File #: RES 22-1014, **Version:** 1

Authorizing the City to enter into an agreement with Innovyze for use of their XPSWMM Software.

WHEREAS, the Department of Public Works Sewer Utility has been using XPSWMM Software to conduct City business for more than a decade; and

WHEREAS, Public Works Sewer Utility has determined that various department business requirements make it desirable to use XPSWMM Software in order to properly create, manage and update all Watershed Designs; and

WHEREAS, Public Works purchases, manages and supports XPSWMM Software for Public Works Sewer Utility; and

WHEREAS, Innovyze Indemnification states: "10.2 Customer's Indemnity. Subject to the terms and conditions set forth in this Section 10, Customer shall, at its own expense, defend Innovyze from and against any and all Claims arising from or relating to Customer's breach or violation of this Agreement; and shall indemnify Innovyze from and against liability for any Losses to the extent based upon such Claims." and

WHEREAS, the Innovyze license agreement requires a promise of defense and indemnity in favor of Innovyze, which the Council finds reasonable and appropriate; and

WHEREAS, the XPSWMM Software is the industry standard for all Watershed Design and is used by a majority of Minnesota Watershed Districts, Ramsey County and MnDOT, for the purpose of sharing Watershed models in a compatible format; and

WHEREAS, XPSWMM Software can only be purchased through Innovyze; and

WHEREAS, the XPSWMM Software is subscription based, meaning that the purchased license is only valid for one year before renewal is required, thus Public Works requests that from the date of the approved resolution, that the resolution be valid for a term of no less than five years; and

WHEREAS, the Software terms of service contains a promise of indemnity in favor of Innovyze, and the City Council finds that the promise of indemnification is appropriate to obtain the XPSWMM Software; and

RESOLVED, that the Department of Public Works is authorized to accept the Terms of Use of Innovyze's XPSWMM Software.