</tr>
<tr>
<td>------------</td>
<td>----------------</td>
<td>----------------------------------------------</td>
<td>------------------------------</td>
<td>--------------</td>
<td>-------------------------------------</td>
</tr>
<tr>
<td>10/27/2016</td>
<td>Recreation</td>
<td>Richard Wilson Scholarship Fund</td>
<td>Robann Otto Mrkonich</td>
<td>$50.00</td>
<td>Check</td>
</tr>
<tr>
<td>12/8/2016</td>
<td>Public Works</td>
<td>Parks for Tomorrow</td>
<td>Nancy Sheran</td>
<td>$890.00</td>
<td>Check - Memorial Bench</td>
</tr>
<tr>
<td>12/12/2016</td>
<td>Fire</td>
<td>Automatic External Defibrillators</td>
<td>Firehouse Subs</td>
<td>$20,833.59</td>
<td>Equipment</td>
</tr>
<tr>
<td>12/12/2016</td>
<td>Public Works</td>
<td>Parks for Tomorrow</td>
<td>Lakeside Estates Assoc.</td>
<td>$1,475.00</td>
<td>Checks/Cash - Memorial Bench</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>2016 Total Value</strong> $187,223.55</td>
</tr>
</tbody>
</table>
Resolution No. 2016-

Resolution accepting gifts, donations and sponsorships made to the city in 2016

Be it resolved by the City Council of the City of Minnetonka, Minnesota as follows:

Section 1. Background.

1.01. Council Policy 2.12 regulates the receipt and acceptance of gifts, donations and sponsorships to the city. The policy requires the council to officially approve acceptance of gifts to the city.

1.02. Minnesota Statutes, section 465.03 allows cities to accept gifts of real or personal property, including money, and to use the gifts in accordance with the terms prescribed by the donor. The statute requires the gift to be accepted by resolution, approved by two-thirds of the members of the city council.

1.03. During the year 2016, the city received gifts, donations or sponsorships as set forth in the list attached to this resolution.

1.04. City staff has certified that all listed donations conform to Council Policy 2.12.

1.05. The total estimated value of the gifts, donations and sponsorships for 2016 is $187,223.55.

Section 2. Council Action.

2.01. Council accepts the gifts, donations and sponsorships set forth on the attached list and designates those gifts for the uses specified in the attached list or, if no use is specified, for the general fund.

Adopted by the City Council of the City of Minnetonka, Minnesota, on December 19, 2016.

________________________________________
Terry Schneider, Mayor

Attest:

________________________________________
David E. Maeda, City Clerk
Action on this resolution:

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on December 21, 2015.

________________________________________
David E. Maeda, City Clerk
City Council Agenda Item #11B
Meeting of December 19, 2016

Brief Description
Applications for renewed precious metal and secondhand dealer licenses for 2017

Recommendation
Approve the licenses

Background
The city has received applications for renewal of precious metal and secondhand dealer licenses for the following establishments:

Evergreene Jewelers 3500 County Road No. 101
Ideal Diamond, Inc. 11900 Wayzata Boulevard, #116K
Best Buy #4 13513 Ridgedale Drive
Best Buy Mobile #2975 12401 Wayzata Blvd
Best Buy #2621 12411 Wayzata Blvd (Inside Macy’s)
Shane Co 11300 Wayzata Blvd, Suite A

There have been no changes to the ownership structure or day-to-day operations since the licenses were approved last year.

Police Contacts
The police department reports that they have had no adverse contacts with any of the businesses this year.

Other Issues
All applicants meet all the requirements of the precious metal dealer/secondhand dealer ordinance. All assessments and other city claims against these establishments, as well as property taxes, are current.

Recommendations
Staff recommends that the city council approve the precious metal and secondhand dealer licenses for the above establishments, for the license year January 1, 2017, through December 31, 2017.

Submitted through:
Geralyn Barone, City Manager
Julie Wischnack, AICP, Community Development Director

Originated by:
Kathy Leervig, Community Development Coordinator
Brief Description: Resolutions regarding utility related items:
1) Municipal water and sanitary sewer rates;
2) Municipal water and sanitary sewer connection fees;
3) Recycling fee

Recommended Action: Hold the public hearing and adopt the resolutions

Background

The city of Minnetonka has long held a policy of making decisions with the long-term in mind. Each spring, the staff and council analyze the operating and infrastructure needs of the city’s water, sewer, recycling and storm water utility enterprises during its development of the Capital Improvements Program (CIP), which includes estimated costs and revenues for at least the future five years. The first year of these five-year enterprise plans is codified in the next year’s budget, over which the council deliberates during several meetings in the summer and fall, and then adopts the final budget in December. Any changes in utility user rates and fees needed to enact the budget are further discussed at a public hearing prior to their specific adoption in December to become effective the following year.

1. Municipal water and sanitary sewer rates

In 2014 and 2015, the city council convened a number of study sessions regarding critical maintenance and reconstruction of the city’s $500 million water and sewer system assets. Subsequently, the council proactively adopted a long-term bonding and user rate plan to support the ongoing costs required to keep the aging systems in appropriate working order.

The schedule for reconstruction of the system prioritizes street areas of high frequency water main breaks. The adopted 2016-2020 CIP and 2017-2021 CIP cover the first of a series of high-cost/high-priority projects, Libb’s Lake neighborhood area (2016) and Oakland Road (2016). Crosby Road is scheduled for 2017, and the remaining two highest-cost/high-priority areas, Groveland School Road/Bay Street and Tonka-Woodcroft neighborhoods, are estimated to be scheduled in 2022 and 2023. As the latter dates approach, staff will engage consultants for further analysis and update of the long term capital plan for the utility system along with its financial blueprint.

The adopted rates and financial plan continues to be consistent with the city’s historic and appropriate financing structures for the city’s utilities. It uses a Pay-As-You-Use approach for financing the major infrastructure of these enterprises and does not special assess to property owners such road-related projects.
Under the rates and financial plan, the city has sold $17.5 million in G.O. revenue bonds in 2015 and 2016, and annual debt service on those bonds began this year. The timing of the first issuance ensured the city preserved its bank-qualified status, which garnered savings of as much as $1 million over the life of amortizing its liability. Current cash flow estimates suggest that the city will not need to issue additional debt for the system until late 2017 or early 2018. The need for each future bond sale will be analyzed prior to further action on each. Debt service on the only prior currently outstanding water/sewer debt will be paid off in 2020, and the new debt is built to wrap-around the related reduction in annual costs.

As discussed previously, user rates need to be increased to support the cost of the new debt service without special assessing costs to adjacent property owners. The recommended schedule of fee changes are similar to that adopted by the city in 2006 and 2007 for our Road Improvement Plan, which included more significant hikes in the first two years, then ongoing more modest increases annually thereafter. 2017 will be the second and last planned year of the higher increases.

Springsted financial advisors estimate that the average water and sewer utility customer will experience a water sewer utility bill increase of $5.91 per month in 2017. And, as indicated below, around three quarters of all water consumption falls within the lowest tier fee rate and less than four percent in the highest.

At the recommended rates, the city of Minnetonka’s relative position of customer costs for water and sewer services compared to other cities in the Metro would continue to make the city’s utility bill one of the larger. However, Minnetonka’s would continue to be somewhat similar and modest amongst those cities where utility infrastructures are comparable in age, as indicated in the shaded portion of the following table. And, Minnetonka does not special assess residents, which is not the case in most other cities.
Combined Monthly Water & Sewer Bill (6,000 gallons)

<table>
<thead>
<tr>
<th>City</th>
<th>2016</th>
<th>Proposed 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maple Grove</td>
<td>$30.38</td>
<td>$31.73</td>
</tr>
<tr>
<td>Eagan</td>
<td>$32.18</td>
<td>$33.23</td>
</tr>
<tr>
<td>Brooklyn Park</td>
<td>$32.87-$33.82</td>
<td>Unknown</td>
</tr>
<tr>
<td>Lakeville</td>
<td>$31.07</td>
<td>$36.96</td>
</tr>
<tr>
<td>Apple Valley</td>
<td>$36.09</td>
<td>$37.70</td>
</tr>
<tr>
<td>Eden Prairie</td>
<td>$38.66</td>
<td>$40.06</td>
</tr>
<tr>
<td>St. Louis Park</td>
<td>$41.59</td>
<td>$44.74</td>
</tr>
<tr>
<td>Burnsville</td>
<td>$44.64</td>
<td>$45.23</td>
</tr>
<tr>
<td><strong>Minnetonka</strong></td>
<td><strong>$43.62</strong></td>
<td><strong>$49.53</strong></td>
</tr>
<tr>
<td>Edina</td>
<td>$47.39</td>
<td>$49.54</td>
</tr>
<tr>
<td>Richfield</td>
<td>$48.82</td>
<td>$51.64</td>
</tr>
<tr>
<td>Minneapolis</td>
<td>$53.27</td>
<td>$56.21</td>
</tr>
</tbody>
</table>

Under the city’s adopted water and sewer system cash balance policy, the minimum targets for the Utility Fund’s operating reserve is six months operating costs and the capital reserve target is ten percent of the system’s accumulated depreciation. The Utility Fund met these cash reserve goals for the first time at the end of 2015 and is projected to do the same at the end of 2016 due to the cash inflow from bond proceeds during those years. Costs of the system’s intensive reconstruction is projected to absorb those assets by year end, at which time staff will reanalyze the timing and need for additional bonding along with more modest annual fee increases beginning 2018.

A summary of the recommended changes are as follows:

I. Residential Water Rate (quarterly use)
   - Tier 1 (0 to 18,000 gallons): Current $2.50, Proposed $2.85
   - Tier 2 (18,001 to 40,000 gallons): Current $2.85, Proposed $3.25
   - Tier 3 (40,001 to 70,000 gallons): Current $3.59, Proposed $4.07
   - Tier 4 (70,001 + gallons): Current $4.98, Proposed $5.65

II. Sewer Rate
   - Base fee – residential: Current $63.56/quarter, Proposed $63.56/quarter
   - Special class base fee*: Current $23.47/quarter, Proposed $23.47/quarter

*Discontinued for new entrants into program.
<table>
<thead>
<tr>
<th>Current (1,000 gallons)</th>
<th>Proposed (1,000 gallons)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>III. Commercial/Industrial Water</strong></td>
<td></td>
</tr>
<tr>
<td>• Base rate</td>
<td>$2.50</td>
</tr>
<tr>
<td>• Summer surcharge rate (May – Sept)</td>
<td>$2.84</td>
</tr>
<tr>
<td><strong>IV. Meter Maintenance Fee</strong></td>
<td></td>
</tr>
<tr>
<td>• 1 ½&quot;</td>
<td>$1.25</td>
</tr>
<tr>
<td>• 2&quot;</td>
<td>$3.73</td>
</tr>
<tr>
<td>• 3&quot;</td>
<td>$7.48</td>
</tr>
<tr>
<td>• 4&quot;</td>
<td>$11.21</td>
</tr>
<tr>
<td>• 6&quot;</td>
<td>$14.96</td>
</tr>
<tr>
<td><strong>V. Commercial/Industrial Sprinkler Accounts (monthly use)</strong></td>
<td></td>
</tr>
<tr>
<td>• Sprinkler I (0 to 75,000 gallons)</td>
<td>$2.85</td>
</tr>
<tr>
<td>• Sprinkler II (75,001 to 175,000 gallons)</td>
<td>$3.59</td>
</tr>
<tr>
<td>• Sprinkler III (175,001 + gallons)</td>
<td>$4.98</td>
</tr>
</tbody>
</table>

State of Minnesota testing fees and meter maintenance fees will remain the same.

Because the water and sewer systems sustainability plan must be aggressive, staff continues a significant public education effort to assist our utility customers in understanding why rates are increasing. A series about the water and sewer utilities continues in the Minnetonka Memo and on the city’s website, and these will continue to be featured in installments over the next year. We are also planning to add an insert to commercial utility bills beginning the first few months of 2017, to make them aware of the changes and the reasons behind them.

2. Municipal water and sanitary sewer connection fees

City Council Policy 12.4, Sanitary Sewer and Water Connection Fees, directs the city’s Residential Equivalent Charge (REC) to be indexed for annual inflationary changes per the “Engineering News Record.” The REC is used as a multiplier against the Metropolitan Council established units of SAC (sewer access charge) in determining city water and sewer connection fees. Per the policy, the REC will be increased in 2017 by the current index for Minneapolis of 3.0 percent, which will increase the RECs per SAC unit to $1,825.36 for water and $1,026.75 for sewer.

3. Recycling Fee

In 2014, council adopted a plan to shore up the city’s Environmental Fund relative to the long-term change in the market for recycled materials. The fund maintains not only the costs of residential recycling, but also the city’s popular yard waste recycling and
special drop-off programs. The 2017 budget continues to appropriately address the fund’s ongoing need for structural balance with an increase in the recycling fee to meet the expenses of the city’s environmental programs supported by the fund.

Environmental Fund Expenditures & Revenue 2006-2021

Before the recession, revenues to the city from the sale of recycled materials (shown above as “contract rebate”) along with the fund’s other sources had more than covered program costs. As of last year, the market for recycled goods has dramatically dried up, and therefore no associated revenues are conservatively forecasted in the future. To offset this loss of revenue, staff has sought to reduce expenditures and have recently negotiated some significant contract service savings for grinding of brush and trees. Other similar savings may be forthcoming, but such discussions are currently only preliminary.

Staff recommends an increase in the residential fee for recycling from $4.00 to $4.10 per month. Until 2014, the city’s recycling fee rate had remained the same for the prior ten years. The new fee rate will place the city’s charges to be in the ball park of the average of residential recycling fees across the metro and would allow the city to recover the full costs of our programs over the long term while requiring only very modest annual rate increases.

Recommendation

Staff recommends that the council conduct the public hearing and adopt the attached resolutions to enact the rates, increase connection fees, and increase the recycling fee. New rates would become effective January 1, 2017.
Submitted through:
  Geralyn Barone, City Manager
  Perry Vetter, Assistant City Manager

Originated by:
  Merrill King, Finance Director
  Brian Wagstrom, Public Works Director
Be it resolved by the City Council of the City of Minnetonka, Minnesota as follows:

Section 1. Background.

1.01. On December 7, 2015, the City Council adopted Resolution No. 2015-127 setting municipal water rates and sanitary sewer service charges.

1.02. Those rates and charges are now scheduled for an increase in order to sustain the operations, maintenance and capital improvements of the city’s water and sanitary sewer enterprise.

1.03. The City Council, upon recommendation of the City Manager, city staff, and financial consultants, deems it proper and for public purposes and in the public interest to revise the current water and sanitary sewer rates and rate structure.

Section 2. Council Action.

2.01. The municipal water rates and sanitary service charges will be established as follows:

1. Residential water charges will be based on a four tier structure as follows:

<table>
<thead>
<tr>
<th>Tier</th>
<th>Gallons</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tier 1</td>
<td>0 – 18,000</td>
<td>$2.85/1,000</td>
</tr>
<tr>
<td>Tier 2</td>
<td>18,001 – 40,000</td>
<td>$3.25/1,000</td>
</tr>
<tr>
<td>Tier 3</td>
<td>40,001 – 70,000</td>
<td>$4.07/1,000</td>
</tr>
<tr>
<td>Tier 4</td>
<td>70,001+</td>
<td>$5.65/1,000</td>
</tr>
</tbody>
</table>

2. For residential accounts, a late payment fee of 10 percent of the current late balance per quarter will be charged for quarterly bills more than 10 calendar days past due.

3. The base water rate for commercial/industrial consumers is set at $2.85 per thousand gallons.

4. A summer surcharge of $0.37 per thousand gallons will be charged for the months of May through September for commercial/industrial customers.
5. Apartment buildings will be billed at residential tiered rates and tier cutoffs will be adjusted by multiplying the number of units in each metered apartment building by each tier threshold.

6. Commercial/industrial irrigation sprinkler accounts will be charged on the following three-tier structure:

<table>
<thead>
<tr>
<th>Sprinkler</th>
<th>Gallons Range</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>0-75,000 gallons</td>
<td>$3.25/1,000 gallons</td>
</tr>
<tr>
<td>II</td>
<td>75,001-175,000 gallons</td>
<td>$4.07/1,000 gallons</td>
</tr>
<tr>
<td>III</td>
<td>175,001 + gallons</td>
<td>$5.65/1,000 gallons</td>
</tr>
</tbody>
</table>

7. For commercial/industrial accounts a 10 percent late payment charge will be collected for monthly billings more than 10 calendar days past due.

8. A meter maintenance fee be collected for each monthly billing as follows:

<table>
<thead>
<tr>
<th>Meter Size</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 ½”</td>
<td>$1.42 per month</td>
</tr>
<tr>
<td>2”</td>
<td>$4.23 per month</td>
</tr>
<tr>
<td>3”</td>
<td>$8.49 per month</td>
</tr>
<tr>
<td>4”</td>
<td>$12.62 per month</td>
</tr>
<tr>
<td>6”</td>
<td>$16.98 per month</td>
</tr>
</tbody>
</table>

10. The State of Minnesota testing fee will be $1.59 per quarter for residential customers and $0.53 per month for commercial/industrial customers.

11. Municipal sanitary sewer charges will be $2.26 per thousand gallons of water actually consumed per quarter or during the winter quarter, whichever is less.

12. All municipal water and/or sewer users, except in #13 below, will be charged a base rate of $63.56 each quarter (residential) and $21.19 per month (commercial) to support fixed costs of the utility systems.

13. Senior citizens, 62 years of age or older, who are served by the city's sanitary sewer system in properties homesteaded under state law, and who submitted an approved application prior to December 17, 2012, will be charged a base rate of $23.47 each quarter to support fixed costs of the utility systems.

2.02. The revised municipal water and sanitary sewer service charges contained herein will become effective for billings prepared on or after January 1, 2017.
Adopted by the City Council of the City of Minnetonka, Minnesota, on this 19th day of December 2016.

________________________________________
Terry Schneider, Mayor

ATTEST:

________________________________________
David E. Maeda, City Clerk

ACTION ON THIS RESOLUTION:

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Resolution adopted.

CERTIFIED COPY:

I certify that the foregoing is a correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on December 19, 2016.

________________________________________
David E. Maeda, City Clerk
Resolution No. 2016-

Resolution providing for a change in municipal water and sanitary sewer connection fees

Be it resolved by the City Council of the City of Minnetonka, Minnesota as follows:

Section 1. Background.

1.01. On May 4, 2009, the City Council adopted Resolution No. 2009-038 establishing municipal water and sanitary sewer connection fees.

1.02. Council policy states that water and sanitary sewer connection fees will be determined by the use of a “Residential Equivalent Charge” (REC).

1.03. The policy further states that the city council will establish the RECs by resolution based on an analysis of the financing needs for the water and sanitary sewer systems. Thereafter, the council will annually, by resolution, increase the REC for water and for sanitary sewer based upon the construction index found in the “Engineering News Record.”

1.04. The current construction index of the “Engineering News Record” is 3.00 percent annual change.

1.05. The municipal water and sanitary sewer fees are now scheduled for an increase in order to ensure that all properties pay a just and equitable share of the sanitary sewer and water infrastructure serving them.

1.03. The City Council, upon recommendation of the City Manager, city staff, and financial consultants, deems it proper and for public purposes and in the public interest to revise the current water and sanitary sewer connection fees.

Section 2. Council Action.

2.01. The “Residential Equivalent Charge” for water connection fees will be $1,825.36 and the “Residential Equivalent Charge” for sanitary sewer connection fees will be $1,026.75, and both will become effective January 1, 2017.
Adopted by the City Council of the City of Minnetonka, Minnesota, on December 19, 2016.

________________________
Terry Schneider, Mayor

Attest:

________________________
David E. Maeda, City Clerk

**Action on this resolution:**

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Resolution adopted.

I certify that the foregoing is a correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on December 19, 2016.

________________________
David E. Maeda, City Clerk
Resolution No. 2016-

Resolution increasing the city’s monthly recycling fee

Be it resolved by the City Council of the City of Minnetonka, Minnesota as follows:

Section 1. Background.

1.01. The City of Minnetonka has provided a recycling program to its citizens since 1989.

1.02. On January 7, 1991, the City Council adopted Resolution No. 91-9163 establishing a utility charge to fund the recycling program, which now may be supported also with a portion of proceeds from the sale of recycled materials, plus funds from Hennepin County.

1.03. In addition to curbside recycling and the recycling drop-off location at the city’s public works building, the City uses the recycling revenues to help pay the cost of other environmental collection and reuse programs including organics, special drop-offs, spring and fall leaf drop-offs, as well as brush drop-offs, which are provided several times every year.

1.04. A substantial change in the market for recycled materials has occurred in recent years, and this change in addition to increases in the cost of the city’s recycling contract and a reduced weight of materials recycled (mainly due to less newsprint and magazines) have resulted in a significant loss in revenues to support the program.

1.05. Before 2014, the monthly recycling fee had not been increased since December 1993.

Section 2. Council Action.

2.01. The recycling fee charged to Minnetonka residents is hereby increased from $4.00 to $4.10 per household per month.

2.02. The revised recycling fee of $4.10 per household per month will become effective for billings prepared on or after January 1, 2017.

Adopted by the City Council of the City of Minnetonka, Minnesota, on December 19, 2016.

______________________________
Terry Schneider, Mayor
Attest:

________________________________________
David E. Maeda, City Clerk

**Action on this resolution:**

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Resolution adopted.

I certify that the foregoing is a correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on December 19, 2016.

________________________________________
David E. Maeda, City Clerk
Brief Description: Resolutions regarding utility related items:
4) Stormwater rates

Recommended Action: Hold the public hearing and adopt the resolution

Background

On January 27, 2003, the city council adopted a resolution approving a council policy for the establishment of a stormwater utility. The policy states that council will, from time to time, by resolution establish a basic system rate that will be used in determining the stormwater fees to be charged against each parcel of land within the city of Minnetonka. The basic rate is the same rate charged to residential parcels.

The 2017-2021 Capital Improvement Program (CIP) was prepared in anticipation of a stormwater fee increase in 2017 that would maintain structural balance within this fund through the next five years. This CIP was reviewed with council at the April 18 study session and was prepared with a balanced approach of increasing funding, and more efficiently using the funds that are available by prioritizing needs. Council approved the 2017-2021 CIP on July 11.

Proposed Rates

The proposed 2017 basic rate represents a 3.0% increase over the 2016 rate. The increase is necessary and reflects the following budgetary pressures that are related to stormwater control and oversight in the city:

- Local street reconstruction project funding that helps minimize the street improvement fund costs for local projects.
- Improvements to stormwater infrastructure in village center areas including projects at Ridgehaven Lane and Plymouth Road, within the Opus area, and corridor improvements in conjunction with the SWLRT.
- Funding federal mandates concerning water quality.

Staff has reviewed the stormwater fund expenditures and CIP for the upcoming five-year period, and anticipates future yearly increases will also be in the range of three percent. The proposed 2017 rates outlined below keep Minnetonka’s stormwater charges in line with comparable cities.
### Proposed Minnetonka Stormwater Utility Fees for 2017

<table>
<thead>
<tr>
<th>Classification</th>
<th>Description</th>
<th>2016 Rate</th>
<th>Proposed 2017 Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Open Space, Golf Courses, Undeveloped</td>
<td>$2.92/acre/month</td>
<td>$3.00</td>
</tr>
<tr>
<td>2</td>
<td>Single-Family and Two/Three-Family Residential</td>
<td>$6.48/unit/month</td>
<td>$6.67</td>
</tr>
<tr>
<td>3</td>
<td>Churches, Schools, and Government Buildings</td>
<td>$17.50/acre/month</td>
<td>$18.02</td>
</tr>
<tr>
<td>4</td>
<td>Apartments, Condos, and Railroad R/W</td>
<td>$19.44/acre/month</td>
<td>$20.02</td>
</tr>
<tr>
<td>5</td>
<td>Commercial and Industrial</td>
<td>$48.99/acre/month</td>
<td>$50.46</td>
</tr>
</tbody>
</table>

In order to fully cover expenses in 2017 and throughout the proposed 2017-2021 CIP, staff is recommending increasing the basic rate (residential fee) by $0.19 to $6.67 per month. In accordance with the policy, the new basic rate is used to calculate the stormwater fee increases for the other parcel classifications, as shown above.

**Recommendation**

Hold the public hearing and adopt the attached resolution. If adopted, the new rates will become effective on January 1, 2017.

Submitted through:
- Geralyn Barone, City Manager
- Perry Vetter, Assistant City Manager

Originated by:
- Will Manchester, P.E., Director of Engineering
- Merrill King, Finance Director
Be it resolved by the City Council of the City of Minnetonka, Minnesota as follows:

Section 1. Background.

1.01. On January 27, 2003 the city council adopted a resolution approving a council policy for the establishment of a stormwater utility.

1.02. The policy states that council will, from time to time, by resolution establish a basic system rate that will be used in determining the stormwater fees to be charged against each parcel of land within the City of Minnetonka.

1.03. The city council, upon recommendation from the city manager and city staff, deems it proper and in the public interest to increase such rate.

Section 2. Council Action.

2.01. The basic system rate shall be $6.67, and shall become effective for billings prepared on or after January 1, 2017.

Adopted by the City Council of the City of Minnetonka, Minnesota, on December 19, 2016.

Terry Schneider, Mayor

Attest:

David E. Maeda, City Clerk

Action on this resolution:

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on December 19, 2016.

__________________________________________________________
David E. Maeda, City Clerk
City Council Agenda Item #13B  
Meeting of December 19, 2016

**Brief Description**
On-Sale & Sunday On-Sale Intoxicating liquor license for Fun Eats and Drinks, LLC (dba Champps), 1641 Plymouth Road

**Recommendation**
Continue the public hearing, grant the license, and renew the 2017 license

**Background**

Fun Eats and Drinks, LLC has acquired the ownership of Last Call Operating Co II (Champps) through a federal bankruptcy court ordered sale. Kelly Investment Group, a private-equity firm out of California, owns Fun Eats and Drinks, LLC. Fun Eats and Drinks, LLC has applied for a new liquor license to operate at 1641 Plymouth Road.

Michael Kelly is Chairman and CEO of Kelly Investment Group (“KIG”). He has developed, owned and operated numerous businesses. KIG’s investment experience includes casual and fine dining restaurants, bars and nightclubs, a gas station/convenience store chain, a family entertainment center with food service, hotels, manufacturing and service businesses, real estate development and a parking structure.

Fun Eats and Drinks, LLC owns and operates under the brand names of Fox & Hound, Bailey’s, and Champps.

**Business Operations**

The change in ownership necessitates the need for a new liquor license. All other operational aspects of the existing restaurant will remain the same. A management agreement is in place between Last Call Operating Co II., and Fun Eats and Drinks, LLC until the council approves the ownership change.

**Application Information**

Application information has been submitted. The police department’s investigative report is complete and will be forwarded to the council separately.

**Recommendation**

Staff recommends that the city council continue the public hearing, grant the license and renew the license for 2017.
Submitted through:
   Geralyn Barone, City Manager
   Julie Wischnack, AICP, Community Development Director

Originated by:
   Kathy Leervig, Community Development Coordinator
Location Map

Applicant: Fun Eats and Drinks, LLC
Address: 1641 Plymouth Road
City Council Agenda Item #14A
Meeting of December 19, 2016

Brief Description
Resolution amending loan documents executed in connection with the multifamily housing revenue obligations issued for the benefit of CHC Minnetonka Affordable Housing LLC; and authorizing the execution and delivery of an amendment document in connection with the request

Recommendation
Adopt the resolution

Background

On May 18, 2015, the EDA approved a Contract for Private Development with CHC Minnetonka Affordable Housing LLC (the “Borrower”), and Community Housing Corporation of America, Inc. related to the Music Barn Apartment project, which consists of the construction of 27 affordable apartment units and underground parking.

In addition to the Music Barn Project, the Borrower is also rehabilitating 46 existing affordable townhome units at 5400 Smetana Drive and rehabilitating 8 affordable townhome units at two locations in Golden Valley.

On May 9, 2016, the Borrower requested and received approval from the city council for the city to issue multifamily housing revenue bonds, in one or more series, as taxable or tax-exempt obligations in the estimated aggregate principal amount not to exceed $11,500,000. Following this approval, the Borrower obtained allocation for affordable housing bonds from the State of Minnesota. The allocation was required to be used within 120 days of the receipt of the award of allocation.

Following the meeting in May, the Borrower requested issuance of a temporary note because the HUD financing was taking longer than expected. On August 8, the council adopted Resolution 2016-063, which authorized the issuance of the city’s multifamily housing revenue note to provide short-term financing for the project. The note was issued on August 18 and sold to Bridgewater Bank. The Borrower, CHC Minnetonka Affordable Housing LLC, intended to refund the note with the proceeds of permanent obligations issued by the city.

On October 24, 2016 the city council adopted a resolution approving the issuance of revenue bonds to refund the note and to provide permanent financing for the project. The borrower continues to finalize the terms of the permanent financing and has requested that the purchaser extend the mandatory redemption date of the short-term financing. The purchaser has agreed to those terms.
The borrower is now requesting that the city council consider the resolution that approves the extension of the mandatory redemption date of the short-term financing and authorizes city officials to enter into a Master Amendment Agreement, which would amend the Loan Agreement, Pledge Agreement, and Regulatory Agreements executed in connection with the issuance of the Note. The Master Amendment Agreement will provide the consent of the purchaser required under the terms of the note.

**Recommendation**

Staff recommends the city council adopt the attached resolution authorizing the execution of related documents that include:
- Master Amendment Agreement
- Amendments to Note

Submitted through:
  Geralyn Barone, City Manager
  Julie Wischnack, Community Development Director

Originated by:
  Alisha Gray, Economic Development and Housing Manager
December 7, 2016

Julie Wischnack  
Community Development Director  
City of Minnetonka  
14600 Minnetonka Boulevard  
Minnetonka, MN  55345-1502

Re: Resolution relating to the approval of amendments to loan documents in connection with the Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016

Dear Julie,

As you know, CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Borrower”), is working with the City of Minnetonka (the “City”) and the City of Golden Valley, Minnesota (“Golden Valley”) to (i) finance the acquisition, construction, and equipping of approximately twenty-seven (27) new affordable apartment units to be located at 5750 Shady Oak Road in the City (the “Music Barn Apartments”); (ii) finance the acquisition and substantial rehabilitation of forty-six (46) existing affordable townhome units located at 5400 Smetana Drive in the City (the “Elmbrooke Apartments”); and (iii) finance the acquisition and substantial rehabilitation of six (6) existing affordable townhome units located at 2100 Douglas Drive North and two (2) existing affordable townhome units located at 3354 Lilac Drive North in Golden Valley (the “Golden Valley Townhomes,” and collectively with the Music Barn Apartments and the Elmbrooke Apartments, the “Project”).

On August 18, 2016, the City issued its Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016 (the “Note”), in the original aggregate principal amount of $11,500,000, as short-term financing for the Project. The Note was sold to Bridgewater Bank (the “Purchaser”). Pursuant to the terms of the Note, the Note is subject to extraordinary mandatory redemption on December 31, 2016, unless the Purchaser consents to the extension of such date. On October 24, 2016, the City Council adopted a resolution approving the issuance of revenue bonds to refund the Note and to provide permanent financing for the Project. The Borrower, however, is still working on finalizing the terms of the permanent financing and has subsequently requested that the Purchaser extend the extraordinary mandatory redemption date, which the Purchaser has agreed to do.

Enclosed is a resolution for consideration by the City Council at its meeting on December 19, 2016. This resolution approves the extension of the extraordinary mandatory redemption date and authorizes City officials to enter into a Master Amendment Agreement, which would amend the Loan Agreement, Pledge Agreement, and Regulatory Agreements executed in connection with the issuance of the Note. The
Master Amendment Agreement will provide the consent of the Purchaser required under the terms of the Note.

I will attend the City Council meeting on December 19, 2016 and can answer any questions that may arise during the meeting. Please contact me with any questions you may have prior to the City Council meeting.

Sincerely,

Julie A. Eddington
Resolution No. 2016-_____

Resolution amending loan documents executed in connection with the multifamily housing revenue obligations issued for the benefit of CHC Minnetonka Affordable Housing LLC; and authorizing the execution and delivery of an amendment document in connection therewith

Be it resolved by the City Council (the “Council”) of the City of Minnetonka, Minnesota (the “City”) as follows:

Section 1. Recitals.

1.01. The City is a home rule city duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota.

1.02. On May 9, 2016, following a duly noticed public hearing, the Council adopted Resolution No. 2016-037 (the “Initial Resolution”), which authorized the issuance of one or more series of multifamily housing revenue bonds, in the maximum principal amount of $11,500,000, to be issued pursuant to Minnesota Statutes, Chapters 462C and 474A, as amended, and Sections 471.59 and 471.656, as amended, for the benefit of CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Borrower”), the managing member of which is CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company.

1.03. On August 8, 2016, following a duly noticed public hearing, the Council adopted Resolution No. 2016-063 (the “Note Resolution”), which authorized the issuance of the City’s Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016 (the “Note”), in the original aggregate principal amount of $11,500,000, to provide short-term financing for the following: (i) financing the acquisition, construction, and equipping of approximately twenty-seven (27) new affordable apartment units to be located at 5750 Shady Oak Road in the City (the “Music Barn Apartments”); (ii) financing the acquisition and substantial rehabilitation of forty-six (46) existing affordable townhome units located at 5400 Smetana Drive in the City (the “Elmbrooke Apartments”); and (iii) financing the acquisition and substantial rehabilitation of six (6) existing affordable townhome units at 2100 Douglas Drive North and two (2) existing townhome units at 3354 Lilac Drive North, Golden Valley, Minnesota (the “Golden Valley Townhomes,” and collectively with the Music Barn Apartments and the Elmbrooke Apartments, the “Project”).
The Note was issued on August 18, 2016 and was sold to Bridgewater Bank, a Minnesota banking corporation (the “Note Purchaser”). The City loaned the proceeds of the Note to the Borrower pursuant to a Loan Agreement, dated as of August 1, 2016 (the “Loan Agreement”), between the City and the Borrower. The City assigned its interest in the Loan Agreement (except for certain unassigned rights set forth in the Loan Agreement) to the Note Purchaser pursuant to a Pledge Agreement, dated as of August 1, 2016 (the “Pledge Agreement”), between the City and the Note Purchaser. To secure the Borrower’s obligations under the Loan Agreement, Community Housing Corporation of America, Inc., a Delaware nonprofit corporation, executed and delivered a Guaranty Agreement to the Note Purchaser. The City, the Borrower, and the Note Purchaser executed a Regulatory Agreement with respect to each of the Music Barn Apartments, the Elmbrooke Apartments, and the Golden Valley Townhomes, each dated August 18, 2016 (collectively, the “Regulatory Agreements”), to ensure compliance with certain rental and occupancy restrictions imposed by the Act and Section 142(d) of the Internal Revenue Code of 1986, as amended, and to ensure compliance with certain restrictions imposed by the City.

The Borrower intends to refund the Note with the proceeds of permanent obligations to be issued by the City. The Note is subject to extraordinary mandatory redemption or purchase in lieu of redemption on December 31, 2016, unless extended as provided by the terms of the Note and with the consent of the Note Purchaser.

The Borrower has requested that the Note Purchaser extend the extraordinary mandatory redemption date, and the Note Purchaser has agreed to extend the extraordinary mandatory redemption date to May 31, 2017.

There has been presented before the Council a form of Master Amendment Agreement (the “Master Amendment Agreement”) proposed to be entered into between the City, the Borrower, and the Note Purchaser, which amends the Loan Agreement, the Pledge Agreement, and the Regulatory Agreements. The purpose of the Master Amendment Agreement is to memorialize the extension of the extraordinary mandatory redemption date.

Section 2. Amendments Approved.

The Mayor and the City Manager are hereby authorized and directed to execute and deliver the Master Amendment Agreement. All of the provisions of the Master Amendment Agreement, when executed and delivered as authorized herein, shall be deemed to be a part of this
resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The Master Amendment Agreement shall be substantially in the form on file with the City which is hereby approved, with such omissions and insertions as do not materially change the substance thereof, and as the Mayor and the City Manager, in their discretion, shall determine, and the execution thereof by the Mayor and the City Manager shall be conclusive evidence of such determinations.

2.02. The Council hereby affirms its findings in the Initial Resolution and the Note Resolution.

Section 3. Effective Date. This resolution shall be in full force and effect from and after its approval. The approvals contained in the resolution are effective for one year after the date hereof.
Adopted by the City Council of the City of Minnetonka, Minnesota this 19th day of December, 2016.

Terry Schneider, Mayor

ATTEST:

David E. Maeda, City Clerk

ACTION ON THIS RESOLUTION:

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on December 19, 2016.

David E. Maeda, City Clerk
MASTER AMENDMENT AGREEMENT

between

CITY OF MINNETONKA, MINNESOTA,
as Issuer

CHC MINNETONKA AFFORDABLE HOUSING LLC,
as Borrower

and

BRIDGEWATER BANK,
as Purchaser

Dated as of December 1, 2016
Relating to:

$11,500,000
City of Minnetonka, Minnesota
Multifamily Housing Revenue Note
(Minnetonka Affordable Housing Project)
Series 2016

This instrument drafted by:
Kennedy & Graven, Chartered (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
MASTER AMENDMENT AGREEMENT

THIS MASTER AMENDMENT AGREEMENT is entered into as of December 1, 2016 (the “Master Amendment Agreement”), between the CITY OF MINNETONKA, MINNESOTA, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (the “Issuer”), CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company (the “Borrower”), and BRIDGEWATER BANK, a Minnesota banking corporation (the “Purchaser”).

RECITALS

WHEREAS, on August 18, 2016, the Issuer issued its Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016 (the “Note”), in the original aggregate principal amount of $11,500,000, pursuant to Minnesota Statutes, Chapters 462C and 474A, as amended, Minnesota Statutes, Sections 471.59 and 471.656, as amended, and resolutions adopted by the City Council of the Issuer on May 9, 2016 and August 8, 2016; and

WHEREAS, the Note was issued for the benefit of the Borrower, whose managing member is CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company, for the purpose of providing short-term financing for all or a portion of (i) the acquisition, construction, and equipping of approximately twenty-seven (27) new affordable apartment units to be located at 5750 Shady Oak Road, Minnetonka, Minnesota (the “Music Barn Apartments”); (ii) the acquisition and substantial rehabilitation of forty-six (46) existing affordable townhome units located at 5400 Smetana Drive, Minnetonka, Minnesota (the “Elmbrooke Apartments”); and (iii) the acquisition and substantial rehabilitation of six (6) existing affordable townhome units at 2100 Douglas Drive North and two (2) existing affordable townhome units at 3354 Lilac Drive North, Golden Valley, Minnesota (the “Golden Valley Townhomes,” and collectively with the Music Barn Apartments and the Elmbrooke Apartments, the “Facilities”); and

WHEREAS, the Issuer sold the Note to the Purchaser and loaned the proceeds thereof to the Borrower pursuant to a Loan Agreement, dated as of August 1, 2016 (the “Loan Agreement”), between the Issuer and the Borrower; and

WHEREAS, the Issuer assigned its interest in the Loan Agreement (except for certain unassigned rights set forth therein) to the Purchaser pursuant to a Pledge Agreement, dated as of August 1, 2016 (the “Pledge Agreement”), between the Issuer and the Purchaser; and

WHEREAS, to ensure compliance with certain rental and occupancy restrictions imposed by the Act and Section 142(d) of the Internal Revenue Code of 1986, as amended (the “Code”), and to ensure compliance with certain restrictions imposed by the Issuer, the Issuer, the Borrower, and the Purchaser entered into a separate Regulatory Agreement with respect to each of the Music Barn Apartments, the Elmbrooke Apartments, and the Golden Valley Townhomes, each dated August 18, 2016 (collectively, the “Regulatory Agreements”); and

WHEREAS, to secure the obligations of the Borrower under the Loan Agreement, Community Housing Corporation of America, Inc., a Delaware nonprofit corporation (the “Guarantor”), executed and delivered to the Purchaser a Guaranty Agreement, dated as of August 1, 2016; and

WHEREAS, the Note is subject to extraordinary mandatory redemption or purchase in lieu of redemption on December 31, 2016, but this date may be extended one or more times, with the consent of the Purchaser, to a date no later than December 31, 2019; and
WHEREAS, in order to allow the Borrower more time to obtain permanent financing for the Project, the Purchaser has agreed to extend the extraordinary mandatory redemption date of the Note to May 31, 2017; and

WHEREAS, the parties hereto are entering into this Master Amendment Agreement to extend the extraordinary mandatory redemption date of the Note in accordance with the terms of the Note; and

WHEREAS, the Guarantor has agreed to acknowledge and consent to this Master Amendment Agreement to ensure that the Guaranty remains in full force and effect until the Note matures or is redeemed; and

NOW THEREFORE, the Issuer, the Borrower, and the Purchaser each in consideration of the representations, covenants and agreements of the other as set forth herein, mutually represent, covenant and agree as follows:

ARTICLE I

AMENDMENTS

Section 1.1 Amendment to the Note. Section 8 of the Note is hereby deleted and replaced with the following:

8. The Note is subject to extraordinary mandatory redemption or purchase in lieu of redemption in whole but not in part, at a redemption price equal to the Principal Balance of the Note plus accrued interest thereon, without premium, without notice, on the earlier of (i) May 31, 2017 or (ii) the date the Purchaser transfers this Note to another person through assignment or purchase, unless such date is extended as provided below, if the Refunding (as defined in the Loan Agreement) of the Note has not occurred on or before such date. The extraordinary mandatory redemption date shall be extended one or more times to a date not later than December 31, 2019 with the consent of the Purchaser and upon delivery to the Purchaser of an opinion of Bond Counsel to the effect that such extension will not adversely affect the tax-exempt status of interest paid on the Note.

Section 1.2 Amendment to Section 4.4 of the Loan Agreement. Subsection (e) of Section 4.4 of the Loan Agreement is hereby deleted and replaced with the following:

(e) In order to qualify the Note and this Loan Agreement under the “governmental program” provisions of Section 1.148-2(d)(2)(iii) of the Treasury Regulations, the Borrower (and any “related person” thereto) shall take no action the effect of which would be to disqualify this Loan Agreement as a “program investment” under Section 1.148-1(b), including but not limited to entering into any arrangement, formal or informal, for the Borrower or any related person to purchase any obligations that finance the program in an amount related to the amount of the Agreement. Notwithstanding the foregoing, the Issuer understands that the Borrower has an obligation to repurchase the Note from the Purchaser on or before May 31, 2017 (the “Mandatory Purchase Date”), unless extended, and if the Borrower is unable to find replacement financing, the Borrower may be the holder of the Note for a period of time after the Mandatory Purchase Date.

Section 1.3 Amendments to the Pledge Agreement and the Regulatory Agreements. The Pledge Agreement and the Regulatory Agreements are hereby amended, in general, to incorporate the
extension of the extraordinary mandatory redemption date of the Note to May 31, 2017, which may be further extended in accordance with the Note.

ARTICLE II

MISCELLANEOUS

Section 2.1 Effective Date. The amendments made to the Loan Agreement, the Pledge Agreement, and the Regulatory Agreements, as set forth in this Master Amendment Agreement, shall be effective as of December 20, 2016.

Section 2.2 Consent. By executing this Master Amendment Agreement, the Purchaser hereby provides its consent to the extension of the extraordinary mandatory redemption date, as required by Section 8 of the Note.

Section 2.3 Certain Defined Terms. Terms used in this Master Amendment Agreement and not defined herein shall have the meanings given in the Loan Agreement.

Section 2.4 Confirmation of Agreements. Except as specifically amended by this Master Amendment Agreement, the Loan Agreement, the Pledge Agreement, and the Regulatory Agreements are hereby ratified and confirmed and remain in full force and effect.

(The remainder of this page is intentionally left blank.)
IN WITNESS WHEREOF, the Issuer, the Borrower, and the Purchaser have caused this Master Amendment Agreement to be executed in their respective names all as of the date and year first written above.

CITY OF MINNETONKA, MINNESOTA

By ______________________________________
Its Mayor

By ______________________________________
Its City Manager
Execution page of the Borrower to the Master Amendment Agreement, dated as of the date and year first written above.

CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company

By: CHC Minnetonka Affordable Housing MM LLC
Its: Managing Member

By: __________________________________________
Name: Richard Martin
Title: Administrative Manager
Execution page of the Purchaser to the Master Amendment Agreement, dated as of the date and year first written above.

BRIDGEWATER BANK

By

Nicholas Place

Its Senior Vice President and Chief Lending Officer
The undersigned, as guarantor under the Guaranty Agreement, dated as of August 1, 2016 (the “Guaranty”), hereby acknowledges and consents to this Master Amendment Agreement, dated as of the date and year first written above, and also confirms that the Guaranty shall remain in full force and effect until the Note matures or is redeemed.

COMMUNITY HOUSING CORPORATION OF AMERICA, INC.

By

______________________________
Its Secretary
Amendments to:

$11,500,000
City of Minnetonka, Minnesota
Multifamily Housing Revenue Note
(Minnetonka Affordable Housing Project)
Series 2016

Pursuant to resolutions adopted by the City Council of the City of Minnetonka, Minnesota (the “Issuer”) on May 9, 2016 and August 8, 2016, Minnesota Statutes, Chapter 462C and 474A, as amended, and Minnesota Statutes, Sections 471.59 and 471.656, as amended, on August 18, 2016 the Issuer issued its Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016 (the “Note”), in the original aggregate principal amount of $11,500,000. The Issuer sold the Note to Bridgewater Bank, a Minnesota banking corporation (the “Purchaser”), and loaned the proceeds thereof to CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Borrower”), pursuant to a Loan Agreement, dated as of August 1, 2016 (the “Loan Agreement”), between the Issuer and the Borrower. Capitalized terms used herein that are otherwise not defined shall have the meanings assigned such terms in the Loan Agreement.

Pursuant to the terms of the Note, the Note has an extraordinary mandatory redemption date of December 31, 2016 but may be extended one or more times to a date no later than December 31, 2019. Section 8 of the Note states that the extension of such date may not take effect unless the Purchaser has consented to the extension and an opinion of Bond Counsel has been delivered to the Purchaser to the effect that such extension will not adversely affect the tax-exempt status of interest paid on the Note. On December 19, 2016, the City Council of the Issuer adopted a resolution approving an extension to the extraordinary mandatory redemption date to May 31, 2017 and authorizing the execution and delivery by the Issuer of a Master Amendment Agreement, dated as of December 1, 2016 (the “Master Amendment Agreement”), between the Issuer, the Borrower, and the Purchaser. The Master Amendment Agreement amends the Loan Agreement, the Pledge Agreement, and the Regulatory Agreements to provide for the extension of the extraordinary mandatory redemption date.

The extension of the extraordinary mandatory redemption date of the Note in accordance with the terms of the Note will not result in a significant modification of the Note for tax purposes pursuant to Section 1.1001-3 of the Treasury Regulations promulgated under the Internal Revenue Code of 1986, as amended.

We have reviewed such certificates and other documents as we have deemed necessary for the purpose of giving this opinion, including the Loan Agreement, the Note, the Master Amendment Agreement, and the other documents included in the bond transcript for the Note. Based on such review, it is our opinion that the extension of the extraordinary mandatory redemption date of the Note will not adversely affect the exemption from federal income taxation of interest on the Note.

Dated in Minneapolis, Minnesota, this ____ day of December, 2016.
City Council Agenda Item #14B
Meeting of December 19, 2016

**Brief Description**

Items concerning Groveland Elementary School at 17310 Minnetonka Blvd and 3217 Groveland School Road:

- Conditional use permit
- Site and Building Plan Review
- Comprehensive Plan Amendment
- Resolution designating no parking area

**Recommendation**

Adopt the resolutions approving the request

**Proposal**

Minnetonka School District is proposing to add a new gymnasium and parking lot at the Groveland Elementary School site. The gymnasium would be an approximately 8,000 square feet addition to the northeast corner of the elementary school. The gymnasium would be regulation size and include bleachers for additional assembly functionality. Its location is currently used as the east parking lot and would cause a loss of 28 parking spaces. The location and orientation of the gymnasium would continue to allow an east building entry which would maintain the existing student drop-off/pick-up area. There would be no loss in the amount of vehicle stacking. In fact, an additional drop-off lane along the east side of the gymnasium would be added which would lengthen the total stacking length.

To alleviate the loss of parking spaces for the gymnasium, the school district proposes to construct a new 77 space parking lot on the 3217 Groveland School Road property. The parking lot would increase the total parking count at Groveland Elementary School from 116 to 165 spaces. In addition, Minnetonka School District is working on a parking agreement with St. Luke’s Presbyterian Church located directly north of the school at 3121 Groveland School Road. The parking agreement would allow the school to provide overflow parking during large events. A large majority of the St. Luke’s parking lot has a gravel surface which the school district would improve with a bituminous hard surface as a part of the project. A stormwater management system, consisting of underground chambers, would also be constructed to meet city requirements and improve water quality. The chambers would be located under the proposed parking lot.
Planning Commission Hearing

The planning commission considered the request on December 1, 2016. The staff report from that meeting is attached along with various plans and documents describing the proposed project. At that meeting, a public hearing was opened to take comment. A neighboring resident of the Sanctuary townhomes spoke at the public hearing about increased traffic concerns and the desire to eliminate the southwest pick up point and prohibiting parking on Groveland School Road. In addition, a representative of St. Luke’s Presbyterian Church stated that the church had approved the plan and the board of trustees and members of the church are expected to approve the agreement.

Following the public hearing, the commission asked questions and discussed the proposal. The planning commissioners supported the proposed improvements; stated support for an updated traffic management plan; and elimination of on street parking along the east side Groveland School Road.

Planning Commission Recommendation

On a 6-0 vote, the commission recommended that the city council approve the proposal, as recommended by city staff with the condition that the school district provide an updated traffic management plan to address the pick up traffic along Groveland School Road. Meeting minutes are attached.

Since Planning Commission Hearing

The school district provided a letter to address the morning drop off and afternoon pick up traffic. The plan would designate five spaces in the north parking lot for morning drop off and afternoon pick up traffic. The plan would also designate the access from the current west entrance access to the north entry. A communications plan from the school principal would educate staff and parents of the changes.

At the planning commission meeting, on street parking was an item of concern. Staff validated those concerns sharing that of the 50 traffic related complaints on Groveland School Road, 33 were parking related. Of those 33 complaints, 24 were adjacent to the school. To address this issue, staff is proposing to change the no parking restrictions along the east side of Groveland School Road.

Currently, parking is restricted from the hours of 7 a.m. to 8:15 a.m. and 3 p.m. to 4 p.m. Staff would propose to mimic the daytime restrictions in place along the west side of Groveland School Road which are 7 a.m. to 7 p.m. to further improve site lines and visibility in the area during school activities. The restricted area would be adjacent to the school property only and staff does not anticipate on street parking to relocate further north due to the new parking areas proposed. This change is also supported by the city's police and engineering departments. A resolution and map with the proposed restrictions
is attached. Official notification to the area for any additional feedback would also be completed prior to posting which would likely be during the summer of 2017.

**Staff Recommendation**

Recommend the city council adopt the resolutions approving the request at Groveland Elementary School, as recommended by the planning commission.

Through:  
Geralyn Barone, City Manager  
Julie Wischnack, AICP, Community Development Director  
Will Manchester, PE, City Engineer

Originator:  
Loren Gordon, AICP, City Planner
Brief Description
Items concerning Groveland Elementary School at 17310 Minnetonka Blvd and 3217 Groveland School Road

Recommendation
Recommend the city council approve the request

Project No.
92032.16a

Property
17310 Minnetonka Blvd. and 3217 Groveland School Road

Applicant
Minnetonka School District

Proposal
The applicant is proposing to add a new gymnasium and parking lot.

Proposal Requirements
The proposal requires:

- Conditional use permit: The expanded use of the school district property.
- Site and Building Plan Review: The expansion of the school building and parking lot.
- Comprehensive Plan Amendment: The proposed parking lot is located on a former residential parcel recently purchased by Minnetonka School District. The expanded use of school district would require a comprehensive plan amendment from low density residential to institutional.

Approving Body
The planning commission makes a recommendation to the city council, which has final authority to approve or deny the request. (City Code 300.06.4)

Site Features
The site is located along Minnetonka Boulevard between Groveland School Road and Woodlawn Avenue. The site is 9.6 acres in size, and the school building is approximately 84,000 square feet. There are two separate parking lots for staff and visitor parking on the site. The east parking lot has access from Minnetonka Boulevard and the west parking lot has access from
Groveland School Road. The two lots provide a total of 116 parking stalls.

The Minnetonka School District purchased the 3217 Groveland School Road property in May of 2016 with plans for the proposed parking lot expansion. The residential home that stood on the property since 1977 was demolished this past fall. The property includes 31,165 square feet of lot area. The inclusion of this former residentially used property would expand the school property to 10.42 acres.

**Proposed Improvements**

The applicant is proposing to add an 8,000 square feet gymnasium to the northeast corner of the elementary school. The gymnasium would be a regulation size and include bleachers for additional assembly functionality. The gymnasium would be located in the area currently used as the east parking lot causing a loss of 28 parking spaces. The location and orientation of the gymnasium would continue to allow an east building entry which would maintain the existing student drop-off/pick-up area. There would be no loss in the amount of vehicles that stack in the lane. In fact, an additional drop-off lane along the east side of the gymnasium would be added which would lengthen the total stacking length.

The applicant would also construct a new 77 space parking lot on the 3217 Groveland School Road property. The parking lot would increase the total parking count at Groveland Elementary School from 116 to 165 spaces.

In addition, Minnetonka School District is working on a parking agreement with St. Luke’s Presbyterian Church located directly north of the school at 3121 Groveland School Road. The parking agreement would allow the school to provide overflow parking during large events. A large majority of the St. Luke’s parking lot has a gravel surface which the school district would improve with a bituminous hardsurface as a part of the project. This paving project would provide 89 parking spaces for St. Luke’s.

The paving of St. Luke’s parking lots also satisfies a condition included in the 2014 columbarium approvals for future paving of the parking lots.

The school district would also improve a sidewalk to connect the new parking lot to the west driveway entrance along Groveland
School Road. Other options to connect to the track and enter the school from the north also exist. Staff would also request the sidewalk extend to Minnetonka Blvd. and the north parking area at St. Luke’s. This would add to better pedestrian travel and safety.

**Grading/Drainage**

Stormwater runoff from the school and St. Luke’s parking lots would be directed to treatment chambers under the school parking lot. Additional details are needed on the proposed stormwater design and maintenance agreements, which would be reviewed with the grading permit application.

**Landscaping/Greenspace**

The proposed gymnasium would not remove any existing landscaping or green space. In fact, the project would provide a net gain of 361 square feet of green space. A combination of trees and shrubs would be planted generally at the east entrance and along the west facing gymnasium wall.

The proposed parking lot would remove all of the existing landscaping which is allowable by ordinance. The preliminary landscape plan provides 44 deciduous and evergreen trees on the east and west sides of the new parking lot. The final landscape plan would be required to meet the minimum landscaping value outlined in the zoning ordinance.

Total greenspace would be reduced by 6 percent with parking and gymnasium improvements.

**Staff Analysis**

Staff finds that the site and building plan and conditional use permit proposal is reasonable.

- The proposal meets the conditional use permit and site and building plan review standards outlined in the zoning ordinance.

- The proposed parking lot expansion provides additional parking and functional design for the site which would reduce burdens on existing roadways. The proposed plan maintains the separation of school bus traffic and student pick-up and drop-off areas. The expansion also maintains vehicle stacking area.

- The proposed gymnasium would add functionality to the school while meeting all code requirements.
Staff finds the proposed comprehensive plan amendment is reasonable.

- The property is situated between institutionally guided uses.
- The expansion of institutional property would not be a detriment to the surrounding neighborhood.
- The proposed expansion will assist Minnetonka Schools and St. Luke’s Church in providing community services.

**Staff Recommendation**

Recommend that the city council adopt the resolutions approving the conditional use permit, site and building plans and comprehensive plan amendment.

Originator: Loren Gordon, AICP, City Planner
# Supporting Information

## Surrounding Land Uses
- **Northerly:** St. Luke’s Presbyterian Church, zoned R-1 and guided for Institutional uses
- **Easterly:** Groveland Cemetery, zoned R-1 and guided for low density residential uses
- **Southerly:** Single-family homes zoned R-1 and guided for low density residential uses
- **Westerly:** Minnetonka Animal Hospital, zoned PUD, Planned Unit Development; The Sanctuary, zoned PUD, Planned Unit Development; and single-family homes zoned R-1, Low density residential

## Planning Guide Plan designation: Institutional
Zoning: R-1, Low density residential

## Standards:
### CUP
The proposal would meet the general conditional use permit standards as outlined in city code:

1) The use is consistent with the intent of this ordinance;

2) The use is consistent with the goals, policies and objectives of the comprehensive plan;

3) The use does not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements; and

4) The use does not have an undue adverse impact on the public health, safety or welfare.

## Standards:
### Site and Building
The proposal would meet the site and building plan review standards as outlined in city code:

1) Consistency with the elements and objectives of the city's development guides, including the comprehensive plan and water resources management plan;

2) Consistency with this ordinance;

3) Preservation of the site in its natural state to the extent practicable by minimizing tree and soil removal and designing grade changes to be in keeping with the general appearance of neighboring developed or developing areas;
4) Creation of a harmonious relationship of buildings and open spaces with natural site features and with existing and future buildings having a visual relationship to the development;

5) Creation of a functional and harmonious design for structures and site features, with special attention to the following:

   a) an internal sense of order for the buildings and uses on the site and provision of a desirable environment for occupants, visitors and the general community;

   b) the amount and location of open space and landscaping;

   c) materials, textures, colors and details of construction as an expression of the design concept and the compatibility of the same with the adjacent and neighboring structures and uses; and

   d) vehicular and pedestrian circulation, including walkways, interior drives and parking in terms of location and number of access points to the public streets, width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic and arrangement and amount of parking.

6) Promotion of energy conservation through design, location, orientation and elevation of structures, the use and location of glass in structures and the use of landscape materials and site grading; and

7) Protection of adjacent and neighboring properties through reasonable provision for surface water drainage, sound and sight buffers, preservation of views, light and air and those aspects of design not adequately covered by other regulations which may have substantial effects on neighboring land uses.

Standards:
Comprehensive Plan Amendment:

The comprehensive guide plan sets forth the standards used to review a request for an amendment:

1) The change would be consistent with the policies, strategies, or other elements of the 2030 Comprehensive Guide Plan and the city’s Strategic Framework, including those for certain long term planning areas noted in this chapter.
2) The change would not create an adverse impact on public facilities and services that could not be mitigated with proposed improvements. Public facilities and services include roads sewers, water supply, drainage, schools and parks.

3) Development resulting from the change would not create an undue impact to surrounding properties.
   a. Such development would be consistent with the physical character of surrounding neighborhood or would upgrade and improve its viability.
   b. Physical character includes land use type, building height and size, relationship to the street, roof lines, and landscaping.
   c. Viability includes stabilization or enhancement of property values or removing blighting influences.

4) The change would allow a more viable transition to the planned uses on adjacent properties than the current land use.

5) The change would not have an adverse impact on the natural environment, including trees, slopes and wetlands, or the impact could be mitigated by improvements on the site or in the same vicinity.

6) There has been a change in city policies or neighborhood characteristics since the city adopted the original plan that would justify a change.

7) The change would correct an error made in the original plan.

8) There is a community or regional need identified in the comprehensive plan for the proposed use or service.

9) The change would help the city meet its housing goals.

10) The change would not adversely impact any landmarks or other historically significant structures or properties unless mitigated through relocation, commemoration, or dedication.

11) In the event a land use change includes numerous properties, such as a neighborhood area, the following factors should be considered:
1. Determination of changed conditions on the properties or within the area surrounding the properties.
2. The condition of the buildings on the property.
3. If residential, the need to preserve the housing stock to meet city housing goals, or if non-residential, the ability of the proposed new land use(s) to meet city housing goals.

**Natural Resources**

Best management practices must be followed during the course of site preparation and construction activities. This would include installation and maintenance of a temporary rock driveway, erosion control, and tree protection fencing. As a condition of approval the applicant must submit a construction management plan detailing these management practices.

**Neighborhood Comments**

The city sent notices to 118 area property owners and received no comments to date.

**Deadline for Decision**

March 1, 2017
Location Map

Project: Groveland Elementary
Applicant: Minnetonka SD #276
Address: 17310 Minnetonka Blvd
Project No. 92032.16a

This map is for illustrative purposes only.
GROVELAND SCHOOL PROJECTS

- **Gymnasium Addition**
- **New Parking Lot**
- **Pave St. Luke's Existing Parking Lots**

[Map of Groveland School with marked projects]
Area Study (1976). Over the years, the commercial areas have expanded slightly to the south along CR 101 with office and service uses that transition to single family homes.

Recently, several businesses have undergone renovations to improve exterior appearances, and several new businesses have moved into the area to expand the type of services available here. Multiple-family developments are located adjacent to the northern edges of the area, including the Breconridge Townhomes on the west side of CR 101 and the Sanctuary Townhomes on the east side of CR 101. The Groveland Elementary School remains one block northeast of the Minnetonka Boulevard/CR 101 intersection.

The city has initiated several efforts to improve the appearance and vitality of the commercial area and improve area-wide safety. These efforts have included the adoption of Neighborhood Design Guidelines in 2002 and a cooperative project with Hennepin County to reconstruct the intersection, install improved streetscaping, add pedestrian/bicycle trails, and bury power lines.

The commercial buildings within the area are small and provide affordable “incubator” business space. Likewise, its housing stock of smaller houses and comparatively smaller lots, as well as the age of most houses, creates a pocket of relatively affordable housing close to an elementary school and a small business area.

Although the outward appearance of these businesses is not similar, it contributes to the area’s distinct character and identity. Large-scale property redevelopment could result in the unintentional relocation of many current tenants and small businesses for financial reasons, and may attract larger, national chain businesses.

To preserve the area’s existing scale and “incubator” feel, the following criteria provides guidance for future development/redevelopment efforts for the Minnetonka Boulevard/CR 101 area in accordance with the 2030 land use plan for the area shown on Figure IV-4:
Renovations and Addition to:
Groveland Elementary School

Minnetonka Public Schools
Independent School District No. 276
17310 Minnetonka Blvd
Minnetonka, MN 55345
2017 PARKING LOT ADDITION AND PAVEMENT IMPROVEMENTS
GROVELAND ELEMENTARY SCHOOL AND ST. LUKE PRESBYTERIAN CHURCH
17310 MINNETONKA BLVD./3121 GROVELAND SCHOOL RD.
MINNETONKA, MINNESOTA

OWNER:
MINNETONKA PUBLIC SCHOOLS
5621 COUNTY ROAD 101
MINNETONKA, MINNESOTA 55345

CIVIL ENGINEER:
INSPEC, INC.
5801 DULUTH STREET
MINNEAPOLIS, MINNESOTA 55422

SURVEYOR:
CLARK ENGINEERING CORPORATION
621 LILAC DRIVE NORTH
MINNEAPOLIS, MINNESOTA 55422

DRAWING SCHEDULE

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<td>C3</td>
<td>BASE BID #2 - DEMOLITION AND EROSION CONTROL PLAN</td>
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<td>C4</td>
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<td>BASE BID #6 - LAYOUT AND GRADING PLAN</td>
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<tr>
<td>C13</td>
<td>BASE BID #1 ADD ALTERNATE #1 - GRADING AND LAYOUT PLAN</td>
</tr>
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KEYED NOTES:

1. NEW "SILVER BLADE MAPLE" (10) TREES TOTAL.
2. NEW "SUGAR MAPLE" (20) TREES TOTAL.
3. NEW "NORWAY SPRUCE" (8) TREES TOTAL.
4. NEW "BLACK HILLE APPALO" (10) TREES TOTAL.

NOTE: ALL TREES TO BE 5' TALL AND AT LEAST 3" DIA. MINIMUM, TREES TO BE PLANTED IN 3" TREDICATION MASTING BAGS.

BASE BID #1
GROVELAND ELEMENTARY SCHOOL
LANDSCAPING PLAN

SIGNED 1" = 20'
A. Items concerning Groveland Elementary School at 17310 Minnetonka Boulevard and 3217 Groveland School Road.

Chair Kirk introduced the proposal and called for the staff report.

Gordon reported. He recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

In response to O'Connell's question, Gordon explained that vehicles entering from Minnetonka Boulevard would travel through the parking lot and drop off students. There would also be a drop off at the front. O'Connell stated that he lives near the school and parents drop off and pick up students on the southwest side and wait on Groveland School Road. Gordon stated that area is not a designated drop off and pick up location.

O'Connell was aware of an existing drainage issue. Gordon explained that the proposal would include stormwater management improvements that would be done to treat all of the water and decrease runoff onto the street.

In response to Chair Kirk’s request, Dietrich explained that gravel parking lots are considered impervious surfaces because of the level of compaction. The fine particulate matter runs off of the parking lot. A paved surface would direct water to a catch basin and into a stormwater facility that would improve the quality of the water. It is better for the environment to have paved parking lots and driveways with stormwater management features than gravel.

Paul Bourgeois, Minnetonka Public Schools Director of Finance and Operations, stated that he met with St. Luke’s representatives and they came to an agreement to share parking since each use has opposite peak-parking times. The school district would pay for paving St. Luke’s parking lot and driveway and for installation of stormwater improvements. The school district would plow the parking lot and driveway and maintain the stormwater management system which would be allowed by the agreed upon easement. It is a good solution. St. Luke’s would pay for paving the north lot and ongoing maintenance for that lot. The solution works out financially for both parties, greatly increases each use’s parking capacity, and would protect the environment. There would be three underground water storage containers that would be maintained by the district. The school district already has experience maintaining 12 existing underground water storage containers.
Chair Kirk confirmed with Gordon that the total of 49 stalls does not include the additional parking that would be available at St. Luke’s. Mr. Bourgeois added that a paved lot would provide safer conditions for pedestrians accessing the church.

Chair Kirk noted that the proposal would eliminate the need for another access on Groveland School Road. That makes sense.

The public hearing was opened.

Christine Hoyles, 17411 Sanctuary Drive, stated that she is the president of the Sanctuary Townhome Association. She stated that she is concerned with additional traffic on Sanctuary Drive and Groveland School Road. Increased traffic would negatively impact residents’ safety and impede emergency vehicle access. Groveland School Road narrows on the south which makes it difficult for two vehicles to pass each other in the winter. She suggested eliminating the southwest pick up point and prohibiting parking on Groveland School Road.

Anita Bradshaw, transitional pastor at St. Luke’s Presbyterian Church, stated that the church’s representatives have approved the easement plan submitted. The board of trustees and members of the church are expected to approve the agreement.

No additional testimony was submitted and the hearing was closed.

Chair Kirk noted that Sanctuary Drive is used by motorists to access County Road 101. Gordon agreed and said that Sanctuary Drive is a private street, so it is not as wide as a public street.

Gordon reviewed that the proposal would improve one sidewalk by connecting the parking lot with the school property and would add a new sidewalk all along the school property to help provide pedestrian safety. The city’s capital improvement plan has scheduled Groveland School Road for a street reconstruction and water main improvement project in 2021. Those improvements may include widening the street, adding pedestrian connections, providing curb and gutters, and adding stormwater management features. Moving up the timetable to complete improvements to the south part of Groveland School Road, from Minnetonka Boulevard to approximately St. Luke’s Presbyterian Church, is being considered by the city to coordinate construction to be done at the same time as the proposal.

O'Connell said that there is no room for vehicles to get by each other on Groveland School Road when parents pick up their students after school. He is concerned with the safety of students. The students could be picked up in the
front of the school or back by the gymnasium. There is no reason for students to load or unload on that side of the street.

Gordon stated that the city has received 33 parking complaints, 10 speeding complaints, and 5 reports of accidents over 7 years in the Groveland School area. Updating the school’s traffic management plan would be beneficial to look at traffic patterns, drop off locations, signage, and the school’s communication with parents plan.

Chair Kirk stated that the city council is scheduled to review the item December 19, 2016.

Calvert noted that the gymnasium would be built to accommodate the existing number of students. The parking improvements would fix a site that has a shortage of parking. The parking concerns preexist the project. Gordon confirmed that the population of the school is expected to remain constant for the foreseeable future. The daily operations would not change. The proposal would provide more parking which would allow vehicles to get off the street. The additional parking stalls would be added prior to construction of the addition.

Mr. Bourgeois stated that the proposed gym would serve the existing students. The current west gym serves as a cafeteria, so lunches have been shortened and two classes have gym at the same time. The proposed gym would allow lunch periods to be extended. It may be used for community education at night, but tournaments would be held at the middle schools and high school.

Odland suggested installing parking signs on Groveland School Road that would prohibit parking from 6 a.m. to 6 p.m.

Powers said that the school is a huge asset to the city. It does need a gym. It would make sense for the city to make improvements to Groveland School Road at the same time as the proposal would be under construction. The proposal would improve the traffic situation by providing more parking. He supports staff’s recommendation.

Chair Kirk encouraged district and city staff to work on updating the traffic management plan. He suggested having designated teacher parking in the north lot.

Knight supported prohibiting parking on the east side of Groveland School Road.

O’Connell favored acting on the proposal now and staff working with district staff on the traffic management plan. Calvert and Powers concurred.
Odland moved, second by Calvert, to recommend that the city council adopt the resolutions approving the conditional use permit with the addition of a condition requiring the applicant to comply with a traffic management plan approved by city staff, site and building plans, and comprehensive plan amendment.

Knight, O'Connell, Odland, Powers, Calvert, and Kirk voted yes. Motion carried.
December 9, 2016

Loren Gordon
City Planner
City of Minnetonka
14600 Minnetonka Boulevard
Minnetonka MN 55345

Dear Mr. Gordon:

Minnetonka Independent School District 276 and Groveland Elementary School intend to close the west entrance at Groveland Elementary School to before-school drop off and after-school pick up starting in September 2017 after completion of the additional parking at 3217 Groveland School Road.

The closure will be accomplished as follows:

1. Five spaces in the current north parking lot will be reserved for before-school drop off and after-school pick up, with any displaced staff parking in the new parking lot at 3217 Groveland School Road.
2. Parents will enter the building at the north entry using the current card key system which is already place.
3. The West Entrance will remain locked to the outside and the existing card key reader will be removed.
4. Groveland Principal David Parker will educate staff and parents on the new drop off and pick up procedures.

This will move all before-school drop off and after-school pick up activity to the north parking lot, off of Groveland School Road.

Thank you.

Sincerely,

Paul Bourgeois, CPA
Executive Director of Finance & Operations
Minnetonka Independent School District 276

David Parker
Principal
Groveland Elementary School

Cc: Dr. Dennis Peterson, Superintendent
Resolution No. 2016-

A Resolution approving a conditional use permit and site and building plan review for a gymnasium at Groveland Elementary School

Be it resolved by the City Council of the City of Minnetonka, Minnesota, as follows:

Section 1. BACKGROUND.

1.01 Minnetonka School District is requesting a site and building plan review for a new gymnasium at Groveland Elementary School. (Project 92032.16a)

1.02 Minnetonka School District is also requesting a conditional use permit and site and building plan review for a new parking lot at the property located at 3217 Groveland School Road. (Project 92032.16a)

1.03 The property is located at 17310 Minnetonka Blvd. and 3217 Groveland School Road. It is legally described on Exhibit A.

1.04 The proposed 8,000 square feet gymnasium is located to the northeast corner of the elementary school. The gymnasium would be a regulation size and include bleachers for additional assembly functionality.

1.05 The parking lot would increase the total parking count at Groveland Elementary School from 116 to 165 spaces.

1.06 On December 1, 2016, the Planning Commission held a hearing on the application. The applicant was provided the opportunity to present information to the Planning Commission. The Planning Commission considered all of the comments and the staff report, which are incorporated by reference into this resolution. The Commission recommended that the City Council approve the project.

Section 2. GENERAL STANDARDS.

2.01 City Code Section 300.16, Subdivision 2, lists the following general
standards that must be met for granting a conditional use permit:

a) The use is consistent with the intent of this ordinance;

b) The use is consistent with the goals, policies and objectives of the comprehensive plan;

c) The use does not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements; and

d) The use does not have an undue adverse impact on the public health, safety or welfare.

2.02 City Code Section 300.27, Subdivision 5, lists the following standards that must be met for site and building plan review:

1) Consistency with the elements and objectives of the city's development guides, including the comprehensive plan and water resources management plan;

2) Consistency with this ordinance;

3) Preservation of the site in its natural state to the extent practicable by minimizing tree and soil removal and designing grade changes to be in keeping with the general appearance of neighboring developed or developing areas;

4) Creation of a harmonious relationship of buildings and open spaces with natural site features and with existing and future buildings having a visual relationship to the development;

5) Creation of a functional and harmonious design for structures and site features, with special attention to the following:

a) an internal sense of order for the buildings and uses on the site and provision of a desirable environment for occupants, visitors and the general community;

b) the amount and location of open space and landscaping;

c) materials, textures, colors and details of construction as an expression of the design concept and the compatibility of the
same with the adjacent and neighboring structures and uses; and

d) vehicular and pedestrian circulation, including walkways, interior drives and parking in terms of location and number of access points to the public streets, width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic and arrangement and amount of parking.

6) Promotion of energy conservation through design, location, orientation and elevation of structures, the use and location of glass in structures and the use of landscape materials and site grading; and

7) Protection of adjacent and neighboring properties through reasonable provision for surface water drainage, sound and sight buffers, preservation of views, light and air and those aspects of design not adequately covered by other regulations which may have substantial effects on neighboring land uses.

Section 3. FINDINGS.

3.01 The proposal meets the general conditional use permit standards as outlined in city code.

3.02 The proposal meets the site and building plan review standards as outlined in city code.

Section 4. CITY COUNCIL ACTION.

4.01 The city council approves the final site and building plans for Groveland Elementary School.

1. Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, except as modified by the conditions below:

   - Renovations and Addition to Groveland Elementary School Plan Set (ATS&R) dated November 2, 2016
   - Revised Landscaping Plan (Inspec) dated November 2, 2016
2. A grading permit is required. Unless authorized by appropriate staff, no site work may begin until a complete grading permit application has been submitted, reviewed by staff, and approved.

a. The following must be submitted for the grading permit to be considered complete:

(1) A recorded copy of this resolution.

(2) Final site plan and parking layout plans.

(3) Final grading and erosion control plans.

(4) Final drainage and stormwater plans.

Applicant will need to submit calculations showing there is sufficient capacity in the storm sewer to connect to it; or, upsize the remainder of the pipe downstream of the connection.

Applicant needs to revise plans to show:
1. Disturbance area
2. Existing impervious surface
3. Proposed impervious surface
*These numbers should reflect aggregates of the total project (sum of base bid 1, 2, alternate, and gymnasium).

Based on these numbers, stormwater management will be required for either the entire site, or the additional impervious surface. A narrative and calculations must be submitted to show conformance with the city’s rate, volume, and water quality criteria.

(5) Will need cross access/parking easements between church and school as well as maintenance and private utility easements for storm sewer. The school should combine the 3217 Groveland School Road property with the larger school parcel.
(6) Show both storm and sanitary easements on all plan sheets.

(7) If needed, secure an encroachment permit with the Metropolitan Council if the storm structures encroach into the easement.

b. Submit the following items for staff review and approval:

1) A construction management plan. This plan must be in a city approved format and outline minimum site management practices and penalties for non-compliance. If the builder is the same entity doing grading work on the site, the construction management plan submitted at the time of grading permit may fulfill this requirement.

2) A landscaping and tree mitigation plan. The plan must meet minimum landscaping and mitigation requirements as outlined in the ordinance. However, at the sole discretion of natural resources staff, mitigation may be decreased based on any of the following: the health of trees removed; the ability to appropriately install trees and other shrubbery given existing vegetation and/or topography.

3) Cash escrow in an amount to be determined by city staff. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document the builder and property owner will acknowledge:

   • The property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and

   • If compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.

4) An electronic CAD file or certified as-built drawings in
microstation or DXF and PDF format.

5) A letter of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost of all required landscaping, grading, and stormwater improvements.

6) An illumination plan.

b) Submit all required hook-up fees.

4. The property owner is responsible for replacing any required landscaping that dies.

5. Construct a sidewalk to connect the north St. Luke’s parking lot to Minnetonka Blvd.

6. The applicant provide a traffic management plan to be approved by city staff.

7. All rooftop and ground-mounted mechanical equipment, and exterior trash and recycling storage areas, must be enclosed with materials compatible with the principal structure, subject to staff approval. Low profile, self-contained mechanical units that blend in with the building architecture are exempt from the screening requirement.

8. Construction must begin by December 31, 2018, unless the city council grants a time extension.

Adopted by the City Council of the City of Minnetonka, Minnesota, on December 19, 2016.

_______________________________________
Terry Schneider, Mayor

ATTEST:

_________________________________
David E. Maeda, City Clerk
ACTION ON THIS RESOLUTION:

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on December 19, 2016.

__________________________________
David E. Maeda, City Clerk

SEAL
Exhibit A

Lots 22, 23, and 24, THE HERZOG DEEPHAVEN ACRES, Hennepin County, Minnesota;

The West 190 feet of Lot 19, THE HERZOG DEEPHAVEN ACRES, Hennepin County, Minnesota;

That part of Lot 19 lying East of the West 190 feet thereof, THE HERZOG DEEPHAVEN ACRES, Hennepin County, Minnesota;

Lot 20, except the easterly 33 feet of the southerly 62.9 feet thereof, THE HERZOG DEEPHAVEN ACRES, Hennepin County, Minnesota;

Lot 21, except the easterly 33 feet thereof, THE HERZOG DEEPHAVEN ACRES, Hennepin County, Minnesota;

That part of the Southwest Quarter of the Northwest Quarter of Section 17, Township 117, Range 22, Hennepin County, Minnesota, described as follows:

Beginning at a point on the South line of said Southwest Quarter of the Northwest Quarter, 1161 feet easterly of the southwest corner thereof; thence northerly, parallel with the West line of said Southwest Quarter of the Northwest Quarter, a distance of 330.00 feet; thence easterly, parallel with the South line of the Southwest Quarter of the Northwest Quarter, to the southeast corner of Lot 21, THE HERZOG DEEPHAVEN ACRES, Hennepin County, Minnesota; thence southerly along the southerly extension of the East line of said recorded plat of THE HERZOG DEEPHAVEN ACRES, to the South line of said Southwest Quarter of the Northwest Quarter; thence westerly along said South line to the point of beginning and there terminating.
Resolution No. 2016-

A Resolution approving a comprehensive guide plan amendment from low density residential to institutional for the property located at 3217 Groveland School Road

Be it resolved by the City Council of the City of Minnetonka, Minnesota, as follows:

Section 1. BACKGROUND.

1.01 Minnetonka School District is requesting a comprehensive guide plan amendment from low density residential to institutional to expand the Groveland Elementary School property. The property expansion would be for purposes of constructing a parking lot. (Project 92032.16a).

1.02 The property is located at 3217 Groveland School Road. It is legally described as follows:

The West 190 feet of Lot 19, THE HERZOG DEEPHAVEN ACRES, Hennepin County, Minnesota

1.03 On December 1, 2016, the Planning Commission held a hearing on the application. The applicant was provided the opportunity to present information to the Planning Commission. The Planning Commission considered all of the comments and the staff report, which are incorporated by reference into this resolution.

Section 2. GENERAL STANDARDS.

2.01 The comprehensive guide plan sets forth the standards used to review a request for an amendment:

1) The change would be consistent with the policies, strategies, or other elements of the 2030 Comprehensive Guide Plan and the city’s Strategic Framework, including those for certain long term planning areas noted in this chapter.
2) The change would not create an adverse impact on public facilities and services that could not be mitigated with proposed improvements. Public facilities and services include roads, sewers, water supply, drainage, schools and parks.

3) Development resulting from the change would not create an undue impact to surrounding properties.
   a) Such development would be consistent with the physical character of the surrounding neighborhood or would upgrade and improve its viability.
   b) Physical character includes land use type, building height and size, relationship to the street, roof lines, and landscaping.
   c) Viability includes stabilization or enhancement of property values or removing blighting influences.

4) The change would allow a more viable transition to the planned uses on adjacent properties than the current land use.

5) The change would not have an adverse impact on the natural environment, including trees, slopes and wetlands, or the impact could be mitigated by improvements on the site or in the same vicinity.

6) There has been a change in city policies or neighborhood characteristics since the city adopted the original plan that would justify a change.

7) The change would correct an error made in the original plan.

8) There is a community or regional need identified in the comprehensive plan for the proposed use or service.

9) The change would help the city meet its housing goals.

10) The change would not adversely impact any landmarks or other historically significant structures or properties unless mitigated through relocation, commemoration, or dedication.

11) In the event a land use change includes numerous properties, such as a neighborhood area, the following factors should be considered:
   a) Determination of changed conditions on the properties or within the area surrounding the properties.
   b) The condition of the buildings on the property.
c) If residential, the need to preserve the housing stock to meet city housing goals, or if non-residential, the ability of the proposed new land use(s) to meet city housing goals.

Section 3. FINDINGS.

3.01 The city council finds that the proposed guide plan change is justified for the following reasons:

1. The change would be consistent with the policies, strategies, or other elements of the 2030 Comprehensive Guide Plan and the city’s Strategic Framework, including those for certain long term planning areas noted in this chapter.

   - The requested change is consistent with the long term planning goals contained in the comprehensive plan for the Minnetonka Boulevard and County Road 101 village center:
     - Incorporate small-scale redevelopment and site and building improvements, with consideration of appropriate design principles to building orientation, massing and circulation.
     - Plan for improved connectivity within all quadrants of the Minnetonka Boulevard/CR 101 intersection.
     - Provide appropriate transitions to existing residential neighborhoods.

2. The change would not create an adverse impact on public facilities and services that could not be mitigated with proposed improvements. Public facilities and services include roads, sewers, water supply, drainage, schools and parks.

   - The proposed guide plan change will allow the expansion of the Groveland Elementary School campus. The parking lot would be beneficial to the surrounding area by allowing increased parking opportunities on site rather than on surrounding streets and properties. The stormwater management system would benefit water quality.

3. Development resulting from the change would not create an undue impact to surrounding properties.

   a. Such development would be consistent with the physical character of surrounding neighborhood or would upgrade and improve its viability.
• The request to reguide the property from low density residential to institutional would be consistent with the use of the adjacent institutional properties.

b. Physical character includes land use type, building height and size, relationship to the street, roof lines, and landscaping.

• The physical improvement of the property with parking lot will also incorporate landscaping to buffer the low density residential uses along Groveland School Road.

c. Viability includes stabilization or enhancement of property values or removing blighting influences.

• Prior to the removal of the residential home, the city had responded to a number of property related nuisance issues which had a negative impact on the surrounding properties. Removal of the potential blighting influence will stabilize land use patterns on the east side of Groveland School Road which enhances the viability of other surrounding land uses.

4. There is a community or regional need identified in the comprehensive plan for the proposed use or service.

• The proposed parking lot will assist Minnetonka Schools and St. Luke’s Church in providing community services.

5. The change would not have an adverse impact on the natural environment, including trees, slopes and wetlands, or the impact could be mitigated by improvements on the site or in the same vicinity.

• The proposed use of the property would include stormwater management which would improve water quality. Additional landscaping would be provided which is an improvement over existing site conditions.

Section 4. APPROVAL

4.01 The guide plan amendment from Low Density Residential to Institutional for 3217 Groveland School Road is approved conditioned on review and approval by the Metropolitan Council.
Adopted by the Minnetonka City Council on December 19, 2016.

_______________________________________
Terry Schneider, Mayor

ATTEST:

_____________________________________
David E. Maeda, City Clerk

ACTION ON THIS RESOLUTION:

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on December 19, 2016.

_____________________________________
David E. Maeda, City Clerk

SEAL
Resolution No. 2016-

Resolution authorizing a no parking zone Monday through Friday from 7 a.m. to 7 p.m. and the installation of no parking signs on Groveland School Road

BE IT RESOLVED by the City Council of the City of Minnetonka, Minnesota as follows:

Section 1. Background.

1.01. Through staff recommendation, a no parking zone is requested from Monday through Friday from 7 a.m. to 7 p.m. at the following location:

   a. The east side of Groveland School Road from Minnetonka Boulevard north 775 feet.

Section 2. Council Action.

2.01. The request and recommendation is hereby received and the City Council does authorize the installation of “No Parking” signs at the following location:

   a. The east side of Groveland School Road from Minnetonka Boulevard north 775 feet.

Adopted by the City Council of the City of Minnetonka, Minnesota, on December 19, 2016.

____________________________
Terry Schneider, Mayor

ATTEST:

____________________________
David E. Maeda, City Clerk

ACTION ON THIS RESOLUTION:

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on December 19, 2016.

__________________________________
David E. Maeda, City Clerk
LOCATION MAP
Groveland School Road
No Parking Area

Existing East Side
No signed parking restrictions

Proposed East Side
No Parking
7 a.m. to 7 p.m.
Mon. - Fri.

West Side Existing
No Parking
7 a.m. to 7 p.m.
Mon. - Fri.

This map is for illustrative purposes only.
City Council Agenda Item #15A  
Meeting of December 19, 2016

Brief Description: Appointment to the senior citizen advisory board

Recommended Action: Approve the recommended appointment

Background

The senior citizen advisory board currently has two open positions. Frederick Leverentz has expressed his willingness to dedicate the time and energy necessary to be a contributing member. Based on the material submitted and recommendation from Steve Pieh, the senior services and activities manager, I recommend that he be appointed. The updated membership roster showing the composition of the senior citizen advisory board is attached.

Recommendation
To approve the following appointment:

- Frederick Leverentz, to the senior citizen advisory board, to serve a two-year term, effective December 20, 2016 and expiring on May 31, 2018.

Respectfully submitted,

Terry Schneider
Mayor
Senior Citizen Advisory Board

*Current Members*

This board is comprised of 15 members whose duties include advising the city council on the needs and status of seniors in the city, recommending ways in which those needs may be met; determining and assessing existing resources in the city which may be utilized by seniors to meet their needs; evaluating and assessing proposed programs, grants and other governmental activities which may impact seniors; recommending policies, goals and objectives for the operation of the Senior Center, and working with staff and the senior director. Members serve two-year terms, and meet the second Tuesday of each month at 10:00 a.m.

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**Staff Liaison:**
Steve Pieh, Senior Services Director, Ph # 939-8366