



**REGULAR CITY COUNCIL MEETING  
RICHFIELD MUNICIPAL CENTER, COUNCIL CHAMBERS  
SEPTEMBER 28, 2021  
7:00 PM**

**INTRODUCTORY PROCEEDINGS**

Call to order

Pledge of Allegiance

Open forum

***Each speaker is to keep their comment period to three minutes to allow sufficient time for others. Comments are to be an opportunity to address the Council. Individuals who wish to address the Council must have registered prior to the meeting.***

Approve the Minutes of the (1) Concurrent City Council and Housing and Redevelopment Authority Work Session of September 7, 2021; (2) City Council Work Session of September 14, 2021; and (3) City Council Meeting of September 14, 2021.

**PRESENTATIONS**

1. Proclamation recognizing Indigenous Peoples Day
2. Minnesota Recreation and Parks Association Awards Presentation

**AGENDA APPROVAL**

3. Approval of the Agenda
4. **Consent Calendar contains several separate items, which are acted upon by the City Council in one motion. Once the Consent Calendar has been approved, the individual items and recommended actions have also been approved. No further Council action on these items is necessary. However, any Council Member may request that an item be removed from the Consent Calendar and placed on the regular agenda for Council discussion and action. All items listed on the Consent Calendar are recommended for approval.**
  - A. Consider to approve a contract from the City of Edina to provide dispatching service to the City of Richfield's Police and Fire Departments.  
Staff Report No. 143
  - B. Consider the adoption of a resolution authorizing acceptance of Office of Traffic Safety (OTS) funds for an extension on an original four-year grant to fully fund an officer dedicated for DWI enforcement in Richfield.  
Staff Report No. 144
  - C. Consider the approval of a Richfield American Legion Post 435 Parking Lot Agreement to implement city-wide organized collection and the swapping-out of waste and recycling carts from September 27 through October 29, 2021.

Staff Report No. 145

- D. Consider the approval of an agreement with Brixmor SPE 1 LLC, a Delaware limited liability company to implement city-wide organized collection and the swapping-out of waste and recycling carts from September 27 through October 29, 2021 at the HUB shopping center.

Staff Report No. 146

- E. Ratify a resolution approving a waiver of application fees for an Interim Use Permit at 6915 Harriet Avenue South.

Staff Report No. 147

- F. Consider the approval of the lease agreement between the City of Richfield and ETS Elite South Central, LLC for use of the space.

Staff Report No. 148

- 5. Consideration of items, if any, removed from Consent Calendar

**PROPOSED ORDINANCES**

- 6. Consider the second reading of an ordinance amending City Code Subsection 1305.13 related to snow removal and snow emergency parking restrictions and approval of a resolution authorizing summary publication.

Staff Report No. 149

**RESOLUTIONS**

- 7. Consider the approval of a resolution modifying a Health Care Savings Plan for the Local 49 Employees.

Staff Report No. 150

**CITY MANAGER'S REPORT**

- 8. City Manager's Report

**CLAIMS AND PAYROLLS**

- 9. Claims and Payroll

**COUNCIL DISCUSSION**

- 10. Hats Off to Hometown Hits

- 11. Adjournment

**Auxiliary aids for individuals with disabilities are available upon request. Requests must be made at least 96 hours in advance to the City Clerk at 612-861-9738.**



# CITY COUNCIL MEETING MINUTES

Richfield, Minnesota

## Concurrent City Council and Housing and Redevelopment Authority Work Session

September 7, 2021

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| <b>CALL TO ORDER</b> |
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The work session was called to order by HRA Chair Supple at 5:00.

- HRA Members Present: Mary Supple, Chair; Maria Regan Gonzalez; Sue Sandahl; and Lee Ohnesorge
- HRA Members Absent: Erin Vrieze Daniels
- Council Members Present: Maria Regan Gonzalez, Mayor; Mary Supple; Simon Trautmann; Ben Whalen; and Sean Hayford Oleary
- Council Members Absent: None
- Staff Present: Katie Rodriguez, City Manager; John Stark, HRA Executive Director/Community Development Director; Julie Urban, Housing Manager; and Celeste McDermott, Housing Specialist
- Others Present: Board members of the Woodlawn Terrace Cooperative and staff from Northcountry Cooperative Foundation

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| <b>Item #1</b> | <b>ON-SITE TOUR OF THE WOODLAWN TERRACE COMMUNITY</b> |
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Board members of the Woodlawn Terrace Cooperative and staff from Northcountry Cooperative Foundation led policymakers on a tour of the Woodlawn Terrace manufactured home community, located at 7421 Lyndale Avenue. Staff described the current conditions, plans for the future, and how they'd like to partner with the city to upgrade the infrastructure and provide down payment assistance to new residents.

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**ADJOURNMENT**

The work session was adjourned by unanimous consent at 5:55 p.m.

Date Approved:

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Maria Regan Gonzalez  
Mayor

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LaTonia DuBois  
Administrative Assistant

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Katie Rodriguez  
City Manager



# CITY COUNCIL MEETING MINUTES

Richfield, Minnesota

## City Council Work Session

### September 14, 2021

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| <b>CALL TO ORDER</b> |
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The meeting was called to order by Mayor Regan Gonzalez at 5:01 p.m. in the Bartholomew Room.

Council Members Present: Maria Regan Gonzalez, Mayor; Ben Whalen; Mary Supple; Simon Trautmann; and Sean Hayford Oleary

Staff Present: Katie Rodriguez, City Manager; Mary Tietjen, City Attorney; Rachel Lindholm, Sustainability Specialist; Blanca Martinez Gavina, Equity Administrator; and Kelly Wynn, Administrative Assistant

Others Present: Gordon Vizecky, President of RTPB; and Katy Epler, Executive Director of RTPB

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| <b>Item #1</b> | <b>REVIEW OF THE ORGANIZED COLLECTION TRANSITION/IMPLEMENTATION PROCESS AND COMMUNICATION EFFORTS.</b> |
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Sustainability Specialist Lindholm gave a presentation regarding organization collection:

- Process re-cap;
- Engagement with residents;
- Themes of resident calls/emails;
- Frequently asked questions;
- Process with haulers;
- Transition/implementation plan;
- Hauler transition plan;
- Engagement for implementation; and
- Recognition of involved process

Council Member Supple thanked Sustainability Specialist Lindholm for her work during the extensive process.

Council Member Whalen echoed gratitude to Sustainability Specialist Lindholm. He asked if staff could send council talking points to better equip them to assist residents with questions or concerns.

Sustainability Specialist Lindholm confirmed she could provide information and also encouraged council to continue sharing city social media posts regarding the project.

City Manager Rodriguez stated staff would like the help to get information out to the public but would like to be consistent.

Council Member Hayford Oleary expressed excitement for the program. He also mentioned the recent mailing that went out with details on cart size change options did not include pricing.

Sustainability Specialist Lindholm stated it was due to lack of space and staff made the decision to include information directing residents to the website or newspaper for additional details.

Council Member Hayford Oleary asked if residents could still change their cart size free of charge even if they missed the deadline.

Sustainability Specialist Lindholm stated residents will have another chance to change their carts once haulers have distributed new carts to residents. They will then be able to change their cart size once a year free of charge if desired.

Council Member Hayford Oleary asked about transition dates.

Sustainability Specialist Lindholm stated the transition begins October 4.

Council Member Supple spoke of how some haulers have merged over the years and wondered if residents would be getting a variety of old carts.

Sustainability Specialist Lindholm stated as far as she knows, haulers will be distributing new carts with their name but it is not prohibited to use carts they have acquired.

Mayor Regan Gonzalez thanked Sustainability Specialist Lindholm for the presentation.

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| <b>Item #2</b> | <b>REVIEW RECOMMENDATIONS TO UPDATE THE AGREEMENT WITH THE RICHFIELD TOURISM AND PROMOTION BOARD (RTPB).</b> |
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City Manager Rodriguez introduced the item and presented on the RTPB agreement history and structure.

Executive Director Epler presented on:

- New promotions;
- Two recent events in supporting businesses; and
- Sponsoring city events to drive people to find Visit Richfield;

She also spoke of exciting it is to see new things happening in the community and assisting others to explore Richfield. She mentioned hotels are marketed out of state while local community activities is marketed to more local areas to encourage people to live, work and play in Richfield.

City Manager Rodriguez provided information on:

- Best practices research;
- Strengthening the agreement;
- RTPB governing board;
- Proposed spending plan; and
- Next steps

President Vizecky thanked everyone for their assistance on the agreement along with all the people who help drive the viability of Richfield.

Council Member Hayford Oleary asked about city appointed members on the RTPB board.

City Manager Rodriguez stated they will be three year terms, staggered.

Council Member Supple asked if the citizen representative could be on an existing city commission and the RTPB board.

City Manager Rodriguez stated research is still being completed but it would be ideal to have someone that is knowledgeable of ongoing events in the community.

Mayor Regan Gonzalez asked for some clarification on the grant program.

President Vizecky stated they have been working on finding what things bring people in from out of town and what is more local where people may not stay at a hotel. Applications will be reviewed on a monthly basis. One example of an application would be that a hotel could contract with some sort of promotion and then bring that to the board and ask to have the expense paid. Some concerns deal with no training on local nonprofits and they will need to work through some logistics.

Council Member Trautmann expressed appreciation for everyone involved in the process and supported the composition of the board. He then asked if the board seats would be approved by council and if it is a possibility to tax Airbnb facilities in the future.

City Manager Rodriguez stated it would be at the discretion of RTPB and it falls within best practices to not have council approve those positions. However, council would approve the positions of citizen and restaurant representatives.

President Vizecky spoke of feedback from MACBB best practices where there is some risk to nonprofit status when you have another organization driving board composition. Build into the agreement what the board make up will be but the RTPB will be seating the directors and protecting the city and public funds.

Council Member Supple stated she is happy to see the review of best practices and the addition of a restaurant representative.

Council Member Whalen spoke of moving in the right direction and appreciates the focus on drawing in people from the broader metro area. The revamping and addition of positions could encourage the community representative be more connected to local events.

City Attorney Tietjen stated council could include desired qualifications in the recruitment process.

Council Member Supple appreciated a more collaborative agreement with council and RTPB along with what are the big things coming up and what the city should be promoting. She believes there should be promotion that the grant period is open.

Mayor Regan Gonzalez thanked Executive Director Epler for all the work she has been doing and handling the shift in the community as people want to hear about new businesses along the families they are impacting. She then thanked President Vizecky for assisting in moving this process forward.

City Manager Rodriguez summarized next steps.

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| <b>ADJOURNMENT</b> |
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The work session was adjourned by unanimous consent at 5:58 p.m.

Date Approved: September 28, 2021

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Maria Regan Gonzalez  
Mayor

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Kelly Wynn  
Administrative Assistant

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Katie Rodriguez  
City Manager





# CITY COUNCIL MEETING MINUTES

Richfield, Minnesota

## Regular Council Meeting

### September 14, 2021

**CALL TO ORDER**

The meeting was called to order by Mayor Maria Regan Gonzalez at 7:00 p.m. in the Council Chambers.

Council Members Present: Maria Regan Gonzalez, Mayor; Mary Supple; Sean Hayford O'Leary; Ben Whalen; and Simon Trautmann

Staff Present: Katie Rodriguez, City Manager; Mary Tietjen, City Attorney; John Stark, Community Development Director; Kristin Asher, Public Works Director; Rachel Lindholm, Sustainability Specialist; Kris Weiby, Program Manager; Chris Link, Operations Superintendent; Jennifer Anderson, Health Administrator; Blanca Martinez Gavina, Equity Administrator; and Kelly Wynn, Administrative Assistant

**PLEDGE OF ALLEGIANCE**

Mayor Regan Gonzalez led the Pledge of Allegiance

**OPEN FORUM**

No speakers.

**APPROVAL OF MINUTES**

M/Whalen, S/Supple to approve the minutes of the: (1) City Council Work Session of August 10, 2021; (2) City Council Meeting of August 10, 2021; (3) City Council Work Session of August 24, 2021; and (4) Special City Council Meeting of August 24, 2021.

Motion carried 5-0.

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| Item #1 | <b>PROCLAMATION RECOGNIZING HISPANIC HERITAGE MONTH</b> |
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Mayor Regan Gonzalez presented the proclamation.

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| <b>Item #2</b> | <b>PROCLAMATION RECOGNIZING CONSTITUTION WEEK</b> |
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Mayor Regan Gonzalez presented the proclamation.

Council Member Trautmann thanked the Human Rights Commission for submitting both proclamations and spoke of how diverse Richfield is along with excitement of how the city will continue to evolve.

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| <b>Item #3</b> | <b>APPROVAL OF THE AGENDA</b> |
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City Manager Rodriguez explained the cancellation of the two public hearings.

M/Supple, S/Whalen to approve the agenda

Motion carried 5-0.

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| <b>Item #4</b> | <b>CONSENT CALENDAR</b> |
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City Manager Rodriguez presented the consent calendar.

- A. Consider approval of the 2021-2022 Emergency Preparedness agreement with the City of Bloomington, using public health emergency preparedness grant funds distributed by a federal grant from the Centers for Disease Control, to provide services in the area of public health emergency preparedness/bio-terrorism and the development of a response system. Staff Report No. 126
- B. Consider the appointment of youth members to City advisory board/commissions. Staff Report No. 127
- C. Consider a new Taxicab license for Twin City's Taxicab Inc., a business run under the LLC name, Twin City's Taxicab Services Inc. Staff Report No. 129
- D. Consider a resolution extending a city-wide moratorium on the establishment of any new commercial use involving firearms for an additional six months. Staff Report No. 130

**RESOLUTION NO. 11872  
RESOLUTION EXTENDING A SIX-MONTH MORATORIUM ON THE  
ESTABLISHMENT OF NEW USES INVOLVING FIREARMS  
FOR AN ADDITIONAL SIX MONTHS**

- E. Consider the adoption of a resolution supporting a Livable Communities Demonstration Act grant application to the Metropolitan Council for the proposed Minnesota Independence College and Community development at 2000 76th Street West. Staff Report No. 131

**RESOLUTION NO. 11873  
RESOLUTION IDENTIFYING THE NEED FOR LIVABLE COMMUNITIES  
DEMONSTRATION ACCOUNT FUNDING AND AUTHORIZING APPLICATION FOR  
GRANT FUNDS**

- F. Consider the approval of a resolution requesting a MnDOT State Aid Design Element Variance for the 65th Street Reconstruction Project. Staff Report No. 132

**RESOLUTION NO. 11874  
RESOLUTION REQUESTING A VARIANCE FROM STANDARD  
FOR STATE AID OPERATION FOR THE 65TH STREET  
RECONSTRUCTION PROJECT/S.A.P 157-104-005**

- G. Consider a resolution approving Laws of Minnesota 2021, First Special Session, Chapter 14, Article 9, Section 5, relating to temporary transfer of tax increment for housing development purposes. Staff Report No. 133

**RESOLUTION NO. 11875  
RESOLUTION APPROVING LAWS OF MINNESOTA 2021, FIRST SPECIAL  
SESSION, CHAPTER 14, ARTICLE 9, SECTION 5, RELATING TO TEMPORARY  
TRANSFER OF TAX INCREMENT FOR HOUSING DEVELOPMENT PURPOSES**

M/Supple, S/Trautmann to approve the consent calendar.

Council Member Supple expressed excitement for youth commissioners and reminded residents there are many more youth commissioner open positions.

Council Member Whalen thanked everyone involved with item G on the consent calendar.

Council Member Hayford Oleary stated he is glad to see the 65<sup>th</sup> Street Reconstruction Project moving forward.

Motion carried 5-0.

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| <b>Item #5</b> | <b>CONSIDERATION OF ITEMS, IF ANY, REMOVED FROM CONSENT CALENDAR</b> |
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None

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| <b>Item #6</b> | <b>CONSIDER THE SECOND READING OF AN ORDINANCE REPEALING AND REPLACING SECTION 601 OF THE RICHFIELD CODE OF ORDINANCES PERTAINING TO SOLID WASTE DISPOSAL, COLLECTION AND HAULING. STAFF REPORT NO. 136</b> |
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Council Member Whalen read staff report 136.

M/Whalen, S/Hayford Oleary to approve the second reading of an ordinance repealing and replacing Section 601 of the Richfield City Code pertaining to solid waste disposal, collection, and hauling.

Motion carried 5-0.

M/Whalen, S/Supple to approve the resolution for summary publication of an ordinance pertaining to the solid waste disposal, collection and hauling.

**RESOLUTION NO. 11876  
RESOLUTION APPROVING SUMMARY PUBLICATION OF AN ORDINANCE  
PERTAINING TO THE SOLID WASTE DISPOSAL, COLLECTION, AND HAULING**

Motion carried 5-0.

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| <b>Item #7</b> | <b>CONSIDER ADOPTION OF A RESOLUTION DESIGNATING THE CITY'S CONTRIBUTION TOWARDS HEALTH, DENTAL, TERM LIFE AND DISABILITY INSURANCE PREMIUMS FOR 2022 FOR GENERAL SERVICES AND MANAGEMENT. STAFF REPORT NO. 137</b> |
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Council Member Supple presented staff report 137.

M/Supple, S/Whalen to adopt a resolution designating the City's contribution toward health, dental, term life, and long term disability insurance premiums for 2022 for General Services and Management employees.

**RESOLUTION NO. 11877  
RESOLUTION DESIGNATING CITY'S CONTRIBUTION TOWARD HEALTH, DENTAL,  
TERM LIFE, AND DISABILITY INSURANCE PREMIUM FOR GENERAL  
SERVICES AND MANAGEMENT EMPLOYEES**

Motion carried 5-0.

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| <b>Item #8</b> | <b>CONSIDER A REQUEST FOR A WAIVER OF APPLICATION FEES FOR AN INTERIM USE PERMIT. STAFF REPORT NO. 138</b> |
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Council Member Hayford Oleary read staff report 138.

Erin Burbank, 6915 Harriet Ave, thanked council for their time and believes they exhausted all other avenues to remedy the situation.

Director Stark stated there is a staff recommendation in the report but will certainly implement any decision from the council.

Council Member Whalen asked if there was set criteria in place in order to waive this type of fee.

City Attorney Tietjen explained this is a very unique situation and asked council to provide some specific reasons to set precedent however they decide to vote.

Council Member Supple spoke of how this is unique and been going on for six months while following the necessary steps. She supports waiving the fee as this issue may not be processed by the courts until next year.

Council Member Trautmann asked the applicants if a restraining order was currently in place.

Erin Burbank stated it was something they were considering but had not filed.

Council Member Trautmann spoke of the shift in level of conflict happening everywhere. He then asked why they had not put a restraining order in place as they should be granted one and would provide legal protection.

Erin Burbank believed utilizing other resources would deter the neighbor from proceeding with bothering them but nothing has seemed to work and this is another option they are trying to gain back the use of their property.

Director Stark stated the city prosecutor is attempting to expedite the situation.

Council Member Hayford Oleary asked why they will be applying for an IUP versus a variance.

Director Stark stated staff didn't believe it met the criteria of a variance.

Council Member Hayford Oleary expressed sympathy to the homeowners but is leaning toward not granting the waiver.

Council Member Trautmann asked if this would set precedent to continue to waive fees and potentially lose out on revenues.

Director Stark stated he isn't concerned of loss of revenue but there has been an increase in neighbor disputes and if the fees are waived, staff would like to make sure it is very specific to this situation.

Council Member Whalen stated he is leaning toward not granting the waiver but would like further discussion around setting precedent regarding neighbor disputes.

Council Member Supple would recommend when several citations have been issued regarding a circumstance.

City Manager Rodriguez stated staff is frequently asked to reduce or waive fees and believes staff is doing everything in their power to assist the homeowners.

Council Member Trautmann believed taking into consideration public safety and financial need when establishing precedent. He then provided information to the homeowners of how to submit harassment restraining order and ask for fees to be waived.

Mayor Regan Gonzalez asked about the frequency of police being involved in neighbor disputes and is unsure if that would be considered a special circumstance.

Health Administrator Anderson stated it is not uncommon for police to respond to calls such as these but they have been called an unusually high amount of times to this particular property.

Mayor Regan Gonzalez spoke of the concern of that the issue still may not be addressed. She then asked how long it would take for the homeowners to see this issue resolved.

Health Administrator Anderson stated the next step for the city has been to submit information to city prosecutor.

Mayor Regan Gonzalez would like to possibly set policy regarding waiving a fee due to financial need.

Council Member Whalen echoed concern of using the number of police reports to set policy to waive a fee. He then asked staff if this escalates to where the city proceeds with prosecution, if that would elevate the need to grant the IUP.

City Attorney Tietjen stated it would be a very specific situation if there was an active prosecution occurring.

Council Member Trautmann asked if staff could produce a specific list of items related to the situation in order to waive fees.

City Attorney Tietjen agreed the more specific, the better.

Director Stark suggested council make the motion to accept an application for an IUP contingent on findings adopted at a later date to waive the fee.

Council Member Hayford Oleary asked at what point would waive a fee for one person and not another.

Council Member Trautmann stated this situation is potentially leading to prosecution would distinguish it from other circumstances.

Council Member Whalen stated it is the decision of the homeowners to go this route however it is time sensitive due to systems.

M/Supple, S/Trautmann for staff to create a resolution with items for council to act on at the September 28, 2021 meeting while allowing applicants to submit an IUP application contingent on the adoption of the waiver on September 28, 2021.

Motion carried 5-0.

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| <b>Item #9</b> | <b>CONSIDER A RESOLUTION TO APPROVE THE CHANGE IN DEED IN ACCORDANCE WITH THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES LAND AND WATER CONSERVATION FUND GRANT FOR AUGSBURG PARK. STAFF REPORT NO. 139</b> |
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Council Member Trautmann presented staff report 139.

M/Trautmann, S/Whalen to approve the resolution so the updated park deed can be filed with the county and all grant requirements are met so funds can be awarded.

Council Member Supple asked about potential future changes to the current footprint of the community center.

City Attorney Tietjen explained if it was an extensive change, it may need to go to the National Park Service for approval but is unsure of the criteria.

Council Member Hayford Oleary expressed concern to accept this incorporating an older building that needs repair.

Council Member Trautmann echoed concerns and observations.

City Attorney Tietjen stated the filing date is September 30, 2021.

Program Manager Weiby confirmed filing date and would hinder the city from receiving the grant funds.

Council Member Whalen believes it more important to collect the funds already spent on the park rather than delay it due to a possibility of a process ten years or more down the road.

City Attorney Tietjen believes this is included to prevent parks from being converted to anything other than outdoor recreation.

Mayor Regan Gonzalez asked if staff could complete additional research.

City Attorney Tietjen confirmed council could approve the item pending additional staff research.

M/Trautmann, S/Supple to amend the original motion to approve the resolution so the updated park deed can be filed with the county and all grant requirements are met so funds can be awarded pending additional research restricting future construction on the property.

**RESOLUTION NO. 11878  
RESOLUTION APPROVING DECLARATION OF USE RESTRICTION FOR THE  
AUGSBURG PARK PROPERTY**

Regan Gonzalez: AYE  
Supple: AYE  
Trautmann: AYE  
Hayford Oleary: NO  
Whalen: AYE

Motion carried 4-1

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| <b>Item #10</b> | <b>CONSIDER THE 2021 REVISED/2022 PROPOSED BUDGET RESOLUTIONS ADOPTING THE 2022 PRELIMINARY PROPERTY TAX LEVY, SETTING TRUTH IN TAXATION HEARING DATE, AUTHORIZING BUDGET REVISIONS, AUTHORIZING REVISION OF 2021 BUDGET OF VARIOUS DEPARTMENTS AND CITY FEES FOR 2022. STAFF REPORT NO. 142</b> |
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Council Member Supple read staff report 142.

City Manager Rodriguez reminded residents the extensive budget presentation is available on the website. She also thanked staff, directors and council for their work and participation.

M/Supple, S/Hayford Oleary to adopt the attached resolutions establishing the 2022 preliminary property tax levy and proposed date for the Truth in Taxation hearing, authorizing budget revisions, authorizing revision of 2021 budget of various departments and city fees for 2022.

**RESOLUTION NO. 11879  
RESOLUTION ADOPTING A PROPOSED BUDGET AND TAX LEVY FOR THE YEAR 2022**

**RESOLUTION NO. 11880  
RESOLUTION AUTHORIZING BUDGET REVISIONS**

**RESOLUTION NO. 11881  
RESOLUTION AUTHORIZING REVISION OF 2021 BUDGET OF  
VARIOUS DEPARTMENTS**

**RESOLUTION NO. 11882**

**RESOLUTION ESTABLISHING 2022 LICENSE, PERMIT AND MISCELLANEOUS FEES PURSUANT TO THE PROVISIONS OF APPENDIX D OF THE ORDINANCE CODE OF THE CITY OF RICHFIELD RESCINDING**

City Council Whalen reminded residents there is a story behind every number including important technology improvements, debt pay off and equity plan.

Motion carried 5-0.

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| Item #11 | <b>CONSIDER A RESOLUTION APPROVING THE 2021 REVISED AND 2022 BUDGET FOR THE AFFORDABLE HOUSING TRUST FUND. STAFF REPORT NO. 140</b> |
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Council Member Whalen presented staff report 140.

Director Stark stated staff would like to maximize the amount of funds going into the trust fund as the state of Minnesota has talked about matching funds and/or creating a clearing house to more easily track funds.

M/Whalen, S/Trautmann to adopt a resolution approving the 2021 Revised Budget and 2022 Budget for the Affordable Housing Trust Fund.

**RESOLUTION NO. 11883  
RESOLUTION ADOPTING AN AFFORDABLE HOUSING TRUST FUND BUDGET FOR THE YEAR 2021 REVISED AND 2022**

Motion carried 5-0.

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| Item #12 | <b>CONSIDER THE FIRST READING OF AN ORDINANCE AMENDING CITY CODE SUBSECTION 1305.13 RELATED TO SNOW REMOVAL AND SNOW EMERGENCY PARKING RESTRICTIONS AND SCHEDULE A SECOND READING FOR SEPTEMBER 28, 2021. STAFF REPORT NO. 141</b> |
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Council Member Hayford Oleary staff report 141.

Operations Superintendent Link confirmed employees will continue to plow just as much to get the streets cleared as quickly as possible when snow falls.

M/Hayford Oleary, S/Whalen to approve the first reading of an ordinance amending City Code Subsection 1305.13 related to snow removal and snow emergency parking restrictions and schedule a second reading for September 28, 2021 with the additional language of parking during a snow emergency is allowed pursuant of any emergency procedures or policies approved by the City Manager under subdivision 2.

Council Member Supple commented on what a wonderful job public works does on a daily basis.

Council Member Hayford Oleary asked about a standard start time for snow emergencies.



Operations Superintendent Link stated the importance is to maintain the city’s assets and the key to that is clearing as much snow and ice as quickly as possible. Staff tries extremely hard to get notice of an upcoming emergency out by 6pm.

Motion carried 5-0.

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| <b>Item #13</b> | <b>CITY MANAGER’S REPORT</b> |
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City Manager Rodriguez provided a covid and vaccination updates.

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| <b>Item #14</b> | <b>CLAIMS AND PAYROLL</b> |
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M/Supple, S/Trautmann that the following claims and payrolls be approved:

| <b>U.S. Bank</b>           | <b>08/24/2021</b>      |
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| A/P Checks 299184 - 299607 | \$ 2,264,490.57        |
| Payroll: 164286 - 164637   | <u>751,001.53</u>      |
| <b>TOTAL</b>               | <b>\$ 3,015,492.10</b> |

| <b>U.S. Bank</b>           | <b>09/14/2021</b>      |
|----------------------------|------------------------|
| A/P Checks 299709 - 300084 | \$ 1,692,931.89        |
| Payroll: 164638 - 164988   | <u>749,387.32</u>      |
| <b>TOTAL</b>               | <b>\$ 2,442,319.21</b> |

Motion carried 5-0

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| <b>Item #15</b> | <b>HATS OFF TO HOMETOWN HITS</b> |
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Council Member Whalen mentioned school board elections are coming up, organized hauling transition beginning October 4, 2021 and thanked the residents of Wood Lawn Terrace for the tour of their community.

Council Member Supple reiterated gratitude for all public works employees for all they do. She also spoke of the upcoming tours available for schools concluding constructions.

Council Member Hayford Oleary summarized the recent Transportation Commission meeting and invited residents to come out to PennFest on September 19.

Council Member Trautmann also mentioned the return of PennFest occurring Sunday, September 19 from 1-5pm.

Mayor Regan Gonzalez reminded residents to sign up for community education classes along with the ongoing promotion with Bonterra wine and Richfield Liquor stores to help with a new butterfly garden.

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| <b>Item #16</b> | <b>ADJOURNMENT</b> |
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The meeting was adjourned by unanimous consent at 8:42 p.m.

Date Approved: September 28, 2021

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Maria Regan Gonzalez  
Mayor

\_\_\_\_\_  
Kelly Wynn  
Administrative Assistant

\_\_\_\_\_  
Katie Rodriguez  
City Manager



## Proclamation of the City of Richfield

**WHEREAS**, the land now known as the State of Minnesota has been home to Indigenous Peoples since time immemorial, and without whom, the building of this state would not have been possible; and

**WHEREAS**, Indigenous Peoples have made essential contributions to the landscape of Minnesota, including traditional knowledge, experience, labor, technology, science, philosophy, industry, and arts; and

**WHEREAS**, Indigenous Peoples have long served as protectors and stewards of the natural environment for the benefit of all; and

**WHEREAS**, the City of Richfield strives to eliminate systemic racism toward Indigenous Peoples, and seeks to promote practices and policies that honor the state's indigenous roots, history and contributions; and

**WHEREAS**, the City of Richfield recognizes students enrolled in the Richfield Public Schools who identify as American Indian; and

**WHEREAS**, Indigenous Peoples Day serves as an important time to reflect on the experiences of Indigenous Peoples, to ensure greater access and opportunity; and

**WHEREAS**, the City of Richfield joins a growing number of government entities across the country that have recognized the second Monday of October as Indigenous Peoples Day, in lieu of Columbus Day, in order to promote appreciation, tolerance, reconciliation, understanding, friendship, and continued partnerships among all of its people; and

**WHEREAS**, the Richfield Human Rights Commission supported this proclamation at its September 7, 2021, meeting and recommended the Richfield City Council do the same; and

**NOW, THEREFORE, I, Maria Regan Gonzalez, mayor of Richfield, on behalf of the Richfield City Council, do hereby proclaim the second Monday in October Indigenous Peoples Day in the City of Richfield.**

**PROCLAIMED** this 28th day of September 2021

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Maria Regan Gonzalez, Mayor



## CITY COUNCIL MEETING

9/28/2021

REPORT PREPARED BY: Amy Markle, Recreation Services Director

DEPARTMENT DIRECTOR REVIEW: Amy Markle, Recreation Services Director  
9/21/2021

OTHER DEPARTMENT REVIEW:

CITY MANAGER REVIEW: Katie Rodriguez, City Manager  
9/22/2021

### **ITEM FOR COUNCIL CONSIDERATION:**

#### **Minnesota Recreation and Parks Association Awards Presentation**

#### **EXECUTIVE SUMMARY:**

The Richfield Recreation Department has been awarded the following awards from the Minnesota Recreation and Parks Association (MRPA):

- The Off-Leash Dog Area at Roosevelt Park has won the award for excellence in facility planning.
- Richfield Virtual Recreation Programming has won the award for excellence in recreation programming.

The following is a brief summary for both programs:

#### **Off-Leash Dog Area at Roosevelt Park:**

The Off-leash Dog Area at Roosevelt Park won an MRPA award as it showcases best practices in park facility planning. The project was strategic in location, well-researched in design, collaborative with both internal and external partners, cost-effective in implementation, and included community engagement. The facility is unique in that the space it was created in was developed from under-utilized skating rinks. The rinks didn't have a warming house and others nearby do, and over the years were not well-attended. It is a site that met much of the established project criteria including adequate space and lighting that was easy to convert to LED's, which was not found in other parks in our already built-out community. The project also achieved all of the established goals, and was very-well received by the residents of Richfield and neighboring communities. Overall, the facility was created out of community desire and feedback, and in the middle of a pandemic became a safe outlet for pets and their owners to have a safe space to recreate together.

#### **Virtual Recreation Program:**

The recreation team quickly pivoted during the beginning of the Covid-19 pandemic to offer safe and accessible virtual programming. We created a robust program that aimed to keep the community engaged both physically and mentally and continue to create a sense of connectiveness and community. The team collaborated to create recreation programs that were multi-cultural, connected to all ages, represented our community, and were accessible via phone, tablet and computer. We developed through many internal and external partners over 100 virtual programs that had over 1.2

million virtual engagements as of January 2021! The virtual recreation program was largely funded through grants and included opportunities such as: puppet shows, virtual dance parties, sports drills, virtual bilingual bike safety class, and many more. We are excited that through the pandemic we were able to keep our community active and engaged in the safest way possible.

MRPA Awards Committee Member Tracy Petersen will be on-hand to help with the awards as well.



**STAFF REPORT NO. 143**  
**CITY COUNCIL MEETING**  
**9/28/2021**

REPORT PREPARED BY: Jay Henthorne, Public Safety Director/Chief of Police

DEPARTMENT DIRECTOR REVIEW: Jay Henthorne, Public Safety Director/Chief of Police  
9/17/2021

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Katie Rodriguez, City Manager  
9/22/2021

**ITEM FOR COUNCIL CONSIDERATION:**

**Consider to approve a contract from the City of Edina to provide dispatching service to the City of Richfield's Police and Fire Departments.**

**EXECUTIVE SUMMARY:**

The City of Edina provides contractual dispatching services for the Police and Fire Departments. The contract between Edina and Richfield covers dispatching services, operations and maintenance of the Edina Communication Center (E.C.C).

The contract period is for one year and will commence January 1, 2022. The contract includes a standard cost escalator for each year of the contract. The escalator will be based on increased labor costs for operation of the E.C.C. under Edina's labor agreements and the rate of increase, over the previous year in the implicit price deflator for government consumption expenditures and gross investment for state and local governments prepared by the Bureau of Economic Analysis.

**RECOMMENDED ACTION:**

**By Motion: Approve a contract between the City of Edina and the City of Richfield to provide dispatching services for the Police and Fire Departments.**

**BASIS OF RECOMMENDATION:**

**A. HISTORICAL CONTEXT**

- On August 13, 2013, the City Council voted to move our dispatching operations to the City of Edina. The City of Edina has provided contractual dispatching services for the Police and Fire Departments.
- The previous contract commenced on December 1, 2013 through December 2017; and the contract commenced from January 2018 and expired on December 31, 2019.
- The most recent contract commenced on January 1, 2020 through December 31, 2021.

**B. POLICIES (resolutions, ordinances, regulations, statutes, etc):**

The City Council previously approved moving dispatching operations to the City of Edina.

**C. CRITICAL TIMING ISSUES:**

City of Richfield must have dispatching services for Police and Fire Departments.

**D. FINANCIAL IMPACT:**

- The contract is for a one year period.
- Edina will receive Richfield's 911 State funding allotment of approximately \$45,000.
- For calendar year 2020 monthly payments in the amount of \$25,012.00 will be made to the City of Edina, compared to the 2019 monthly payments of \$24,166.00, an increase of 3.5% (\$846.00 a month or \$10,148.00 a year). For calendar year 2021 monthly payments in the amount of \$25,887.00 will be made to the City of Edina, an increase from 2020 of 3.5% (\$875.00 a month or \$10,505.00 a year).
- For calendar year 2022 monthly payments in the amount of \$26,793.16 will be made to the City of Edina, an increase from 2021 of 3.5% (\$906.16 a month or \$10,874.00 a year).

**E. LEGAL CONSIDERATION:**

The City Attorney has reviewed the contract for the City.

**ALTERNATIVE RECOMMENDATION(S):**

Richfield Police and Fire need dispatching services. If the contract is not approved, additional vendors would need to be researched and selected to provide dispatch services.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

None

**ATTACHMENTS:**

| Description | Type               |
|-------------|--------------------|
| ☐ Contract  | Contract/Agreement |

*Edina-Richfield  
Emergency  
Communications  
Center*

# 2022 BUDGET PROPOSAL FOR 911 DISPATCH SERVICES WITH THE CITY OF RICHFIELD



Edina offers Richfield community members and first responders the high level of personalized dispatch service they are accustomed to.





**Cost Proposal for  
Richfield 911 Dispatch Services**

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**General Principles of Cost Determination**

- Factors considered include total number of CAD events, staffing costs, and general operating expenses.
- The 2020-2021 cost was set at a flat rate increase of 3.5% each year which was below the inflation in total operational expenses over this period.
- Richfield Police and Fire accounted for approximately 45% of all CAD events generated in 2020.
- Due to ongoing challenges in recruiting qualified dispatch candidates Edina has eliminated part-time positions in favor of one additional full-time position. Our center now has an authorized strength of (13) full-time staff including: ten dispatchers, two lead dispatchers, and one dispatch supervisor.
- Edina receives Richfield 911 Funds which based on a 2021 legislative act will increase to approximately \$95,000/year until 2025.
- Edina is offering an additional year of service under the existing contract terms with a flat 3.5% rate increase.

**Public Safety Software Project (2021-2023)**

- Edina is planning to replace our Computer Aided Dispatch (CAD) and Records Management System (RMS) software which will impact future dispatch operations and contracts.
- Edina has selected Tyler Technologies - New World as the preferred vendor for this project.
- Edina anticipates executing a contract with Tyler Technologies before the end of 2021 and fully transitioning to the new software sometime in 2023.
- With this new system Edina is interested in hosting a complete public safety software suite for Richfield which would include all existing CAD/mobile services plus: police records (RMS), electronic citations, property management, enhanced mobility applications (iOS/Android), and analytics.
- Richfield has received a demonstration of the proposed software and a preliminary budgetary cost estimate.
- Negotiations to determine participation by Richfield in this project will need to be completed in 2021.

**2022 Costs for Richfield 911 Dispatch Services with Edina-Richfield**

| <i>Item</i>               | <i>2022 Cost</i>    |
|---------------------------|---------------------|
| <b>Total Annual Cost:</b> | <b>\$321,518.00</b> |
| <b>Monthly Cost:</b>      | <b>\$26,793.16</b>  |

3.5% Annual increase (based off 2020-21 approved amendment)

**Expense Items**

- (1) **Expense Item:** License and Software
- Explanation:**
- (2) CAD Resource Monitor Annual Maintenance
  - (25) CAD Mobile (MCT) Annual Maintenance
  - MCT AVL Annual Maintenance
  - MCT Maps Annual Maintenance
  - Multi-jurisdictional CAD Annual Maintenance
  - ONE Solution CAD Event Export-Law/Fire/EMS (Cost Split with Edina Fire)
  - ONE Solution US Digital Fire Alerting Communications Gateway (Cost Split with Edina Fire)

**Cost Proposal for  
Richfield 911 Dispatch Services**

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**(2) Expense Item:** Administration

**Explanation:**

- Administration Fee: offsets the costs of ongoing staff management, IT services, operations management, CAD services, 911 audio requests, and training

**(3) Expense Item:** Staffing

**Explanation:**

- Total authorized staff within the 911 center: (12) FT Dispatchers, (1) Dispatch Supervisor

**THIRD AMENDMENT TO  
 AGREEMENT BETWEEN EDINA AND RICHFIELD  
 FOR THE PROVISION OF DISPATCH SERVICES AND OPERATION  
 AND MAINTENANCE OF THE EMERGENCY COMMUNICATIONS CENTER**

**AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 2021 by and between the **City of Edina**, a Minnesota municipal corporation ("Edina") and the **City of Richfield**, a Minnesota municipal corporation ("Richfield"), collectively "the Parties."

**WHEREAS**, Edina and Richfield are parties to an Agreement dated the 1<sup>st</sup> day of December, 2013, for the provision of dispatch services and operation and maintenance of the emergency communications center ("Agreement"); and

**WHEREAS**, the Parties want to amend the Agreement.

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

1. Amendment. The Agreement shall remain in full force and effect except and amended by this Third Amendment. This Third Amendment is effective January 1, 2022.

2. Paragraph 3 of the Agreement is amended to provide as follows:

**Payment for Dispatch Services and Operation and Maintenance of the E.C.C.**

**Subject to the payment of initial costs pursuant to Paragraph 2 herein and any unbudgeted expenses pursuant to Paragraph 5 herein, for the calendar year 2022, Richfield shall pay Edina:**

**2022 Costs for Richfield 911 Dispatch Services with Edina-Richfield**

| <i>Item</i>               | <i>2022 Cost</i>    |
|---------------------------|---------------------|
| <b>Total Annual Cost:</b> | <b>\$321,518.00</b> |
| <b>Monthly Cost:</b>      | <b>\$26,793.16</b>  |

3.5% Annual increase (based off 2020-21 approved contract)

**Payment shall be due in advance on or before the first day of each calendar month.**

3. Paragraph 7 of the Agreement is amended and replaced in its entirety to provide as follows:

**Term of Agreement. This Agreement shall commence on January 1, 2022. This Agreement may be terminated by either party upon a six (6) month advance written termination notice delivered by either party to the other party.**

4. Effective Date. This Third Amendment is effective January 1, 2022.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement the day and year first above written.

**CITY OF EDINA**

BY: \_\_\_\_\_  
James Hovland, Its Mayor

AND \_\_\_\_\_  
Scott Neal, Its City Manager

**CITY OF RICHFIELD**

BY: \_\_\_\_\_  
Maria Regan Gonzalez, Its Mayor

AND \_\_\_\_\_  
Katie Rodriguez, Its City Manager



**STAFF REPORT NO. 144**  
**CITY COUNCIL MEETING**  
**9/28/2021**

REPORT PREPARED BY: Jay Henthorne, Director of Public Safety/Chief of Police

DEPARTMENT DIRECTOR REVIEW: Jay Henthorne, Director of Public Safety/Chief of Police  
9/17/2021

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Katie Rodriguez, City Manager  
9/22/2021

**ITEM FOR COUNCIL CONSIDERATION:**

**Consider the adoption of a resolution authorizing acceptance of Office of Traffic Safety (OTS) funds for an extension on an original four-year grant to fully fund an officer dedicated for DWI enforcement in Richfield.**

**EXECUTIVE SUMMARY:**

The National Highway Traffic Safety Administration (NHTSA) is providing federal funding to the OTS to implement a program to support one full time officer solely for DWI enforcement. Eight counties, including Hennepin, were chosen to receive grant funding. The grant is administered through the OTS. The grant was guaranteed for four years, but will be written for an additional federal fiscal year at a time. The City of Richfield has received an additional extension and has been awarded \$120,168.67 for 2022.

**RECOMMENDED ACTION:**

**By motion: Adopt a resolution allowing the Richfield Department of Public Safety to accept a grant from the Office of Traffic Safety (OTS) for an extension on an original four-year grant to fully fund an officer dedicated for DWI enforcement in Richfield.**

**BASIS OF RECOMMENDATION:**

**A. HISTORICAL CONTEXT**

- The average number of DWI arrests per year in Richfield is 176. The goal is to increase that to 200 DWI arrests per year.
- In 2016, Richfield had 26 alcohol related crashes.
- In 2017, Richfield had 30 alcohol related crashes.
- In 2018, Richfield had 35 alcohol related crashes.
- In 2019, Richfield had 37 alcohol related crashes.
- In 2020, Richfield had 32 alcohol related crashes.
- January 1, 2021-September 15, 2021, Richfield had 29 alcohol related crashes.
- Minnesota Motor Vehicle Crash Facts data show that the hours between 5:00 p.m. and 5:00 a.m. as having the highest concentration of alcohol related crashes. The DWI officer's work shift will be from 5:00 p.m. to 5:00 a.m. with a minimum of two Fridays and two Saturdays per month to be a required part of the DWI officer's schedule. Statistics will be checked daily, including but not

limited to: speed tickets, seat belt tickets, texting tickets, "Not a Drop" tickets and warnings associated with these statistics. Proactive criminal interdiction patrol would also be implemented.

- The City of Richfield has been approved to receive \$120,168.67 from the DWI Officer grant for 2022.

**B. POLICIES (resolutions, ordinances, regulations, statutes, etc):**

- Public Safety does not accept financial support unless it is designated for a specific program that will affect the department as a whole.
  - The grant money will be used by Public Safety to pay for one full-time police officer salary; including overtime and/or training.
  - Minnesota Statute 465.03 requires that every acceptance of a grant or devise of real or personal property on terms prescribed by the donor be made by resolution of more than two-thirds majority of the City Council.
  - The Administrative Services Department issued a memo on November 9, 2004, requiring that all grants and restricted donations to departments be received by resolution and by a two-thirds majority of the City Council in accordance with Minnesota Statute 465.03.

**C. CRITICAL TIMING ISSUES:**

The total length of the grant was for four years, however, grants will be written for one federal fiscal year at a time and the City of Richfield has received an extension on an original four-year grant to fully fund an officer.

**D. FINANCIAL IMPACT:**

- Federal guidelines require this money be spent on projects designed to reduce DWI incidents. Both the officer and majority of the equipment funded by the grant can only be used for the enforcement of laws prohibiting driving while impaired. If the DWI officer responds to, or is called to an incident for something other than an alcohol-related driving offense, the time spent on non-DWI related enforcement exceeding 15 successive minutes must be paid for by the agency. The vehicle will be assigned to and driven solely by the DWI officer.
- The Richfield Department of Public Safety has developed a work plan and budget that have been approved by the OTS.
- The grant will cover one full-time sworn officer, and fringe benefits are covered by the grant. The Richfield Department of Public Safety has funds budgeted for items not covered by the grant.

**E. LEGAL CONSIDERATION:**

There are no legal considerations.

**ALTERNATIVE RECOMMENDATION(S):**

Council could not approve the acceptance of the grant but the Richfield Department of Public Safety would then not be able to dedicate an officer to DWI enforcement.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

None

**ATTACHMENTS:**

| Description   | Type               |
|---|--------------------|
| <input type="checkbox"/> Resolution                       | Resolution Letter  |
| <input type="checkbox"/> Contract                         | Contract/Agreement |
| <input type="checkbox"/> Certification Regarding Lobbying | Backup Material    |

**RESOLUTION NO.**

**RESOLUTION AUTHORIZING THE DEPARTMENT OF PUBLIC SAFETY/POLICE TO ACCEPT GRANT MONIES FROM THE OFFICE OF TRAFFIC SAFETY IN THE AMOUNT OF \$120,168.67 OR A LESSER AMOUNT, AS AWARDED BY THE DEPARTMENT OF PUBLIC SAFETY, TO FUND A POLICE OFFICER DEDICATED TO DWI ENFORCEMENT.**

**WHEREAS**, Richfield Police Department has been approved by the Office of Traffic Safety (OTS) to receive funds made available to eight Counties in the State of Minnesota through federal funding provided by the National Highway Traffic Safety Administration (NHTSA); and

**WHEREAS**, Richfield is scheduled to be awarded \$120,168.67 or a lesser amount as awarded by the Minnesota Department of Public Safety to be used as designated by the grant agreement which mandates that the funds be used to support one full time officer dedicated to DWI enforcement for an extension of the original term of four years; and,

**WHEREAS**, Richfield has agreed that the Minnesota Department of Public Safety will serve as the fiscal agent; and,

**WHEREAS**, in accordance with the agreement, squad operating costs per mile, maintenance, uniforms, weapons and time spent in excess of 15 minutes on non-DWI related calls will be covered by the Richfield Police Department; and,

**WHEREAS**, Richfield Police has established an approved budget with the OTS for \$120,168.67 or a lesser amount for the DWI enforcement program; and,

**NOW, THEREFORE, BE IT RESOLVED** that the City of Richfield, Public Safety Department enter into a grant agreement with the Minnesota Department of Public Safety, for traffic safety enforcement projects during the period from October 1, 2021 to September 30, 2022.

Adopted by the City Council of the City of Richfield, Minnesota this 28th day of September, 2021.

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Maria Regan Gonzalez, Mayor

ATTEST:

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Kari Sinning, City Clerk



|  |  |
|--|--|
| <b>Minnesota Department of Public Safety (“State”)</b><br>Office of Traffic Safety<br>445 Minnesota Street, Suite 1620<br>Saint Paul, MN 55101   | <b>Grant Program:</b> 2022 NHTSA: 2022 DWI Officers<br><br><b>Grant Contract Agreement No.:</b> A-OFFICR22-2022-RICHFPD-011                                |
| <b>Grantee:</b><br>Richfield Police Department<br>6700 Portland Avenue South<br>Richfield, MN 55423-1618   | <b>Grant Contract Agreement Term:</b><br><b>Effective Date:</b> 10/1/2021<br><b>Expiration Date:</b> 9/30/2022   |
| <b>Grantee’s Authorized Representative:</b><br>Sergeant Matt Steen<br>Richfield Police Department<br>6700 Portland Avenue South<br>Richfield, MN 55423-1618<br>(612)861-9800<br>msteen@richfieldmn.gov | <b>Grant Contract Agreement Amount:</b><br>Original Agreement \$120,168.67<br>Matching Requirement \$0.00  |
| <b>State’s Authorized Representative:</b><br>Duane Siedschlag<br>Office of Traffic Safety<br>445 Minnesota Street, Suite 1620<br>Saint Paul, MN 55101<br>(651)201-7078<br>Duane.siedschlag@state.mn.us | Federal Funding: CFDA 20.608 & CFDA 20.616<br>FAIN: 69A37519300001640MNA & FAIN<br>69A3752030000405DMNL<br>State Funding: None<br>Special Conditions: None |

Under Minn. Stat. § 299A.01, Subd 2 (4) the State is empowered to enter into this grant contract agreement.

**Term:** The creation and validity of this grant contract agreement conforms with Minn. Stat. § 16B.98 Subd. 5. Effective date is the date shown above or the date the State obtains all required signatures under Minn. Stat. § 16B.98, subd. 7, whichever is later. Once this grant contract agreement is fully executed, the Grantee may claim reimbursement for expenditures incurred pursuant to the Payment clause of this grant contract agreement. Reimbursements will only be made for those expenditures made according to the terms of this grant contract agreement. Expiration date is the date shown above or until all obligations have been satisfactorily fulfilled, whichever occurs first.

The Grantee, who is not a state employee will:

Perform and accomplish such purposes and activities as specified herein and in the Grantee’s approved 2022 NHTSA: 2022 DWI Officers Application (“Application”) which is incorporated by reference into this grant contract agreement and on file with the State at 445 Minnesota Street, Suite 1620, Saint Paul, MN 55101. The Grantee shall also comply with all requirements referenced in the 2022 NHTSA: 2022 DWI Officers Guidelines and Application which includes the Terms and Conditions and Grant Program Guidelines (<https://app.dps.mn.gov/EGrants>), which are incorporated by reference into this grant contract agreement.

**Budget Revisions:** The breakdown of costs of the Grantee’s Budget is contained in Exhibit A, which is attached and incorporated into this grant contract agreement. As stated in the Grantee’s Application and Grant Program Guidelines, the Grantee will submit a written change request for any substitution of budget items or any deviation and in accordance with the Grant Program Guidelines. Requests must be approved prior to any expenditure by the Grantee.

**Matching Requirements:** (If applicable.) As stated in the Grantee’s Application, the Grantee certifies that the matching requirement will be met by the Grantee.





**Payment:** As stated in the Grantee’s Application and Grant Program Guidance, the State will promptly pay the Grantee after the Grantee presents an invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services and in accordance with the Grant Program Guidelines. Payment will not be made if the Grantee has not satisfied reporting requirements.

**Certification Regarding Lobbying:** (If applicable.) Grantees receiving federal funds over \$100,000.00 must complete and return the Certification Regarding Lobbying form provided by the State to the Grantee.

**1. ENCUMBRANCE VERIFICATION**

*Individual certifies that funds have been encumbered as required by Minn. Stat. § 16A.15.*

Signed: \_\_\_\_\_

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

**3. STATE AGENCY**

Signed: \_\_\_\_\_  
(with delegated authority)

Title: \_\_\_\_\_

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

Grant Contract Agreement No./ P.O. No. A-OFFICR22-2022-RICHFPD-011/3000075347

Project No.22-03-03

**2. GRANTEE**

*The Grantee certifies that the appropriate person(s) have executed the grant contract agreement on behalf of the Grantee as required by applicable articles, bylaws, resolutions, or ordinances.*

Signed: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Signed: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Distribution: DPS/FAS  
Grantee  
State’s Authorized Representative

Organization: Richfield Police Department

Budget Summary

| Budget   |                     |             |  |
|--|---------------------|-------------|--|
| Budget Category  | State Reimbursement | Local Match |  |
| Salary   |                     |             |  |
| DWI Officer salary for entire year, plus anticipated overtime. | \$120,043.67        | \$0.00      |  |
| <b>Total</b>   | \$120,043.67        | \$0.00      |  |
| Operating Expenses   |                     |             |  |
| Operating expenses   | \$0.00              | \$0.00      |  |
| <b>Total</b>   | \$0.00              | \$0.00      |  |
| In State Travel for TZD Conference                             |                     |             |  |
| In person attendance to TZD conference                         | \$125.00            | \$0.00      |  |
| <b>Total</b>   | \$125.00            | \$0.00      |  |
| <b>Total</b>   | \$120,168.67        | \$0.00      |  |

**CERTIFICATION REGARDING LOBBYING**  
(For State of Minnesota Contracts and Grants over \$100,000)

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, A Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities", in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31 U.S.Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_  
Organization Name

\_\_\_\_\_  
Name and Title of Official Signing for Organization

By: \_\_\_\_\_  
Signature of Official

\_\_\_\_\_  
Date



**STAFF REPORT NO. 145**  
**CITY COUNCIL MEETING**  
**9/28/2021**

REPORT PREPARED BY: Rachel Lindholm, Sustainability Specialist

DEPARTMENT DIRECTOR REVIEW: Amy Markle, Recreation Services Director  
9/21/2021

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Katie Rodriguez, City Manager  
9/22/2021

**ITEM FOR COUNCIL CONSIDERATION:**

**Consider the approval of a Richfield American Legion Post 435 Parking Lot Agreement to implement city-wide organized collection and the swapping-out of waste and recycling carts from September 27 through October 29, 2021.**

**EXECUTIVE SUMMARY:**

The City of Richfield has been planning organized collection for many months. The implementation phase starts October 4, 2021. There is a need to have large physical space for waste haulers to remove, store, and replace waste and recycling carts in the community. Having several lots for haulers to work from will help with a smooth transition for customers to swap out old carts for new, and increase the efficiency and turn-around time for the haulers. Both Aspen and Waste Management will be using the American Legion Lot and will be done with the cart swap by the end of October, 2021 (note: Republic will be using part of the Hub parking lot for their cart swap operation).

Organized collection helps the City streamline education to residents about proper waste disposal, including curbside recycling, organics recycling, bulky item and electronics recycling, and reuse opportunities. This helps the City collectively send less trash to landfills and incinerators, which also contributes to city, county, and state goals regarding waste reduction.

Organized collection aligns with several of the City's sustainability goals, including those outlined in the City's Climate Action Plan, Richfield's Solid Waste Management Goals, and county and state solid waste management plans. The environmental benefits include less air pollution from having more efficient truck routes. Fewer trucks and more efficient routes also mean safer driving throughout the city, with the former being one of the most common complaints residents have historically had. Additionally, the majority of residents should see economic benefits. Ensuring that all residents have adequate waste management services and are paying the same rates for these services is essential to making the system more equitable.

**RECOMMENDED ACTION:**

**By motion: Approve a parking lot agreement with the Richfield American Legion Post 435 for use of their lot from September 27 through October 29, 2021, to aid in the implementation of city-wide waste collection.**

**BASIS OF RECOMMENDATION:**

## **A. HISTORICAL CONTEXT**

- In November 2018, Hennepin County revised Ordinance 13 declaring that cities with 10,000+ residents must make curbside organics collection available to all residents in 1-4 unit buildings by 1/1/22.
- Also in November 2018, Richfield launched a 2 site organics drop-off program, which immediately started to grow rapidly.
- On 6/11/19, Council voted to approve the organization of curbside recycling and organics hauling.
- After some legal concerns sidelined the original process, at the 2/24/20 work session, staff presented options for next steps to council and received direction to pursue researching and planning organization of trash, recycling, and organics collection.
- At the 11/20/20 work session, staff received direction from Council to officially start the process of considering organized collection and begin negotiations with haulers.
- Staff held several virtual "listening and learning" sessions for Richfield residents and community members in December 2020. For the past 5+ months, staff have had weekly meetings with the participating haulers to negotiate terms of service and create the draft proposal.
- A Council work session was held on 5/11/21 where staff explained the scope of services and pricing associated with the proposed organized collection contract.
- A virtual public listening session was held on 5/20/21 for residents to share their comments and feedback with the City Council. Draft minutes and written comments are attached to this report. 19 people commented via email, phone, or virtually on WebEx. Comments included concerns about visual pollution, questions about pricing, support for organized collection and the environmental benefits, desire to have curbside organics collection, voting, concerns about specific haulers, comments about billing through the hauler or the City, wanting fewer trucks, and more.
- A public hearing was held on 6/1/21 for residents to share their comments and feedback with the City Council. Draft minutes and written comments are attached to this report. 13 members of the public provided testimony at the public hearing, either by calling in, emailing, or speaking in person. Testimony included concerns about accountability and responsibility of the haulers, the recourse for potential customer service issues, support for organized collection, a desire to reduce trucks and ensure pricing is the same for all residents, voting, and concerns about specific haulers.
- Council approved the organized collection contract on June 8, 2021.
- Code was revised and approved to support organized collection on August 24 and September 14, 2021.
- Implementation of organized collection is planned for October 4, 2021.

## **B. POLICIES (resolutions, ordinances, regulations, statutes, etc):**

- Richfield City Code - Chapter VI, Section 601
- Richfield Climate Action Plan
- Richfield Solid Waste Management Goals
- Hennepin County Ordinance 13
- MN State Statute 115A.94

## **C. CRITICAL TIMING ISSUES:**

The program launch date of October 4, 2021 is approaching.

## **D. FINANCIAL IMPACT:**

There is no financial impact, the Richfield American Legion Post 435 would prefer no compensation for the use of their parking lot.

## **E. LEGAL CONSIDERATION:**

Legal process to organize collection is outlined in MN Statute 115A.94.

## **ALTERNATIVE RECOMMENDATION(S):**

Reject the recommendation and seek alternative parking lots to aid in the cart swap operation of organized collection.

## **PRINCIPAL PARTIES EXPECTED AT MEETING:**

There are no principal parties expected at the meeting.

**ATTACHMENTS:**

| Description                                   | Type               |
|---|--------------------|
| 📄 Organized Collection Cart Storage Agreement | Contract/Agreement |

## STORAGE AGREEMENT

This STORAGE AGREEMENT (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2021 between the City of Richfield, a Minnesota municipal corporation (the “City”) and the Minneapolis-Richfield American Legion Post 435, a nonprofit corporation organized under the laws of the State of Minnesota (the “Legion”).

### RECITALS

**WHEREAS**, the Legion currently owns real property located at 6501 Portland Ave S, Richfield, MN 55423 in the City of Richfield (the “Property”); and

**WHEREAS**, the City has requested that the Legion permit it to store materials and equipment upon the Property, including carts used for the storage and collection of solid waste (the “Equipment”), related to its implementation of organized collection in the City (the “Project”); and

**WHEREAS**, the Legion approves of the temporary storage of the Equipment upon the Property pursuant to the terms of this Agreement.

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

### AGREEMENT

**1. Grant of License.** The Legion hereby grants the City a license to store its Equipment on the Property pursuant to the terms of this Agreement. The City may only store Equipment related to the Project upon the Property. The City shall at no time use or occupy or permit the use or occupancy of the Property for any other purpose.

**2. Access.** The City and its invitees shall be permitted to access the Property beginning on September 27, 2021 and terminating on October 29, 2021, in order to access, store, and remove the Equipment. Access shall be limited between the hours of 7:00 a.m. and 8:00 p.m. on the days listed above. The City shall not be permitted to access the Property at any other time during the term of this Agreement except as arranged with between the City and the Legion.

**3. Term and Termination.** The City shall remove all of the Equipment no later than October 29, 2021, at 8:00 p.m. This Agreement shall automatically terminate upon that day and time. Either party may also terminate this Agreement at any time upon 10 days written notice to the other party. The City and the Legion may agree to extend the term of this Agreement. Any extension shall be in writing and executed by both parties to this Agreement.

**4. Use and Restoration of Premises.** The City hereby agrees that, upon termination or expiration of this Agreement, the City will remove its Equipment from the Property and restore the Property to its original state. The City and its invitees shall use care in accessing, storing, and removing the Equipment from the Property. The City shall be responsible for repairing any damage to the Property caused by the storage or removal of the Equipment.

**5. Risk of Loss.** During the term of this Agreement, the Legion shall not be liable for any loss or damage to the Equipment. The City acknowledges that the Equipment stored on the Property are not covered by the Legion's insurance. The City acknowledges that all risks relating to the presence of the Equipment and on the Property shall be borne exclusively by the City.

**6. Indemnification.** The City hereby releases and agrees to defend, indemnify, and hold harmless the Legion, its officials, agents, employees, representatives, and contractors from liability for claims for bodily injury and property damage occurring on the Property, arising out of or related to the City's use of the Property under this Agreement. Nothing in this Agreement shall constitute a waiver or limitation of any immunity or limitation on liability to which the City is entitled under Minnesota Statutes or otherwise.

**7. Notices.** A notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and

To the City:

The City of Richfield  
6700 Portland Avenue South  
Richfield, MN 55423  
Attn: Rachel Lindholm

To the Legion:

The Minneapolis-Richfield  
American Legion Post 435  
7730 Laredo Drive Unit 729  
Chanhassen, MN 55317  
Attn: \_\_\_\_\_

**8. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument and may not be amended or modified except by a writing signed by the parties hereto.

**9. Governing Law; Forum.** This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota. All parties to this Agreement waive any objection to the jurisdiction of these courts.

**10. Relationship of Parties.** Nothing in this Agreement shall be interpreted or construed as a partnership or joint venture between the Legion and the City.

**11. Entire Agreement.** This Agreement is intended by the parties as the final and binding expression of their agreement and as the complete and exclusive statement of its terms, and supersedes all prior negotiations, representations, and agreements between the parties, whether oral or written, relating to the subject matter of this Agreement.



IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date written above.

**THE CITY OF RICHFIELD**

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

Its: \_\_\_\_\_

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

Its: \_\_\_\_\_

**THE MINNEAPOLIS-RICHFIELD  
AMERICAN LEGION POST 435**

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

Its: \_\_\_\_\_



**STAFF REPORT NO. 146**  
**CITY COUNCIL MEETING**  
**9/28/2021**

REPORT PREPARED BY: Rachel Lindholm

DEPARTMENT DIRECTOR REVIEW: Amy Markle, Recreation Services Director  
9/23/2021

OTHER DEPARTMENT REVIEW:

CITY MANAGER REVIEW: Katie Rodriguez, City Manager  
9/23/2021

**ITEM FOR COUNCIL CONSIDERATION:**

**Consider the approval of an agreement with Brixmor SPE 1 LLC, a Delaware limited liability company to implement city-wide organized collection and the swapping-out of waste and recycling carts from September 27 through October 29, 2021 at the HUB shopping center.**

**EXECUTIVE SUMMARY:**

The City of Richfield has been planning organized collection for many months. The implementation phase starts October 4, 2021. There is a need to have large physical space for waste haulers to remove, store, and replace waste and recycling carts in the community. Having several lots for haulers to work from will help with a smooth transition for customers to swap out old carts for new, and increase the efficiency and turn-around time for the haulers. Republic will be using part of the Hub parking lot for their cart swap operation.

(Note: Both Aspen and Waste Management will be using the American Legion Lot)

Organized collection helps the City streamline education to residents about proper waste disposal, including curbside recycling, organics recycling, bulky item and electronics recycling, and reuse opportunities. This helps the City collectively send less trash to landfills and incinerators, which also contributes to city, county, and state goals regarding waste reduction.

Organized collection aligns with several of the City's sustainability goals, including those outlined in the City's Climate Action Plan, Richfield's Solid Waste Management Goals, and county and state solid waste management plans. The environmental benefits include less air pollution from having more efficient truck routes. Fewer trucks and more efficient routes also mean safer driving throughout the city, with the former being one of the most common complaints residents have historically had. Additionally, the majority of residents should see economic benefits. Ensuring that all residents have adequate waste management services and are paying the same rates for these services is essential to making the system more equitable.

**RECOMMENDED ACTION:**

**By motion: Approve a parking lot agreement with Brixmor SPE 1 LLC for use of part of the Hub parking lot from September 27 through October 29, 2021, to aid in the implementation of city-wide waste collection.**

**BASIS OF RECOMMENDATION:**

## A. HISTORICAL CONTEXT

- In November 2018, Hennepin County revised Ordinance 13 declaring that cities with 10,000+ residents must make curbside organics collection available to all residents in 1-4 unit buildings by 1/1/22.
- Also in November 2018, Richfield launched a 2 site organics drop-off program, which immediately started to grow rapidly.
- On 6/11/19, Council voted to approve the organization of curbside recycling and organics hauling.
- After some legal concerns sidelined the original process, at the 2/24/20 work session, staff presented options for next steps to council and received direction to pursue researching and planning organization of trash, recycling, and organics collection.
- At the 11/20/20 work session, staff received direction from Council to officially start the process of considering organized collection and begin negotiations with haulers.
- Staff held several virtual "listening and learning" sessions for Richfield residents and community members in December 2020. For the past 5+ months, staff have had weekly meetings with the participating haulers to negotiate terms of service and create the draft proposal.
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## B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

- Richfield City Code - Chapter VI, Section 601
- Richfield Climate Action Plan
- Richfield Solid Waste Management Goals
- Hennepin County Ordinance 13
- MN State Statute 115A.94

## C. CRITICAL TIMING ISSUES:

The program launch date of October 4, 2021 is approaching.

## D. FINANCIAL IMPACT:

Licensing/rental fee of \$500 to be paid in full upon execution.

## E. LEGAL CONSIDERATION:

Legal process to organize collection is outlined in MN Statute 115A.94.

## ALTERNATIVE RECOMMENDATION(S):

None

## PRINCIPAL PARTIES EXPECTED AT MEETING:

## ATTACHMENTS:

Description

Type

▣ HUB Usage Agreement

Contract/Agreement

**COMMON AREA SHORT TERM LICENSE AGREEMENT**

**I. BASIC TERMS AND DEFINITIONS:**

|                          |   |
|--------------------------|---|
| Effective Date:          | _____   |
| Licensor:                | Brixmor SPE 1 LLC,<br>a Delaware limited liability company  |
| Licensee:                | City of Richfield   |
| Shopping Center:         | Richfield Hub -<br>36 West 66th Street, Richfield, MN 55423-2316  |
| Licensed Area:           | The portion of the Common Area of the Shopping Center shown on <u>Exhibit A</u> attached hereto, identified as Unit <u>PRK</u> of the Shopping Center.  |
| Term:                    | The period beginning on the Commencement Date and expiring on the Termination Date or earlier termination of this Agreement.  |
| Commencement Date:       | 09/27/2021  |
| Rent Commencement Date:  | 9/27/2021   |
| Termination Date:        | 10/22/2021  |
| Permitted Use:           | storage   |
| Permitted Trade Name:    | City of Richfield   |
| License Fee:             | <input checked="" type="checkbox"/> \$500 paid in full upon execution; OR<br><input type="checkbox"/> \$ _____ payable <input type="checkbox"/> per month or <input type="checkbox"/> per week during the Term. |
| Percentage Rent:         | <input type="checkbox"/> 0% of Gross Sales above the Natural Breakpoint (see Ex. C)   |
| Security Deposit:        | \$0.00  |
| Address for Payments:    | c/o Brixmor Property Group<br>Attn: Nia Lam<br>PO Box 645346<br>Cincinnati, OH 45264-5346   |
| Licensor Notice Address: | Brixmor Property Group<br>Attn: Specialty Leasing<br>200 Ridge Pike, Suite 100<br>Conshohocken, PA 19428<br>Email: specialtyleasing@brixmor.com<br>Phone: 855-540-5983  |
| Licensee Notice Address: | Katie Rodriguez<br>6700 Portland Avenue<br>Richfield, MN  |

Email: [krodriguez@richfieldmn.gov](mailto:krodriguez@richfieldmn.gov)  
Phone: [612-861-9702](tel:612-861-9702)

## II. TERMS AND CONDITIONS.

THIS SHORT TERM LICENSE AGREEMENT (this “**Agreement**”) is made as of the Effective Date by and between the Licensor and Licensee identified above, on the following terms and conditions, and incorporating the Basic Terms and Definition set forth in Article I above (the “**Basic Terms**”):

1. **Grant of License.** Licensor hereby grants to Licensee, subject to the terms and conditions of this Agreement, the right and license (the “**License**”) to access and use the Licensed Area, during the Term, for the Permitted Use, and for no other purpose.

2. **Licensed Area.**

2.1. **Delivery of the Licensed Area.** Licensor shall permit access to the Licensed Area beginning on the Commencement Date. Licensor has no obligation to make any improvements to the Licensed Area in preparation for Licensee’s use. Any set-up or breakdown shall be the responsibility of Licensee, and shall occur only during the Term, unless otherwise consented to by Licensor in writing. By taking possession of the Licensed Area, Licensee shall be deemed to have inspected the Licensed Area and accepted the Licensed Area “AS IS” with no representation or warranty of any kind by Licensor.

2.2. **Common Areas.** The Licensed Area is part of the common area of the Shopping Center. Licensee shall have the non-exclusive right to use the common areas of the Shopping Center for ingress and egress and any other purpose for which they were designed. Licensor may from time to time change the size, location, nature and use of any of any such common areas.

2.3. **Relocation the Licensed Area.** Licensor shall have the right to relocate the Licensed Area at any time, to any location within the Shopping Center, upon twenty-four (24) hours’ notice to Licensee (a “**Relocation Notice**”).

2.4. **Surrender of the Licensed Area.** Upon the expiration or earlier termination of this Agreement, Licensee will vacate the Licensed Area and remove all of its property from the Licensed Area and repair any damage caused by such removal (the “**Surrender Obligations**”). All property of Licensee not removed by the last day of the Term shall be deemed abandoned and may be removed or retained by Licensor without compensation to Licensee, but Licensee shall remain liable for any costs of such removal incurred by Licensor.

2.5. **Utilities.** If required for Licensee’s use, Licensor shall arrange for certain utilities, including electricity and water, to the Licensed Area. All utility charges are included in the License Fee.

3. **Fees and Expenses.**

3.1. **License Fees.**

(a) If the Basic Terms require the License Fees to be pre-paid, then Licensee shall pay the full amount of the License Fee when Licensee executes and returns this Agreement to the Licensor.

(b) If the Basic Terms require the License Fees to be paid monthly or weekly each a “**Payment Period**”), then the License Fee for the first Payment Period shall be paid by Licensee upon execution of this Agreement and shall be prorated for any partial Payment Period; and thereafter during the Term, each payment of the License Fee shall be payable in advance, at least five (5) days prior to the commencement of the applicable Payment Period.

(c) If the Basic Terms require the payment of Percentage Rent, then following the Rent Commencement Date, Licensee shall pay Percentage Rent in accordance with the terms and conditions of Exhibit C attached hereto.

(d) If the Shopping Center is located in a jurisdiction that presently or in the future imposes a sales tax or other tax on Rent, Licensee shall pay the tax assessed by the state or any municipality, simultaneously with each payment of Rent, when due to Licensor.

3.2. Payment of Fees. The License Fee and all other sums of money or charges payable pursuant to this Agreement are collectively referred to herein as the “**Fees.**” Any Fees not paid when due shall bear interest from the date due until the date paid at the annual rate of the lesser of the highest rate permitted under applicable law or eighteen percent (18%). The Licensee shall pay all Fees, without demand, set off, claim, counterclaim or other deduction of any kind whatsoever, to Licensor by certified check, money order, cashier’s check, or in currency of the United States of America, to the Address for Payments set forth in the Basic Terms, or such other address as Licensor may designate from time to time.

3.3. Security Deposit. Licensee has deposited the Security Deposit as security for the performance of all of Licensee’s obligations under this Agreement. In the event of a default by Licensee, Licensor may, in addition to any other right or remedy available to Licensor, use, apply, or retain any or all of the Security Deposit to pay any unpaid Fees or any other cost or expense resulting from the Licensee’s default. If any portion of the Security Deposit is used or applied by Licensor during the Term, Licensee shall, upon five (5) days’ written demand, deposit with Licensor an amount sufficient to restore the Security Deposit to its original amount. Any unapplied portion of the Security Deposit shall be returned to Licensee within thirty (30) days following the expiration of the Term and compliance with the Surrender Obligations and all other terms of this Agreement.

#### **4. Licensee Covenants and Responsibilities.**

4.1. Use. Licensee only may use the Licensed Area for the Permitted Use, and under the Permitted Trade Name, and for no other purpose and under no other trade name.

4.2. Maintenance. Licensee shall maintain the Licensed Area, and all equipment and other items therein, in clean, neat and safe condition, and in good repair (and free of snow and ice, if applicable), at Licensee’s sole cost and expense.

4.3. Alterations. Licensee shall not construct, install or make any alterations or improvements of any kind in the Licensed Area.

4.4. Signage. Licensee shall not install or utilize any signage in or around the Licensed Area without first obtaining Licensor’s prior written consent, which Licensor may withhold in its sole discretion. Any exterior and interior signage must conform to Licensor’s sign criteria and shall be professionally made at Licensee’s expense. Licensee shall comply with all visual merchandising standards of Licensor.

4.5. Trash Disposal. Licensee shall store all trash in an adequate, sanitary, closed container, not visible to the public, within the Licensed Area, and shall dispose of such trash at least daily, using the trash receptacles approved or designated by Licensor. Licensee shall pay the cost of removal of garbage or refuse from the Licensed Area, and if Licensor shall provide or designate a service for picking up refuse and garbage, then Licensee shall use same at Licensee’s expense provided that such service is priced competitively.



4.6. Security. Licensee shall be responsible for its own security. Licensor shall not be liable for the security of any personal property (including, without limitation, Licensee's displays, fixtures and/or merchandise) in the Licensed Area or elsewhere in the Shopping Center. Licensee shall bear all risk of loss or damage to any personal property of Licensee or at the Licensed Area or the Shopping Center.

4.7. Compliance with Law. Licensee shall conduct its activities in accordance with all applicable governmental laws and regulations (including, without limitation, all environmental laws); and shall secure all permits and licenses required by law.

4.8. Rules and Regulations. Licensee shall comply with Licensor's rules and regulations made available from time to time to Licensee by Licensor.

4.9. Use of Shopping Center Name. Licensee may use only the name of the Shopping Center and its address in its advertisements and other materials and shall not utilize any other Shopping Center information, including, without limitation, photographs or site plans.

## **5. Insurance and Indemnification.**

5.1. Insurance Requirements. Licensee shall comply with the insurance requirements set forth on Exhibit B at all times during the Term.

5.2. Indemnification. Licensee shall indemnify, defend and hold harmless Licensor and its principals, officers, members, partners, shareholders, directors, agents, employees, contractors, mortgagee(s), and affiliates, and their respective heirs, successors and assigns (each a "**Licensor Party**"), from and against all claims, actions, damages, liability and expense of every kind, including without limitation reasonable attorneys' fees and expenses, arising out of (a) Licensee's use, operation or maintenance of the Licensed Area or the Shopping Center; or (b) any acts, failures, omissions or negligence of Licensee, its agents, employees, contractors, invitees, sublicensees, and assigns (each a "**Licensee Party**"), unless the same is judicially determined pursuant to a final non-appealable judgment to have resulted solely and directly from the willful misconduct or gross negligence of the Licensor.

5.3. Limitation of Liability. No Licensor Party shall be liable for, and Licensee waives, all claims for loss or damage, economic or otherwise, to Licensee's business or damage to person or property sustained by Licensee or any person claiming by, through or under Licensee resulting from any accident or occurrence in, on or about the Licensed Area or any part of the Shopping Center, due to any cause. Licensee shall use and occupy the Licensed Area, and such other portions of the Shopping Center as Licensee is given the right to use, at Licensee's own risk. Licensee agrees that, in the event Licensee shall have any claim against Licensor under this Agreement, Licensee's sole recourse shall be against Licensor's interest in the Shopping Center for the satisfaction of any claim or judgment requiring the payment of money by Licensor, and no other assets of any Licensor Party shall be subject to any enforcement procedure for the satisfaction of any such claim or judgment. Licensee agrees that no Licensor Party shall be responsible for any lost profits or any consequential, special, incidental or punitive damages incurred or sustained by any Licensee Party in connection with Licensee's occupancy of the Licensed Area.

## **6. Default and Termination.**

6.1. Events of Default. Any breach by Licensee of any covenant or obligation contained in this Agreement, or in any mortgage or other document encumbering the Shopping Center, or of any of the rules and regulations applicable to the Shopping Center, is an "**Event of Default**".

6.2. Licensor's Remedies. Upon the occurrence of an Event of Default that is not cured within after two (2) days written notice by Licensor to Licensee, Licensor may take any or all of the following actions:

- (a) Terminate this Agreement, in which case Licensee will immediately vacate the Licensed Area and comply with the Surrender Obligations;
- (b) Recover damages from Licensee including, without limitation, all Fees that would otherwise be due and payable by Licensee during the Term;
- (c) Perform Licensee's obligations at Licensee's expense, together with Licensor's administrative costs related thereto in an amount equal to twenty percent (20%) of the total cost of such items; and/or
- (d) Pursue any other remedy provided at law or in equity.

6.3. Exercise of Remedies. Licensee hereby grants to Licensor full and free right to enter into the Licensed Area, to take possession of the Licensed Area with or without process of law, and to expel and remove Licensee or any other person who may be occupying the Licensed Area or any part thereof. Licensee will reimburse Licensor for any and all costs and expense, including reasonable attorneys' fees, which Licensor incurs in connection with any default by Licensee and/or the enforcement of this Agreement. No remedy or election hereunder shall be deemed exclusive but shall be cumulative with all other remedies at law or in equity.

6.4. Termination. In addition, Licensor shall have the right to terminate this Agreement at any time, and for any reason (including, without limitation, due to casualty or condemnation) or for no reason, effective on the date which is seven (7) days after written notice of election of such termination, in which case this Agreement and the License granted hereunder shall terminate as of such effective date, and Licensee shall vacate and surrender the Licensed Area and comply with the Surrender Obligations. In the event of termination, Licensor shall refund to Licensee the portion of any pre-paid Fees that applies to the balance of the unused Term.

7. Limitation on Transfers. Licensee may not assign, transfer, mortgage, or encumber this Agreement (or any direct or indirect interest herein), sublicense the Licensed Area, or otherwise allow any portion of the Licensed Area to be occupied or used by any other person or entity (whether by merger, consolidation, operation of law, transfer of direct or indirect ownership interests or otherwise) (each a "Transfer"), in each case, without the consent of Licensor, which consent may be withheld in Licensor's sole discretion. Licensor reserves the right to assign this Agreement, and upon any such assignment, and Licensor shall be released of all liability and obligations arising under this Agreement.

## 8. Miscellaneous.

8.1. Not a Lease. This Agreement shall not be construed as granting to Licensee any leasehold or other real estate interest in the Licensed Area to Licensee. This Agreement merely grants Licensee the right to enter upon, occupy and use the Licensed Area during the Term in accordance with the terms and conditions hereof. Licensee agrees that this Agreement does not create or constitute a lease, sublease, assignment or easement.

8.2. Subordination. This Agreement is subject and subordinate in all respects to any mortgage or financing now or hereafter placed against the Shopping Center and any restrictions set forth in any documents which are currently or in the future recorded against the Shopping Center.

8.3. Notices. All notices to be given hereunder by either of the parties shall be in writing and shall be deemed duly served if addressed to the Licensor Notice Address or the Licensee Notice Address, as applicable and: (i) deposited with the United States Postal Service as certified mail, return receipt requested, with proper postage prepaid; or (ii) deposited with FedEx or other reliable overnight courier; (iii) or, for notices given to Licensee, delivered in person to any employee or agent of Licensee at the Licensed Area. Either party may change its notice address by notice to the other party. If service shall be made by certified mail, such service shall be deemed completed as of the third day following the mailing of such notice in the manner aforesaid. If service shall be made by overnight courier, such service shall be deemed completed as of the next business day following the deposit with the overnight courier.

8.4. Broker. Licensee represents and warrants that Licensee has not dealt with any broker in connection with this Agreement, and Licensee agrees to indemnify Licensor against any liability arising from a breach of this representation and warranty, including reasonable attorneys' fees.

8.5. No Waiver. Failure of Licensor to insist upon the strict performance of any provisions of this Agreement or to exercise any option or any rule or regulation shall not be construed as a waiver for the future of any provisions, option, rule or regulation.

8.6. Restricted Parties. Licensee represents that neither Licensee, nor the principals, officers, partners, and/or members of Licensee: (i) are identified on any U.S. Government or other government list of prohibited or restricted parties, including, but not limited to, the Specially Designated Nationals and Blocked Persons List maintained by the U.S. Department of the Treasury, or (ii) are owned or controlled by or acting on behalf of a party on any such list.

8.7. Entire Agreement; Severability; Amendment; Successors; Time of Essence. This Agreement contains all agreements of the parties with respect to any matter mentioned herein. No prior or contemporaneous agreement or understanding pertaining to any such matter shall be effective. The invalidity or unenforceability of any provision hereof shall not affect or impair any other provision. This Agreement may be modified only in a writing signed by Licensor and Licensee. The covenants and conditions herein contained shall inure to and bind the respective heirs, permitted successors, executors, administrators and assigns of the parties hereto, and the terms "Licensor" and "Licensee" shall include the successors and assigns of either such party, whether immediate or remote, except as otherwise specifically set forth in this Agreement to the contrary. Time is of the essence of this Agreement and of all provisions hereof.

8.8. Governing Law; Venue. This Agreement shall be governed by and construed pursuant to the laws of the State in which the Shopping Center is located. Licensor and Licensee consent to the jurisdiction and venue of the applicable state and federal courts located in the County and State in which the Shopping Center is located. Licensee hereby waives the right to a jury trial in connection with any lawsuit arising from this Agreement.

8.9. Counterparts. This Agreement shall become effective only upon execution and legal delivery by both Licensor and Licensee. However, this Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart. This Agreement may be executed as PDF originals and each copy of this Agreement bearing the PDF transmitted signature of any party's authorized representative shall be deemed to be an original.

REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK

**IN WITNESS WHEREOF**, the parties hereto have executed this Short Term License Agreement as of the Effective Date.

**LICENSOR:**

Brixmor SPE 1 LLC,  
a Delaware limited liability company

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

Name: Howard Porter

Title: SVP, Specialty Leasing

**LICENSEE:**

City of Richfield  
d/b/a City of Richfield

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**LICENSED AREA**



---

NOT TO SCALE

The foregoing site plan is attached to show the approximate location of the Licensed Area and general layout of the Shopping Center. Unless otherwise expressly set forth this Agreement, Licensor makes no representation or warranty that the Shopping Center will be exactly as depicted herein or that the occupants shown will remain in occupancy during the Term. The Shopping Center excludes the parcel(s) of land shown as “N.A.P”, which are owned and/or controlled by a party (or parties) other than the Licensor.

**EXHIBIT B**

**INSURANCE REQUIREMENTS**

1. **Required Coverages.** Licensee shall, from and after the Commencement Date (or such earlier date as it occupies or utilizes the Licensed Area) and at all times during the Term, at its sole cost and expense, carry and maintain the insurance coverages designated below (“**Licensee’s Insurance**”) with respect to the Licensed Area:

- Property Insurance:** Fire and extended coverage insurance insuring its fixtures, inventory, furniture and equipment of Licensee in the Licensed Area for the full replacement value thereof with the broadest possible coverage (“all risk” form), insuring against all risks of direct physical loss.
- Liability Insurance:** Commercial general liability coverage for the benefit of Licensor and Licensee with a limit of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence.
- Workmen’s Compensation Insurance:** Workmen’s compensation insurance insuring against and satisfying the workmen’s compensation laws of the State in which the Shopping Center is located.
- Automobile Liability Insurance:** Comprehensive Automobile Liability Insurance in the amount of One Million Dollars (\$1,000,000) covering bodily injury, including personal injury resulting therefrom, and property damage.
- Additional Required Coverage:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. **Insurance Requirements.** All insurance policies required to be carried by Licensee shall comply with the following requirements:

- (a) Licensee’s Insurance shall be issued by an insurance company authorized to do business in the State in which the Shopping Center is located and having a Best’s Insurance Guide rating of at least A:X.
- (b) Licensee’s Insurance (other than any policy of workmen’s compensation insurance) will name Licensor and such other persons or firms as Licensor specifies from time to time as additional insured.
- (c) Certificates of insurance policies and, upon Licensor’s request, copies of such insurance policies will be delivered to Licensor prior to the date that Licensor delivers the Licensed Area to Licensor, and at any date the prior policy expires or Licensor requests same.
- (d) Licensee’s Insurance will provide that it may not be terminated or amended except after thirty (30) days prior written notice to Licensor.
- (e) All public liability property damage, liability and casualty policies maintained by Licensee shall be written as primary policies, not contributing with and not supplemental to coverage that Licensor may carry.

- (f) Licensee shall cause its insurance carrier to issue appropriate endorsements to its fire and extended coverage policies of insurance carried in connection with the Licensed Area or the contents of the Licensed Area, which endorsements waive such insurer's subrogation rights under such policies against Licensor.
- (g) Licensee's Insurance shall not be subject to any deductible or self-insured retention.

**3. Waiver of Subrogation.** Without limiting any release or waiver of liability or recovery set forth elsewhere in this Agreement, Licensee hereby waives any and all rights of recovery against Licensor (and against the occupants of other space in the Shopping Center) and against Licensor Parties, for loss of or damage to Shopping Center insured under any valid and collectible insurance policy in force at the time of such loss or damage, to the extent of any recovery collected under such insurance policy. Licensee, from time to time, shall cause its insurer to issue appropriate endorsements to all policies of insurance carried in connection with the Shopping Center or the Licensed Area or the contents of the Licensed Area, which endorsements waive such insurer's subrogation rights under such policies against the Licensor.

## EXHIBIT C

### PERCENTAGE RENT

If the Basic Terms require the payment of Percentage Rent, then the following provisions shall apply:

1. Gross Sales Reports. Within 15 days after the end of each month during the Term, Licensee shall deliver to Licensor a report of Licensee's Gross Sales for the preceding month. In addition, by February 1st of each year during the Term, Licensee shall deliver to Licensor a report of Licensee's Gross Sales for the preceding calendar year, certified to be true and accurate by either, at Licensee's option, a certified public accountant or a financial officer of Licensee. The term "**Gross Sales**" means the sum of all sales of goods, services, and all other income and receipts whatsoever of all business conducted in or from the Licensed Area (whether made for cash, on credit, or otherwise), and shall include such sales and services: (i) where the orders originate at the Licensed Area, but delivery or performance thereof is made elsewhere; (ii) where the orders are made by mail, telephone, facsimile, from a website, email, or other like means and filled from the inventory located at the Licensed Area; (iii) are made by means of an kiosk, computer terminal, merchandise or other vending devices in the Licensed Area; and/or (iv) achieved as a result of transactions originating from whatever source that Licensee in the ordinary course of business would credit or attribute to its business at the Licensed Area. Licensee either shall upload Licensee's Gross Sales Reports to Licensor's Online Tenant/Licensee Portal or send by U.S. mail (or nationally recognized delivery service) to: Sales Audit Department, Brixmor Property Group, 200 Ridge Pike, Suite 100, Conshohocken, PA 19428. Licensee shall include the name of the Licensee and the Shopping Center in all submissions by mail. Said reports shall be in a form and substance reasonably acceptable to Licensor. If Licensee fails to provide any Gross Sales report when due, then Licensee shall incur a late fee of \$150.00 per month per report until such report is received by Licensor. The provisions of this section shall survive the expiration or sooner termination of this Agreement.

2. Payment of Percentage Rent. Licensee shall also pay for the Licensed Area, without any set-off, deduction and/or counterclaim, as an additional component of the License Fee, percentage rent equal to (i) the percentage rent specified in the Basic Terms (the "**Percentage**"), multiplied by (ii) the Gross Sales for the applicable month, to the extent the Gross Sales are in excess of the Natural Breakpoint (the "**Percentage Rent**"). As used herein, the "**Natural Breakpoint**" is equal to the amount of the monthly License Fee, divided the Percentage. For example, if the monthly License Fee is equal to \$1,000, and the Percentage is equal to 10%, then the Natural Breakpoint would be  $\$1,000 \div 10\% = \$10,000$ . Percentage Rent shall be payable in arrears for the prior calendar month, on the twenty fifth (25th) day of each month, in the same manner as the payment of the License Fee. Upon the expiration or earlier termination of the Term, a payment of Percentage Rent with respect to any month or months at the end the Term for which no Percentage Rent has been paid shall be due on the last day of the Term at the same per-diem rate as the last full calendar month in which a Gross Sales report was delivered, and upon delivery of the Gross Sales report for the applicable month or months, Licensor and Licensee shall make such payments as are required to reconcile any over-payment or under-payment of such final installment of Percentage Rent.





**STAFF REPORT NO. 147**  
**CITY COUNCIL MEETING**  
**9/28/2021**

REPORT PREPARED BY: Melissa Poehlman, Asst. Community Development Director

DEPARTMENT DIRECTOR REVIEW: John Stark, Community Development Director  
9/23/2021

OTHER DEPARTMENT REVIEW:

CITY MANAGER REVIEW: Katie Rodriguez, City Manager  
9/23/2021

**ITEM FOR COUNCIL CONSIDERATION:**

**Ratify a resolution approving a waiver of application fees for an Interim Use Permit at 6915 Harriet Avenue South.**

**EXECUTIVE SUMMARY:**

On September 24, 2021, the City Council considered a request by Erin Burbank and Joe Evert (6915 Harriet Avenue South) for a waiver of fees for an Interim Use Permit application. The City Council concluded that there are unique circumstances that apply to this particular situation and time that justify the waiving of said application fees and articulated their findings and reasoning at the September 14, 2021 meeting. Tonight the City Council is asked to ratify a resolution officially approving this fee waiver.

**RECOMMENDED ACTION:**

**By motion: Ratify a resolution approving a waiver of application fees for an Interim Use Permit at 6915 Harriet Avenue South.**

**BASIS OF RECOMMENDATION:**

**A. HISTORICAL CONTEXT**

- The City Council considered and fully discussed this item at its September 14, 2021 meeting.
- On September 14, the City Council articulated their reasoning for authorizing a waiver of application fees in this particular case, namely:
  - The Covid-19 pandemic has created an environment that has fostered more and deeper neighbor disputes and also time delays related to the resolution of said disputes; and
  - The particular dispute between the residents of 6915 Harriet Avenue South and 6914 Grand Avenue South has risen to the level of prosecution and an open case for prosecution currently exists; and
  - The delays in the Hennepin County Court system may not allow for a hearing related to this dispute until 2022; and
  - The inability to resolve disputes in a timely manner creates a hardship that justifies special allowances related to application fees.

**B. POLICIES (resolutions, ordinances, regulations, statutes, etc):**

- Appendix D of the City Code establishes License, Permit and Miscellaneous Fees.

- The established application fee for an Interim Use Permit is \$500 plus \$100 per year based on the duration of the Permit.
- The Interim Use Permit application fee has been established to cover the publication of a public hearing notice in the newspaper, and a mailing to properties within 350 feet of the applicant's site, and staff time to process, research and prepare materials for consideration by the Planning Commission and Council, as well as annual administration and compliance monitoring.
- This decision approves a waiver of application fees. It does not approve an Interim Use Permit.

C. **CRITICAL TIMING ISSUES:**

None

D. **FINANCIAL IMPACT:**

See Policy Section.

E. **LEGAL CONSIDERATION:**

The City Attorney has been consulted and participated in the discussion on September 14, 2021.

**ALTERNATIVE RECOMMENDATION(S):**

None

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

None

**ATTACHMENTS:**

| Description  | Type              |
|--------------|-------------------|
| □ Resolution | Resolution Letter |

**RESOLUTION NO.**

**RESOLUTION APPROVING A WAIVER  
OF INTERIUM USE PERMIT APPLICATION FEES  
AT 6915 HARRIET AVENUE**

**WHEREAS**, the City Council has received a request for a waiver of fees related to the application for an Interim Use Permit at property legally described as:

Lot 14, Block 2, Wallaces Sunnyside Acres 2nd Addition, Hennepin County, MN

**WHEREAS**, the City of Richfield has established fees for the processing of certain permits, applications, and licenses per Appendix D of City Code; and

**WHEREAS**, Erin Burbank and Joe Evert of 6915 Harriet Avenue have requested that fees related to the application for an Interim Use Permit for their property be waived due to their particular circumstances; and

**WHEREAS**, the City Council has the authority to grant a waiver of application fees when it determines that such a waiver is justified; and

**WHEREAS**, the City Council fully considered the request for a waiver of application fees related to an Interim Use Permit at 6915 Harriet Avenue at its meeting of September 14, 2021; and

**WHEREAS**, the City Council finds that the global Covid-19 pandemic has created an environment that has fostered more and deeper neighbor disputes and also time delays related to the resolution of said disputes; and

**WHEREAS**, the City Council finds that the particular dispute between the residents of 6915 Harriet Avenue and 6914 Grand Avenue has risen to the level of prosecution and an open case for prosecution currently exists; and

**WHEREAS**, the City Council finds that this dispute has been ongoing since April 2021; and

**WHEREAS**, the City Council finds that the delays in the Hennepin County Court system will not allow for a hearing related to this dispute until 2022; and

**WHEREAS**, the City Council finds that the inability to resolve disputes in a timely manner creates a hardship that justifies special allowances related to application fees; and

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Richfield, Minnesota, as follows:

1. The City Council adopts as its Findings of Fact the WHEREAS clauses above.

2. A waiver of application fees for an Interim Use Permit at 6915 Harriet Avenue is hereby granted.

Adopted by the City Council of the City of Richfield, Minnesota this 28th day of September, 2021.

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Maria Regan Gonzalez, Mayor

ATTEST:

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Kari Sinnig, City Clerk



**STAFF REPORT NO. 148**  
**CITY COUNCIL MEETING**  
**9/28/2021**

REPORT PREPARED BY: Amy Markle, Recreation Services Director

DEPARTMENT DIRECTOR REVIEW: Amy Markle, Recreation Services Director  
9/22/2021

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Katie Rodriguez, City Manager  
9/22/2021

**ITEM FOR COUNCIL CONSIDERATION:**

**Consider the approval of the lease agreement between the City of Richfield and ETS Elite South Central, LLC for use of the space.**

**EXECUTIVE SUMMARY:**

The Richfield Ice Arena is home to Minnesota's Tier 2 Junior Hockey Team, the Minnesota Magicians. To accommodate the team, the City has constructed an additional locker room to Rink 1 and the Magicians have been renting this space. To further accommodate the team, the 1,900 square-foot area of the Arena that was formerly occupied by Hat Trick Hockey was converted into a training facility for ice sport athletes and leased to the team on October 15, 2014. On April 15, 2017, the space was subleased to Surge Sports Training LLC, a private company that conducts sports training services to the Minnesota Magicians and other users of the Richfield Arena. That lease expired on April 14, 2018. An experienced training company, ETS Elite South Central, LLC, stepped forward and has leased the space for the same purpose for the past three years, their current lease expires on September 30, 2021, this lease renewal will extend the lease.

Highlights of the Lease Agreement are as follows:

- **Rent** - \$1,500 per month for the first 12 months of lease term, \$1,550 per month for the remaining months of the lease term.
- **Term** - The term of the Lease Agreement shall commence on October 1, 2021, and shall terminate on September 30, 2026.
- **Use of Leased Premises** - The Leased Premises shall be used only for training purposes for individuals and groups including strength conditioning, aerobic conditioning, skill development and other ice sports training activities, and other activities as the City may authorize from time to time.
- **Taxes** - Hennepin County officials have reviewed the attached lease and have determined use of the leased premises are not subject to property taxes because the leased premises will not operate as a training center for the general public such as a private health club.
- **Utilities** - The Team will pay a prorated share of electric and gas utilities for the lease space.
- **Insurance** - ETS Elite South Central will be required to carry general liability insurance as set forth in Article V.

**RECOMMENDED ACTION:**

**By motion: Approve the lease agreement between the City of Richfield and the ETS Elite South**

Central, LLC for use of the space.

## **BASIS OF RECOMMENDATION:**

### **A. HISTORICAL CONTEXT**

- At a study session on April 18, 2013, staff presented a proposal to construct a number of building improvements at the Ice Arena including the construction of a dedicated locker room, training area, lobby expansion and exhibit area/classrooms to accommodate the new team and larger crowds. Cost estimates for all these improvements were initially estimated at about \$1,961,960 not including parking lot expansion and related storm water retention that would be triggered by building code due to the magnitude of the amount of improvements made to the Arena. When adding the cost of parking lot and storm water retention improvements, it was later concluded that the cost to fund these improvements over a fifteen-year bond term would far exceed the amount of anticipated additional revenue the new improvements would help generate to pay the annual bond payments. As a result, the proposal to proceed with lobby, classroom and training facility expansion was abandoned.
- City Council approved a contract with Derau Construction Company on November 12, 2013 in the amount of \$510,900 to construct an attached locker room to Rink 1 as a stand-alone project. This contract did not include architectural design costs or contingency.
- The estimated final cost of the new locker room is \$625,478 including design cost and contingency.
- The Minnesota Magicians played their first home game on September 19, 2013. An ordinance amendment was approved by Council on August 28, 2013 to temporarily allow a properly licensed food establishment to sell 3.2 percent malt liquor beverages at the Richfield Arena for the remainder of the Magician's first season.
- State Representative Linda Slocum and Senator Melissa Wicklund sponsored and introduced a bill for special legislation to sell strong beer and wine at the Richfield Arena. The Minnesota State Legislature enacted this bill earlier this year.
- The Richfield City Council approved a rental agreement between the City and the Magicians on September 9, 2014, for use of the newly constructed locker room.
- The lease with Hat Trick Hockey was terminated on March 31, 2014 by default. The 1,900 square-foot area of the Arena that was formerly occupied by Hat Trick Hockey was converted into a training facility for ice sport athletes and leased to the team on October 15, 2014. On April 15, 2017, the space was subleased to Surge Sports Training LLC, a private company that conducts sports training services to the Minnesota Magicians and other users of the Richfield Arena. That lease expired on April 14, 2018. On September 1, 2018 ETS Elite South Central, LLC signed a three year lease to conduct sports training in the facility. This lease will expire September 30, 2026.

### **B. POLICIES (resolutions, ordinances, regulations, statutes, etc):**

The City Council considers and executes these types of agreements for the City.

### **C. CRITICAL TIMING ISSUES:**

Current lease expires September 30, 2021.

### **D. FINANCIAL IMPACT:**

ETS Elite South Central, LLC is required to provide it's own equipment.

### **E. LEGAL CONSIDERATION:**

The City Attorney has reviewed the agreement.

## **ALTERNATIVE RECOMMENDATION(S):**

City Council may reject the agreement and renegotiate with ETS Elite South Center, LLC.

## **PRINCIPAL PARTIES EXPECTED AT MEETING:**

Kris Weiby, Facilities Manager

## **ATTACHMENTS:**

| Description                   | Type               |
|-------------------------------|--------------------|
| ▣ ETS Lease Renewal-2021-2023 | Contract/Agreement |

## LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease"), made and entered into effective as of this \_\_\_\_\_ day of September 2021, by and between the City of Richfield, a Minnesota municipal corporation, whose address is 6700 Portland Ave, Richfield, Minnesota 55432 ("Landlord") and ETS South Central LLC, a Minnesota limited liability company, whose registered address is 741 Mount Curve Chase, Hudson, WI 54016 with a mailing address of 741 Mount Curve Chase, Hudson, WI 54016 ("Tenant").

WITNESSETH:

### ARTICLE I - GRANT AND TERM

1.1 LEASED PREMISES. In consideration of the rents, covenants and agreements herein , Landlord does hereby lease to Tenant and Tenant does hereby rent from Landlord the Leased Premises located at 636 East 66<sup>th</sup> Street, Richfield, Minnesota, hereto (hereinafter referred to as the "Leased Premises"), subject to the terms and conditions of this Lease.

1.2 TERM. The term of this Lease and Tenant's obligation to pay rent hereunder shall commence on October 1<sup>st</sup>, 2021 and shall run until September 30, 2023. Tenant may not terminate this Lease prior to September 30, 2022. Beginning October 1, 2022, Tenant must give Landlord 120 days' advance written notice if it wishes to terminate this Lease.

1.3 EXTENSION PERIOD. Unless Tenant provides written notice to terminate as required in section 1.2, this Lease will automatically extend for three additional 12-month periods, expiring on September 30, 2026. All terms and conditions of this Lease shall apply to such extension period.

1.4 USE OF COMMON AREAS. Tenant shall have the non-exclusive right to use the entry ways, stairs, hallways, and restrooms of the Leased Premises. Employees of the Tenant shall have the non-exclusive right to use the parking areas of the Leased Premises. Use by Tenant of the parking areas of the Leased Premises for over 15 guests or invitees of the Tenant shall be subject to the prior written approval of the Landlord. Use of the public areas of the Leased Premises shall be subject to such rules and regulations for use of such areas as may be established from time to time by the Landlord.

1.5 ACCESS TO TRAINING CENTER. Tenant, its employees, and invitees shall have access to the Leased Premises during all business hours established by Landlord for the facility. There will be no access to the Leased Premises during non-business hours to employees and/or invitees of Tenant. The Landlord may exclusively use the Leased Premises four times per year for special events. Scheduling of the events is in the sole discretion of the Landlord. Landlord may perform cleaning, maintenance and improvement projects throughout the Leased Premises. Landlord may prohibit access to the Leased Premises during such time if the Landlord believes providing access may create a safety concern or may cause damage within the Leased Premises,



Tenant will be given no less than 30 days' notice of such Landlord use events. Additionally, Tenant, upon Tenant's request, will be provided keys for access to the Leased Premises. Tenant shall make no more keys than are provided by Landlord. Tenant may request additional keys beyond those provided by Landlord at a cost of \$75.00 per key. If Tenant loses keys that were provided by the Landlord, Tenant will be charged \$75.00 per key lost and \$75.00 per lock.

## ARTICLE II - RENT

2.1 RENT. During the term hereof Tenant agrees to pay to Landlord "minimum rent" for the Leased Premises as follows:

\$1,500.00 per month for the first year. Any additional years, beginning October 1, 2022, will be \$1,550 per month.

Rental payments are payable in advance prior to the first (1st) day of each month as indicated above, without deduction or set-off, commencing October 1<sup>st</sup> 2021.

2.2 FIRST PAYMENT. The total amount due for the first payment of minimum rent is \$1,500 which is due no later than October 1<sup>st</sup> 2021.

2.3 ADDITIONAL RENT. Any other charges to be paid by Tenant pursuant to the provisions of any other sections of this Lease other than minimum rent shall be designated as "additional rent". Failure of Tenant to pay "additional rent" shall give Landlord the right to declare an event of default. Invoices for additional rent will be provided by Landlord to Tenant at the conclusion of each calendar year quarter during the Term of this lease.

2.4 RENT DELINQUENCIES. Should the Tenant, for any reason whatsoever, fail to pay, when the same is due and payable, any "minimum rent", and/or "additional rent" and should said rent not be paid within ten (10) days of due date, Tenant shall pay a late penalty of \$50. An additional charge of \$50 will take place for every 30 days the payment is late after the first of the month.

2.5 TAXES, ASSESSMENTS, AND OTHER CHARGES. In addition to other charges identified in this agreement, the Tenant shall pay all taxes, assessments, licenses, fees, or other charges that may be levied or assessed upon the Tenant's property, the Leased Premises, or any activity of the Tenant. Should it be determined that the interest of the Tenant in this agreement is taxable, and should any tax be levied, the Tenant shall pay such tax. Upon request by the Landlord, the Tenant shall provide proof of such payment.

## ARTICLE III - USE OF PREMISES

3.1 TENANT'S USE. During the term of this Lease, the Leased Premises shall be used solely for the purpose of Athletic Training and administrative purposes for the Tenant and for no other purpose without prior written consent of Landlord.

3.2 COMPLIANCE WITH LAWS AND REGULATIONS.

(a) Tenant covenants and agrees that at all times during the term hereof it will maintain and conduct its business insofar as the same relates to the occupancy of the Leased Premises in such a manner and under such regulations as to be in strict compliance with any and all applicable governmental and/or quasi-governmental laws, rules, regulations and orders, as well as any and all applicable provisions of insurance underwriters of insurance of the Leased Premises or of the Leased Premises.

(b) Tenant hereby agrees to operate its business in accordance with the Americans with Disabilities Act (ADA), codified at 42 U.S. sections 12101 et seq. Among other requirements that may apply to the Leased Premises, Title III of the ADA requires owners and tenants of "public accommodations" to remove barriers in order to allow access by disabled persons and to provide auxiliary aids and services for hearing, vision or speech impaired persons. Detailed regulations can be found at 28 C.F.R. Part 36.

3.3 AFFIRMATIVE COVENANTS OF TENANT. Without in any way limiting or restricting other covenants of Tenant elsewhere in this Lease, the Tenant affirmatively covenants and agrees as follows:

(a) Tenant shall neither permit or suffer or conduct activities creating noise or other nuisance in, on or about said Leased Premises to annoy or disturb any person occupying premises in close proximity or common areas;

(b) Tenant shall keep the Leased Premises, including all service and/or loading areas for the Leased Premises, free from all litter, dirt and obstructions;

(c) Tenant shall arrange for and accept deliveries only at such times, in the areas, and through entrances designated for such purpose by Landlord;

(d) Tenant shall keep said Leased Premises clean and in the sanitary condition required by ordinance and regulations of any governmental or quasi-governmental unit having jurisdiction;

(e) Tenant shall neither permit nor suffer the Leased Premises, or the walls, ceilings or floors thereof to be endangered by overloading;

(f) Tenant shall not use or permit the Leased Premises to be used for any purpose or purposes other than that set forth in Section 3.1 hereof;

(g) Tenant will control its employees, guests and invitees to prevent drunken, unruly or obnoxious behavior.

#### ARTICLE IV - MAINTENANCE AND REPAIRS

4.1 TENANT'S MAINTENANCE AND REPAIRS. Tenant agrees that, from and after the date that possession of the Leased Premises is delivered to Tenant, and until the end of the term hereof, Landlord will be responsible for all repairs, maintenance and replacements to the Leased Premises including, but not limited to, structural repairs and replacements, the interior and

exterior portions of all doors, windows, plate glass, locks, frames, hardware and showcases surrounding and incorporated into the Leased Premises; the mechanical plumbing, heating, air conditioning and/or cooling, ventilating and electrical equipment and systems; partitions, and all other fixtures, appliances and facilities furnished by Landlord. Tenant shall not be responsible for repair or damage caused by the negligence of Landlord, its employees or agents but shall be responsible for any repair or damage caused by the negligence of the Tenant, its employees, guests, invitees or agents. Tenant shall be required to pay for any structural repairs, alterations, or unscheduled improvements that are required by governmental rules, orders or regulations as a result of Tenant's use and or occupancy of the Leased Premises. In the event Tenant is required to make improvements or alterations under the preceding sentence, Tenant may elect to terminate this Lease on 30 days' prior written notice unless Landlord is willing to assume responsibility for payment of expenses related to such improvement. Any and all such repairs, alterations or improvements shall require prior approval of the Landlord. Landlord may inspect the Leased Premises to insure Tenant's compliance with the above and foregoing requirements. Tenant accepts the Leased Premises as being in good and sanitary order, condition and repair.

4.2 SURRENDER OF PREMISES. At the expiration or termination of this Lease, Tenant shall surrender the Leased Premises in the same condition as existed on the commencement date of this Lease, ordinary wear and tear excepted. All fixtures, structural alterations or improvements that have become attached to the Leased Premises, except trade fixtures, shall become a part of the Leased Premises and shall become the property of Landlord. Further, within ninety (90) days prior to the expiration of the term, Landlord shall during reasonable business hours, have the right to show the Leased Premises to third parties for the purpose of again leasing same. Landlord shall schedule appointments with Tenant to show the Leased Premises to third parties, giving at least 48 hours' notice and, to the extent reasonably possible, scheduling such appointments to avoid any disruption to Tenant's business.

#### ARTICLE V - TENANT LEASE RESPONSIBILITIES

5.1 RESPONSIBILITIES. Tenant shall procure a liability insurance policy on the Leased Premises in the minimum amounts of \$ 2,000,000 aggregate and \$ 1,000,000 per occurrence and shall name Landlord as an "additional insured" thereunder and shall provide Landlord with a certificate thereof.

Tenant shall comply with all applicable City of Richfield ordinances.

#### ARTICLE VI – UTILITIES and MAINTENANCE

6.1 SUPPLY OF UTILITY CHARGES. Landlord shall not accept responsibility for repairing any failure or defect in the supply or character of electricity, water, sewer, or gas furnished by reason of any change, requirement, act, neglect or omission of the public utility serving the Leased Premises or for any reason not attributed to Landlord.

6.2 INTERRUPTION OR DISCONTINUANCE OF LANDLORD'S SERVICE. Tenant agrees that Landlord shall not be liable for failure to supply any service when Landlord uses reasonable diligence to supply the same, it being understood that Landlord reserves the right to temporarily discontinue such services, or any of them, at such times as may be necessary by

reason of accident, unavailability of employees, failure of supply, repairs, alterations or improvements, or by reason of fire, strikes, flood, lockouts, riots, Acts of God or any other happening beyond the reasonable control of the Landlord. When Landlord causes services to be rendered by independent third parties, Landlord shall have no liability for the performance thereof or liability therefore.

6.3 CUSTODIAL SERVICE, GARBAGE AND REFUSE COLLECTION. All garbage and refuse shall be kept in closed bags/containers and shall be placed in the exterior containers designated for such purpose.

6.4 TELEPHONE SERVICE AND INTERNET ACCESS. The Tenant may use its own telephone system provided it does not result in any structural alterations to the Leased Premises or other area within the Leased Premises, or cause any unreasonable disruption of telephone, computer, or electronic services provided to other tenants or occupants of the Leased Premises. The Tenant may use the Landlord's WIFI system free of charge as long as it's not used for Point of Sale purposes. The Tenant must obtain its own WIFI system if using it for Point of Sale methods.

#### ARTICLE VII - ALTERATIONS AND TENANT IMPROVEMENTS

7.1 ALTERATIONS. Tenant may, from time to time during the term of this Lease, make, at its own cost and expense, any alterations or changes in the interior of the Leased Premises in good and workmanlike manner in compliance with all applicable requirements of law, provided Tenant follows the notice procedure and obtains Landlord's consent where required, all in accordance with this Article. Upon completion of such alterations, Tenant shall present Landlord a copy of the endorsement to Tenant's fire and extended coverage insurance policy which endorsement shall incorporate said alterations into the policy. All costs of any such work shall be paid promptly by Tenant so as to prevent the assertion of any liens for labor or materials. Tenant shall allow no work on the Leased Premises that could result in attachment to the Leased Premises or to the Leased Premises of mechanics or materialmen's liens without securing payment and performance bonds for such work in a form satisfactory to Landlord.

7.2 NOTICE TO LANDLORD. Prior to the initiation of any alterations, Tenant shall give Landlord written notice thereof and specify the work to be performed in reasonable detail and provide as much information as possible as to the nature, timing, and process to be undertaken with the construction project. After receipt of said notice, Landlord shall have a reasonable period of time during which it shall make a determination, in its sole discretion, as to whether the proposed work would create an undesirable structural or design change at the Leased Premises. Tenant shall provide Landlord, upon request with any further information reasonably necessary for such determination by Landlord and Tenant shall not commence work or accept materials prior to receiving written notice of Landlord's determination. If Landlord determines that the proposed work would create a structural or design change, then the same must be approved in writing by Landlord prior to the commencement of any work or the delivery of any materials therefor.

7.3 LEASED IMPROVEMENTS. All fixtures, furnishing, and finishing shall be the responsibility of Tenant, at Tenant's expense, and subject to the provisions of paragraphs 7.1 and 7.2.

7.4 SIGNS. No signs, advertisements, placards, or notices shall be placed or painted on any part of the Leased Premises or the Leased Premises without the prior written authorization of Landlord.

#### ARTICLE VIII - DESTRUCTION AND RESTORATION

8.1 DAMAGE. If a significant portion of the Leased Premises shall be damaged or destroyed by any casualty, Landlord shall have the option to rebuild or to terminate this Lease. If the Leased Premises cannot be repaired and restored within ninety (90) days from the date of the damage, then the Landlord has the right to terminate this Lease from the date of such damage or destruction by giving a notice to the Tenant. If due to such damage or destruction, Tenant is unable to use the Leased Premises for 30 days, Tenant shall have the right to terminate this Lease by giving Landlord written notice. The obligation to pay rent shall cease as of the date of the casualty and shall not commence again until and unless the space is made ready for occupancy.

#### ARTICLE IX – WAIVER AND INDEMNITY

9.1 WAIVER AND INDEMNITY.

(a) Landlord and its officers, council members, mayor, and employees shall not be liable to Tenant, or those claiming by, through or under Tenant, for any damage or claims, however caused, arising from loss or damage to books, records, computer or other electronic equipment, data or media, files, artwork, money, securities, negotiable instruments or papers, or any other personal property in the Leased Premises or Leased Premises, the interruption in the use of any cellular or wireless communication devices or the interruption in the use of the Leased Premises, any fire, robbery, theft, assault, or any other casualty, any leakage or bursting of pipes or water vessels or any roof or wall leakage or other water damage, in any part or portion of the Leased Premises or Leased Premises and Tenant hereby releases Landlord from liability with respect thereto.

(b) Tenant shall indemnify, defend (at Landlord's request and with counsel approved by Landlord) and hold Landlord and its officers, council members, mayor, and employees harmless from and against every demand, claim, cause of action, judgment and expense, including, but not limited to, reasonable attorneys' fees and disbursements of counsel, whether suit is initiated or not, and all loss and damage arising from: (a) any injury, loss or damage to the person or property of Tenant, any other tenant in the Leased Premises, or to any other person rightfully in the Leased Premises (i) occurring in or about the Leased Premises, or (ii) caused by the negligence or misconduct of Tenant or any of its representatives, employees, visitors, guests or

other associated parties, or (iii) resulting from the violation of the provisions of this Lease by Tenant or its employees; (b) any loss or damage, however caused, to books, records, computer or other electronic equipment, data or media, files, artwork, money, securities, negotiable instruments or papers in the Leased Premises; or (c) any loss or damage resulting from interference with or obstruction of deliveries or access to or from the Leased Premises. The covenants set forth in this Section shall survive the expiration of the Lease and any earlier termination thereof.

## ARTICLE X - TENANT'S DEFAULT

10.1 EVENTS OF DEFAULT. The following events shall be deemed to be events of default by Tenant under this Lease:

- (a) Tenant shall fail to pay when due any installment of rent, or other charges provided herein, or any portion thereof and the same shall remain unpaid after the fifteenth (15<sup>th</sup>) day of the month; provided, however, that Tenant shall not be in default under this paragraph 10.1(a) until five days after Landlord has given written notice to Tenant of default by reason of failure to make timely payment of rent; or
- (b) Tenant shall for reasons other than those specifically permitted in this Lease, cease to conduct its normal business operations in the Leased Premises or shall vacate or abandon Leased Premises. Tenant will be deemed to have vacated, closed or abandoned the Leased Premises if it fails to conduct its business on the Leased Premises during regular working hours for a period of more than thirty (30) consecutive business days without prior written authorization of Landlord; or
- (c) Tenant shall do or permit to be done anything that creates a lien upon the Leased Premises; and does not cause said lien as to Landlord's interest in the property to be released within ten (10) days after written notice from Landlord; or
- (d) Any representation or warranty made in writing to Landlord in this Lease or in connection with the making of this Lease, by Tenant or any guarantor, shall prove at any time to have been incorrect in any material respect when made or becomes incorrect; or
- (e) Tenant shall have failed to comply with any other provisions of this Lease and shall not cure any failure within thirty (30) days, or such longer period of time as may be reasonably required to cure such default, after Landlord, by written notice, has informed Tenant of such noncompliance.

10.2 LANDLORD'S REMEDIES. Upon the occurrence of any of the above listed events of default, Landlord may elect to: (1) terminate this Lease; or (2) terminate Tenant's right to

possession only without terminating this Lease, hereinafter referred to as re-entry; or (3) pursue any other remedy available at law or in equity. Landlord shall have all remedies provided in the Lease and under governing law. All of the remedies given to Landlord in this Lease or by law shall be cumulative, and the exercise of one right or remedy by Landlord shall not impair its right to exercise any other right or remedy.

In the event of election under (2) above to terminate Tenant's right to possession only, Landlord may, at Landlord's option, proceed to demand possession by notice and proceeding under the Unlawful Detainer Law of Minnesota, Minnesota Statutes Chapter 504B, and take and hold possession thereof without such proceeding or entry into possession terminating this Lease or releasing Tenant in whole or in part from Tenant's obligation to pay the rent hereunder for the full term. Without limiting the foregoing, in other words, under an election under alternative (2), Tenant shall remain liable for all remaining rent under the Lease for the remaining term of the Lease (subject to offset for amounts actually received by Landlord upon reletting the Leased Premises), but Tenant shall no longer be entitled to any rights of possession of the Leased Premises. Upon re-entry Landlord may remove all personal property from the Leased Premises and such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant, all without service of notice or resort to legal process and without being deemed guilty of trespass, or becoming liable for any loss or damage that may be occasioned thereby. Upon and after entry into possession without termination of Lease, Landlord shall use reasonable efforts to relet the premises, or any part thereof for the account of Tenant, to any other person, firm or corporation, for such rent and other charges for such time and upon such terms as Landlord, in Landlord's sole subjective discretion shall determine, but Landlord shall not be required to accept any potential tenant offered by Tenant or to observe any instruction given by Tenant about such reletting. Landlord may make repairs or redecorate the premises to the extent deemed by the Landlord necessary or commercially reasonable. Notwithstanding any action of possession or re-entry into the Leased Premises by the Landlord as permitted in this Article, or termination of this Lease as permitted under this Article, it is stipulated and agreed that Tenant shall remain liable to Landlord for damages for breach of this Lease and of Tenant's covenants hereunder in an amount equal to the total of the following:

- (a) All fixed minimum rent, additional rent, late charges, additional rent payable for and otherwise, and any and all charges payable by Tenant hereunder or under other agreements with the Landlord due for the period prior to the date of termination of this Lease or re-entry but unpaid, together with additional late charges from the due date until paid; PLUS
- (b) All costs and expenses incurred by Landlord in connection with re-entry and repossession of the Leased Premises, the repair, renovation, remodeling, or redecoration thereof to the state required by this Lease upon termination, or as may be necessary for reletting, and any brokers' commissions, attorneys' fees, and other charges incurred in connection therewith or in connection with reletting the Leased Premises, including attorneys' fees, expended in the collection of rents; PLUS
- (c) A sum equal to the present value of all rents that would have been payable hereunder after the date of termination or re-entry for the balance of the term of this Lease had the Lease not been terminated or re-entry made,

together with interest thereon at the rate of two percent (2%) per annum in excess of the prime rate as quoted by U.S. Bank National Association to its best customers, or the highest rate permitted by law, whichever is less from due date until paid, PROVIDED THAT, in the event the Leased Premises is relet (which reletting shall in no event relieve or release Tenant of or from liability for damages hereunder) for all or any part of the balance of the original term hereof then, for each month during such reletting for which Landlord receives net avails of such reletting, Tenant shall be entitled to a credit against its liability to Landlord for such month in an amount equal to such net avails, and PROVIDED FURTHER that, in lieu of damages set forth in the foregoing provisions of this Section, Landlord may waive such foregoing provisions and elect, by written notice to Tenant within ninety (90) days after termination or re-entry, to receive forthwith as liquidated damages for such breach, in addition to the amounts specified above, a sum equal to fifteen percent (15%) of the rents that would have been due and payable for the portion of the balance of the term of the Lease from the date of early termination or re-entry through the final lease year.

10.3 COSTS, EXPENSES AND ATTORNEYS' FEES. If one party is required to seek legal counsel for collection or to commence litigation or another dispute resolution proceeding in order to enforce the covenants and agreements of this Lease, the party prevailing in such collection, litigation or dispute resolution proceeding shall have the right to reimbursement from the other party of all reasonable costs, expenses and attorney's fees.

#### ARTICLE XI - MISCELLANEOUS PROVISIONS

11.1 HOLDING OVER. If either party terminates this Lease Agreement and in the event that Tenant continues to occupy the Leased Premises after the expiration of the term of this Lease hereof without entering into a new Lease hereof said tenancy shall be construed to be a "tenancy from month to month" upon all of the other terms and conditions herein contained, except where same are not applicable, and except that the rental during such holdover period shall be the then current "minimum rent" plus fifty percent (50%) thereof and all "additional rent" shall continue to be paid.

11.2 ENTIRE AGREEMENT. This Lease is executed in identical counterparts, each of which, when bearing original initials of the parties on each page and at each change in the text hereof as well as original signatures at the end of the document, shall constitute an original for all purposes. All previous agreements, whether oral or written, are superseded by this Lease. Subsequent change shall not be binding unless reduced to writing and signed by the parties hereto.

11.3 INVALIDATION OF PARTICULAR PROVISIONS. If any clause, term or provision of this Lease, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be



valid and be enforced to the fullest extent permitted by law. It is the intention of the parties hereto that in lieu of each clause, term or provision of this Lease that is illegal, invalid or unenforceable, there be added as part of this Lease a clause, term or provision similar to such illegal, invalid or unenforceable clause, term or provision as may be possible and would be legal, valid and enforceable.

11.4 PROVISIONS BINDING, ETC. Except as herein otherwise expressly provided, the terms hereof shall be binding upon and shall inure to the benefit of the heirs, successors, assigns and legally appointed representative, respectively, of the Landlord and the Tenant. Each term and each provision of this Lease to be performed by Tenant shall be construed to be both a covenant and a condition.

11.5 The Tenant will be able to utilize the City's outgoing mail drop.

11.6 GOVERNING LAW. The laws of the State of Minnesota shall govern the interpretation, validity, performance and enforcement of this Lease.

11.7 NOTICES. Any notice that is required under this Lease shall be deemed "given" upon hand delivery or three (3) days after prepaid posting in the U.S. Mail whichever shall first occur. Notice shall be addressed to:

Landlord: CITY OF RICHFIELD  
636 EAST 66<sup>TH</sup> STREET  
RICHFIELD, MN 55423  
Attn: Recreation Services Director

Tenants: ETS South Central LLC  
741 Mount Curve Chase  
Hudson, WI 54016

Attn: \_\_\_\_\_

or to any other address as shall be designated by written notice.

Where in this Lease a certain number of days from date of notice to a given action is specified, unless the specific provision otherwise states, the days shall be counted as follows: The first calendar day shall be excluded and the last day shall be included, unless the last day is a Saturday, Sunday or legal holiday, in which event the period shall be extended to include the next day that is not a Saturday, Sunday, or legal holiday.

11.8 HEADINGS. The heading, section numbers and article numbers appearing in this Lease are not intended in any manner to define, limit or describe the scope of any such section or article and are solely inserted for ready reference purposes.

11.9 PRONOUNS. As utilized in this Lease, the "singular" pronouns shall include the "plural", and the "masculine" shall include the "feminine" and the "neuter" and vice versa, unless a contrary intent specifically appears.

11.10 ASSIGNMENT AND SUBLETTING. Tenant may not assign this Lease or sublet any portion of the Leased Premises without first obtaining the prior written consent of Landlord, which consent may be granted or withheld in Landlord's sole discretion. In no event may Tenant assign this Lease or sublet any portion of the Leased Premises if Tenant is in default of any of its obligations under this Lease. No assignment by Tenant shall relieve Tenant of any obligation under this Lease, and Tenant shall remain fully liable hereunder. Any attempted assignment by Tenant in violation of the terms and covenants of this section shall be void. Any consent by Landlord to a particular assignment shall not constitute Landlord's consent to any other or subsequent assignment, and any proposed assignment by a subtenant of Tenant shall be subject to the provisions of this section as if it were a proposed assignment by Tenant.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures the day and year first above written.

LANDLORD: CITY OF RICHFIELD

BY: \_\_\_\_\_  
City Manager

BY: \_\_\_\_\_  
Recreation Services Director

BY: \_\_\_\_\_  
Mayor

TENANTS: ETS South Central LLC

BY: \_\_\_\_\_  
Ryan Englebert  
ITS: Manager

AGENDA SECTION: PROPOSED  
ORDINANCES  
AGENDA ITEM # 6.



**STAFF REPORT NO. 149**  
**CITY COUNCIL MEETING**  
**9/28/2021**

REPORT PREPARED BY: Scott Kulzer, Administrative Aide/Analyst

DEPARTMENT DIRECTOR REVIEW: Kristin Asher, Public Works Director  
9/21/2021

OTHER DEPARTMENT REVIEW:

CITY MANAGER REVIEW: Katie Rodriguez, City Manager  
9/22/2021

**ITEM FOR COUNCIL CONSIDERATION:**

**Consider the second reading of an ordinance amending City Code Subsection 1305.13 related to snow removal and snow emergency parking restrictions and approval of a resolution authorizing summary publication.**

**EXECUTIVE SUMMARY:**

**Background**

Richfield is known for its excellent snow removal and ongoing upkeep of streets. However, current snow emergency parking restrictions and parking availability may place undue burden on residents in high density areas of the city, which can lead to parking citations and potential towing of vehicles. In an effort to reduce the number of snow emergencies and ticket and tow occurrences, the proposed ordinance amendment will change the threshold at which a snow emergency is automatically in effect from two (2) inches to four (4) inches. This ordinance change is one part of a Winter Parking Pilot Program that will be implemented over the 2021-2022 winter season. The pilot program will be evaluated annually.

**Impact on Service Delivery**

Public Works (PW) believes changing the snow emergency threshold from two (2) inches to four (4) inches will have little to no effect on the Department's ability to clear snow in a thorough and timely fashion. This change will have no operational effect on the Department's snow plowing routine because the Department will continue to plow any amount of measurable snow. PW will still encourage residents to remove their cars from the street following any snowfall and expects most residents to voluntarily comply because they are accustomed to the old snow emergency policy. PW does expect to spend more time the day following a snow event cleaning up "snowbirds" with this new threshold, but snowbird and other miscellaneous clean-up is already part of the snow removal routine. Any issues identified with the routine clearing of snow will be noted and reviewed as part of the annual evaluation of the pilot program.

**RECOMMENDED ACTION:**

**By Motion: Approve the second reading of the ordinance amending City Code Subsection 1305.13 related to snow removal and snow emergency parking restrictions and approve the resolution authorizing summary publication.**

**BASIS OF RECOMMENDATION:**

**A. HISTORICAL CONTEXT**

- At the August 10, 2021 City Council Work Session, staff received direction from City Council to implement this change to our snow emergency ordinance.
- At the September 14, 2021 City Council meeting, the first reading of this ordinance amendment was approved.

**B. POLICIES (resolutions, ordinances, regulations, statutes, etc):**

- The City Charter requires a first and second reading of ordinances.
- A public hearing is not required unless a separate statute, charter provision or ordinance requires it, which is not the case in this instance.

**C. CRITICAL TIMING ISSUES:**

- Approval of the second reading of this ordinance and approval of summary publication at this meeting will ensure that it is effective in time for the start of the 2021-2022 winter season.
- The amended ordinance will become effective 30 days following summary publication.

**D. FINANCIAL IMPACT:**

- Limited costs are expected as PW converts the snow emergency signage around Richfield to reflect the new four (4) inch policy.
- Fuel costs may grow slightly if PW spends more time cleaning up snowbirds related to a <4" snowfall, but the reality is that snowbirds are commonplace throughout Richfield even if a snow emergency is declared due to noncompliance.

**E. LEGAL CONSIDERATION:**

The City Attorney has reviewed the proposed ordinance and will be available to answer questions.

**ALTERNATIVE RECOMMENDATION(S):**

None

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

None

**ATTACHMENTS:**

|   | Description                    | Type              |
|---|--------------------------------|-------------------|
| ☐ | Ordinance                      | Ordinance         |
| ☐ | Summary Publication Resolution | Resolution Letter |

**BILL NO. 2021-  
AN ORDINANCE AMENDING CHAPTER XIII OF THE  
RICHFIELD CODE OF ORDINANCES PERTAINING TO  
SNOW REMOVAL AND SNOW EMERGENCY  
PARKING RESTRICTIONS**

**THE CITY OF RICHFIELD DOES ORDAIN:**

**Section 1.** Chapter XIII, Section 1305 of the Richfield Code of Ordinances is amended at Subsection 1305.13, subdivision 1, as follows:

1305.13. – Snow removal

Subdivision 1. Snow emergency parking restrictions. After a snowfall of ~~two (2)~~ four (4) inches or more and/or upon the declaration of a snow emergency by the City manager or a designee, no person shall stop, stand, park or leave any vehicle or permit it to stand upon any street or highway. Lawful parking may be resumed on such streets or highways only after the snow has been removed or plowed curb to curb. Parking during a snow emergency is allowed pursuant to any emergency procedures or policies approved by the City Manager under subdivision 2 of this subsection.

**Section 2.** This ordinance will be effective in accordance with Section 3.09 of the City Charter.

Adopted by the City of Richfield this 28th day of September, 2021.

\_\_\_\_\_  
Maria Regan Gonzalez, Mayor

ATTEST:

\_\_\_\_\_  
Kari Sinning, City Clerk

**RESOLUTION NO.**

**RESOLUTION APPROVING SUMMARY PUBLICATION OF AN ORDINANCE  
AMENDMENT TO SUBSECTION 1305.13, SUBDIVISION 1, OF THE  
RICHFIELD CODE OF ORDINANCES PERTAINING TO  
SNOW REMOVAL AND SNOW EMERGENCY  
PARKING RESTRICTIONS**

**WHEREAS**, the City has adopted the above referenced amendment to the Richfield City Code; and

**WHEREAS**, the verbatim text of the ordinance is cumbersome, and the expense of publication of the complete text is not justified.

**NOW THEREFORE, BE IT RESOLVED** by the City Council of the City of Richfield that the following summary is hereby approved for official publication:

**SUMMARY PUBLICATION  
BILL NO. 2021-\_\_\_\_\_**

**AN ORDINANCE AMENDING CHAPTER XIII OF THE  
RICHFIELD CODE OF ORDINANCES PERTAINING TO  
SNOW REMOVAL AND SNOW EMERGENCY  
PARKING RESTRICTIONS**

On September 28, 2021, the Richfield City Council adopted an ordinance designated as Bill No. 2021-\_\_\_\_\_, the title of which is stated above. This summary of the ordinance is published pursuant to Section 3.12 of the Richfield City Charter.

The purpose of this ordinance is to change the threshold at which a snow emergency is automatically in effect from two (2) inches to four (4) inches. The current (2) inch snow emergency results in more frequent declaration of snow emergencies and thus the number ticket and tow occurrences experienced by residents. City staff has determined the current restrictions unduly impact residents in higher density parts of town with limited or no access to off-street parking. By enacting this ordinance change, the City will reduce the number of declared snow emergencies, including ticket and towing occurrences, while providing the same level of snow removal service as before the ordinance amendment. Public Works' plow routine will be unchanged and the plows will be deployed for any accumulated snowfall as has been past practice.

**BE IT FURTHER RESOLVED**, that the City Clerk is directed to keep a copy of the Ordinance in their office at City Hall for public inspection during normal business hours and to post a full copy of the Ordinance in a public place in the City for a period of two weeks. Copies of the ordinance are also available upon request by calling the Public Works Department at (612) 861-9170.

Adopted by the City Council of the City of Richfield, Minnesota, this 28th day of September, 2021.

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Maria Regan Gonzalez, Mayor

ATTEST:

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Kari Sinning, City Clerk



**STAFF REPORT NO. 150**  
**CITY COUNCIL MEETING**  
**9/28/2021**

REPORT PREPARED BY: Krista Guzman, HR Manager

DEPARTMENT DIRECTOR REVIEW:

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Katie Rodriguez, City Manager  
9/22/2021

**ITEM FOR COUNCIL CONSIDERATION:**

**Consider the approval of a resolution modifying a Health Care Savings Plan for the Local 49 Employees.**

**EXECUTIVE SUMMARY:**

In 2001, the Minnesota legislature granted authority to the Minnesota State Retirement System (MSRS) to offer a post-employment Health Care Savings Plan (HCSP) to eligible employees of the State of Minnesota and other governmental subdivisions. A post-employment HCSP is an employer-sponsored program that allows employees to save money to pay towards medical expenses and/or health insurance premiums after termination of employment. Employees are able to choose among different investment options provided by the State Board of Investment. Assets contributed into the program are tax-free, accumulate tax free, and if used for medical expenses, remain tax-free.

The IUOE, Local 49 employee group has agreed upon a modification to its plan that modifies the bi-weekly contribution amount from \$45 bi-weekly to \$60 bi-weekly. Under state statute, modifications to HCSP's cannot be made more often than once every two years. The last modification to the Local 49 HCSP was in May 2015. Staff is recommending amending the Post Employment Health Care Savings Plan for Local 49 employees.

**RECOMMENDED ACTION:**

**By motion: Approve a resolution modifying a Health Care Savings Plan for eligible Local 49 employees.**

**BASIS OF RECOMMENDATION:**

**A. HISTORICAL CONTEXT**

- Legal authority to establish a HCSP is provided through Minn. Stat. 352.98 and Internal Revenue Service rulings. The establishment of each plan, including contribution formulae, must be negotiated when dealing with a collective bargaining unit or personnel policy where non-union employees are involved. Once established, the plan must be filed with MSRS to initiate or modify the plan.
- Participation for each individual employee within a bargaining unit or employee group is mandatory once the plan is established for that respective group. Moreover, the amounts contributed for or by each employee in a particular group must be the same for every employee of



the group; however, contributed amounts between employee groups will vary.

- A Health Care Savings Plan was established by the City Council for the Local 49 employee group on February 14, 2006. Under state statute, plan modifications may be made no more frequently than once every two years. The last modification was in May, 2015.

**B. POLICIES (resolutions, ordinances, regulations, statutes, etc):**

- Minnesota Statutes have been amended to provide the opportunity for a very valuable benefit to City employees. The City of Richfield has offered this benefit to employee groups that are interested in such a mandatory plan.
- Approval of the resolution by the City Council will provide the City authority to proceed with this modified program for the Local 49 employees. Plan modifications can be made every two years.

**C. CRITICAL TIMING ISSUES:**

- There is no time critical issue pertaining to the timing of this modification; however, the majority of Local 49 employees have expressed a desire to implement the modified program, so it should be pursued at the City's earliest opportunity.
- This plan has already been submitted for preliminary approval through MSRS, but following City Council approval, a final plan must be submitted to MSRS for filing and implementation.

**D. FINANCIAL IMPACT:**

- There is no cost to the City in this version of the plan since the City makes no contribution. In fact, there is a cost savings to the City in that wages and severance pay that the employee contributes to the Health Care Savings plan are not subject to Social Security or Medicare contributions.
- The plan provides a great tax savings to the participating employees and provides a tax mechanism to fund post-employment medical costs.

**E. LEGAL CONSIDERATION:**

- There is legal authority for this plan in Minnesota Statutes and IRS Code.
- The plan modification has been sent to the State for review and has received informal approval.

**ALTERNATIVE RECOMMENDATION(S):**

The City Council could decide not to approve this plan modification. In that case, the current plan would remain in effect; however, this decision contradicts the wishes of the majority of this employee group.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

None

**ATTACHMENTS:**

| Description     | Type              |
|-----------------|-------------------|
| □ Resolution    | Resolution Letter |
| □ Local 49 HCSP | Backup Material   |

**RESOLUTION NO.**

**RESOLUTION ESTABLISHING AN UPDATED AMENDED POST EMPLOYMENT HEALTH CARE SAVINGS PLAN FOR LOCAL 49 EMPLOYEES (IUOE #49)**

**WHEREAS**, Laws of Minnesota 2001, chapter 352.98, authorizes the Minnesota State Retirement System (MSRS) to offer a Post Employment Health Care Savings Plan (Plan) program to state employees, as well as, other governmental subdivisions, and

**WHEREAS**, the Internal Revenue Service Code provides for such Plans, and

**WHEREAS**, the City of Richfield currently offers such a Plan to eligible City employees as a tax free method for employees to set aside money to cover the ever increasing costs of health insurance and medical costs after termination of public employment, and

**WHEREAS**, such plans must be established by employee group, either through a collective bargaining agreement for union employees or a personnel policy for employees not covered by a collective bargaining agreement, and

**WHEREAS**, modification to the provisions of an established Plan for Local 49, IUOE #49, employee group have been agreed to by the Local 49 employee group and the City of Richfield, and

**WHEREAS**, the proposed plan is a net savings to the City of Richfield and a benefit to the individual employees covered by the plan.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Richfield hereby authorizes the City Manager to amend the Health Care Savings Plan for the IUOE Local 49 group of employees in the City of Richfield.

Adopted by the City Council of the City of Richfield, Minnesota this 28<sup>th</sup> day of September 2021.

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Maria Regan Gonzalez, Mayor

ATTEST:

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Kari Sinning, City Clerk

**Policy:** ***International Union of Operating Engineers, Local 49 Post Employment Health Care Savings Plan***

**Approved by:** Richfield City Council on September 28, 2021

**Effective Date:** October 1, 2021

**Page:** 1 of 2

**Plan Purpose** The City of Richfield is interested in establishing a means for eligible employees to participate in a mandatory program to help defray some of the costs of post-employment health related expenses, including health insurance premiums using pre-tax dollars. Participation in the Post Employment Health Care Savings Plan, administered by the Minnesota State Retirement System (MSRS), is intended to provide an opportunity to accomplish that goal.

**Post-Employment Health Care Savings Plan** The Post Employment Health Care Savings Plan (HCSP) is an Employer sponsored program that allows eligible employees to:

- 1) defer payment of a portion of unused vacation and personal leave as a severance payment at the time of termination to pay for eligible health insurance premiums and/or health expenses after separation from City service: and
- 2) defer a portion of an Employee's biweekly salary for deposit into their HCSP for the payment of qualified healthcare related expenses after separation from City service.

Employees will be able to choose among several different investment options provided by the Minnesota State Board of Investment. Under the Plan, amounts contributed into the HCSP are tax-free and not subject to FICA contributions. Assets in the HCSP will accumulate tax-free and since payouts are used for qualifying medical expenses, they will also remain tax-free.

**Eligibility to Participate** Participation in the **IUOE, Local 49 HCSP** is mandatory for all employees that are members of the Richfield IUOE, Local 49 Pay Classification Plan at the time of termination of employment.

**Contribution Formula** Mandatory participation in the HCSP shall be in accordance with, and limited to the following formulas for contributions:

**I. Biweekly Contribution**

1. An eligible Employee will contribute **\$60 of their base biweekly wage** to the Employee's account in the IUOE, Local 49 HCSP.

**II. Severance Contribution**

1. The first 40 hours of accumulated but unused **Vacation Leave or Personal Leave or a combination thereof** shall be paid as a credit to the Employee's account in the HCSP.

2. All severance payments based upon **Vacation Leave and/or Personal Leave** are calculated as described above, by multiplying the number of hours by the applicable rate of pay at the time of termination.

3. Contributions authorized under this Plan shall continue until such time as this policy is amended or repealed by the City of Richfield.

**HCSP  
Administration**

The HCSP is authorized under the Internal Revenue Code and is administered by the Minnesota State Retirement System.