

MOORE, COSTELLO & HART, P.L.L.P.

MEMORANDUM

TO: Kathleen Corley
FROM: Phyllis Karasov
DATE: January 29, 2007
SUBJECT: Corporate Merger of the Girl Scout Councils of Cannon Valley, Greater Minneapolis, Peacepipe, River Trails and St. Croix Valley

Background

It is our understanding that the Girl Scout Councils of Cannon Valley, Greater Minneapolis, Peacepipe, River Trails and St. Croix Valley are all Minnesota nonprofit organizations exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). The organizations desire to merge under the Minnesota Nonprofit Corporation Act (the "Act"). The following is a description of the process for merging under the Act.

Process

- I. Adopt Plan of Merger:**
- A. Resolution of Merger. If they have not done so already, each organization must adopt a resolution:
 - 1. Authorizing pursuit of the merger; and
 - 2. Empowering the officers of the organization (or other representatives, such as members of a steering committee) to take any actions necessary or helpful to pursue the course of merger.

 - B. Plan of Merger. Once a decision to pursue a merger has been made by the Board of each constituent organization, the organizations must work together to produce a Plan of Merger required under the Act. The Plan of Merger must be in writing and contain the following items:
 - 1. The names of the organizations proposing to merge;
 - 2. The name of the surviving organization;
 - 3. The terms and conditions of the proposed merger (this would include the proposed corporate structure for the new organization,

- describing responsibility once the merger has been accomplished, and other related items);
4. A statement of amendments to the Articles of Incorporation of the surviving organization proposed as a part of the merger; and
 5. Other provisions with respect to the proposed merger that are considered necessary or desirable.
- C. Adoption of Plan of Merger. The Plan of Merger must be approved by the Board of Directors of the five organizations by the affirmative vote of a majority of all Directors. Notice of the meeting must be given accompanied by a copy of the proposed Plan of Merger.

II. If Applicable, Give Notice to the Attorney General's Office.

While the Act requires a 45-day advance notice to the Minnesota Attorney General's Office in some merger situations, no notice is required in the current case where the merger is between two or more organizations exempt under Section 501(c)(3) of the Code.

III. Adopt Articles of Merger.

- A. Form and Execution of Articles of Merger. Once the Plan of Merger has been approved by the Board of Directors of each organization, Articles of Merger must be prepared, signed on behalf of each constituent organization, and filed with the office of the Minnesota Secretary of State. The Articles of Merger must contain the following:
1. The Plan of Merger;
 2. A statement that the Plan of Merger has been approved by each organization as required under the Act;
 3. A statement that the notice to the Attorney General's Office has been given or that the notice does not apply.
- B. Certificate of Merger. When the Articles of Merger are filed, the Secretary of State will issue a Certificate of Merger to the surviving organization. The Certificate of Merger must be filed with the Attorney General's Office.

Other Tasks

Preparing the legal documents necessary for the merger is only one step in the process. Other tasks involved in the merger include:

I. Determining Treatment of Assets and Liabilities of Each Organization.

- A. Assets. Each organization may have assets such as office equipment and furniture, other office supplies and materials, and financial resources and reserves. The organizations must agree of how these assets will be controlled following the merger. To accomplish this, each organization must identify its assets, and whether they are owned outright, owned subject to debt, or leased. Any leases must be reviewed to determine if they allow assignment and, if necessary, the lessor's consent must be obtained.
- B. Liabilities. The organizations must decide how liabilities will be handled. Options include full assumption by the surviving organization or payoff before merger.

II. Consolidation of Systems.

Logistics must be addressed concerning consolidation of corporate systems and functions including:

- Staffing and programming
- Adopting uniform corporate policies
- Consolidating employee benefits
- Consolidating financial and other recordkeeping systems.

If you have any questions concerning the merger process under the Minnesota Nonprofit Corporation Act, please feel free to contact me.

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