



Legislation Text

File #: 51223, **Version:** 1

Fiscal Note

This resolution authorizes staff to accept an End User Licensing Agreement for a software license, consistent with City policy. Purchase of CaseWare software will allow the Finance Department to prepare the City's Comprehensive Annual Financial Report (CAFR) internally without as much assistance from external auditors. This may reduce costs under the external audit contract, as well as address internal control deficiencies identified by federal and state agencies regarding preparation of the CAFR.

Title

Authorizing Information Technology staff to accept an End User License Agreement with CaseWare International, Inc. for licensing and use of software to improve automating the City's Comprehensive Annual Financial Report and authorizing indemnification of the contractor by the City.

Body

WHEREAS, APM 1-1 prohibits the City from entering into a contract that requires indemnification of another party by the City, unless permission is specifically granted by the Common Council with the advice of the City Risk Manager; and,

WHEREAS, many software purchases require the City to agree to an End User License Agreement (EULA) with no opportunity to negotiate the legal terms; and,

WHEREAS, Resolution # 47764 adopted on 9/19/2017 authorized the IT Director to approve software purchases of up to \$10,000 that include indemnification and other legal terms if the software provider will not negotiate legal terms; and,

WHEREAS, the Finance Department has identified the CaseWare software product as a tool that will assist staff to more efficiently automate the complete preparation of the roughly 250 page Comprehensive Annual Financial Report yearly, including a GASB footnote library, working paper tools, and supporting document auto-loader, but the price exceeds that authorized by Resolution # 47764 (approximately \$8,900 per year for five user subscriptions, or \$16,000 for ten, and Finance staff plan to use this software for at least 5 years, if not more); and,

WHEREAS, the City's external auditors have identified control deficiencies that are considered significant surrounding the preparation of complete and accurate financial statements including disclosure footnotes. They recommend considering resources and changes necessary to complete the City's Comprehensive Annual Financial Report without the assistance of its audit firm staff; and,

WHEREAS, CaseWare will not negotiate the terms of its EULA and CaseWare's EULA includes the following indemnity clause:

"Licensee shall, indemnify and save harmless CWI and its directors, officers and employees from and against all claims, costs (including reasonable attorney's fees), damages and losses of every nature and kind which may be suffered by reason of a third party making a claim based on any representation made or other step taken by Licensee. Where the Licensee is a government entity, indemnification by a Licensee shall only be enforceable to the extent allowed by the local, state or provincial, and national laws of the Licensee's place of governmental operations, and if unenforceable under such laws this indemnity shall be void ab initio."

WHEREAS, the City Risk Manager has reviewed this language in the context of the overall project and determined there is little risk overall to the City from agreeing to this language for the use of this software product,

NOW, THEREFORE, BE IT RESOLVED that the Common Council authorizes the indemnification of CaseWare International, Inc. as stated above, and a staff person designated by the Information Technology CIO or designee is authorized to click on to accept the terms of the EULA on behalf of the City if needed to complete the purchase.