

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (hereinafter "MOU"), effective the 17th day of December 2018 (hereinafter "Effective Date"), is entered into by and between the City of Excelsior (hereinafter "City"), a municipal corporation under the laws of the State of Minnesota and Community for The Commons (hereinafter "C4C"), a Minnesota nonprofit corporation, to memorialize an ongoing partnership in capital investment, elevated care, and enhanced programming in The Commons Park (hereinafter "The Commons") in Excelsior, Minnesota.

WITNESSETH:

WHEREAS, The Commons, Excelsior's premier park on the shores of Lake Minnetonka is beloved by the community and region as a destination open space and recreational attraction;

WHEREAS, The Commons needs substantial capital investments and its operating and maintenance demands often surpass available public resources;

WHEREAS, In 2015, C4C organized as a 501(c)(3) nonprofit corporation to act as an active partner with the City in elevating capital investment, quality of care, and visitor experience in The Commons;

WHEREAS, In 2017, after more than a year of engaging the community and in close partnership with C4C, the City adopted Excelsior Commons Conceptual Guide Plan as a design vision for reconstructing The Commons;

WHEREAS, Since Guide Plan adoption, C4C has collaborated with the City to prepare strategic tools that, when coupled with the Guide Plan, creates a robust implementation and operating framework for The Commons;

WHEREAS, The magnitude of capital investments and operational attention recommended in the Guide Plan demands ongoing deployment of resources and stewardship in addition to those available through local government;

WHEREAS, Now that pursuits in capital investment, elevated care, and enhanced programming in The Commons is approaching the implementation stage, a broad agreement in the form of an MOU between the City and C4C is appropriate as a statement of common interests in The Commons as well as an umbrella to subordinate agreements.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants of the parties hereto, the parties do hereby agree as follows:

1. **DEFINITIONS.** For purposes of this MOU, the terms set forth below shall have the following meanings:

“Budget or Project Budget”	The totality of estimated hard and soft costs necessary to construct a capital project.
“Campaign”	A distinct fundraising effort.
“Capital Investment”	A financial or in-kind investment in a fixed asset in The Commons (building, pavement, landscape, etc.)
“City Funds”	Funding or in-kind services provided by the City.
“Donor”	Person, group, or organization that donates money or in-kind goods or services through C4C toward fulfillment of a fundraising campaign.
“Philanthropic Funds”	Funding or in-kind donations provided by or through C4C.
“Project”	Group of improvements that constitute a distinct Capital Investment to be funded through a Campaign.
“Subordinate Agreement”	Fundraising, program or operating Agreements between the City and C4C that are subordinate to this MOU.
“The Commons”	Excelsior’s central park, adjacent to downtown Excelsior and bounded by Lake Minnetonka, Lake Street, and an outlot bordering Lake Street to the Southwest, West Lake Street, First Street, and Water Street (including the area commonly known as the “Port of Excelsior”). The Commons is depicted on the map attached hereto and made a part hereof as Exhibit A with its boundaries highlighted in red.
“Third-Party Funds”	Funding secured for the Campaign from sources that are neither Philanthropic or City, which include but are not limited to agency grants, legislative appropriations, and earned revenues.

2. EXHIBITS.

Exhibit A Map of The Commons

3. MOU DESCRIPTION. This MOU memorializes a mission-driven, mutual-interest partnership between the City and C4C toward bolstering capital investment, operations, and programming in The Commons. It is a non-binding but important expression of interests, values, expectations, and ways of collaborating on future endeavors. The MOU:

3.1 Is an umbrella to future agreements between the City and C4C.

3.2 Recognizes and honors the City's authority, ownership, stewardship, and otherwise "first position" in The Commons.

3.3 Recognizes C4C as the City's primary philanthropic and operating nonprofit partner in The Commons.

4. RENEWAL. This MOU does not have a specific term or expiration although it should be revisited and updated every five years, or earlier if necessary, to account for evolution of the relationship and key activities related to The Commons.

5. GOALS. The primary goals of the City-C4C partnership are to:

5.1 Couple the City's perspective, history, resources, and expertise in The Commons with C4C's private-sector energy, advocacy, expertise, and pathways to philanthropy.

5.2 Authorize C4C to advocate for continual betterment of The Commons through community interactions, social media, events, and programs.

5.3 Sustain an elevated standard of care in The Commons by raising additional funding, providing technical expertise, and enhancing The Commons' maintenance regime.

5.4 Raise Philanthropic and Third-Party Funding for Capital Investments in The Commons.

5.5 Curate the interests of various outside parties in Commons funding and programming.

5.6 Exchange technical and strategic support in Commons Capital Investment efforts.

6. EXPECTATIONS. With the partnership expressed in this MOU, each party has expectations of the other.

6.1 Mutual Expectations.

- Maintain sustained commitment to The Commons and its betterment.
- Be a trusted, supportive, and understanding partner to the other.
- Make efforts to build public awareness and regard for efforts to improve the infrastructure, programming and maintenance of The Commons.
- Be communicative in mutual efforts.
- Share forms of communications and promotional media in Commons efforts.
- Fulfill fundraising, operating, and program commitments established in

agreements subordinate to this MOU.

6.2 City expectations of C4C.

- Establish and operate a well-managed, professional, innovative and sustainable nonprofit organization.
- Recognize and become familiar with the unique limitations and demands placed on the actions of government bodies, the use of public finance, and the use of public space.
- Build an advocacy and promotional engine behind mutual efforts.
- Establish strong and lasting relationships with the Philanthropic community.
- Offer innovative ideas.

6.3 C4C expectations of the City.

- Identify C4C as the City's primary philanthropic partner in The Commons.
- Collaborate with C4C on fundraising efforts.
- Consult with C4C about inquiries from outside philanthropic or programming interests in The Commons.
- Consider innovative approaches to Commons project delivery, funding, operations, and programming.

7. ROLES.

7.1 The City assumes the following key roles in the partnership.

- Land owner.
- Capital project design leadership.
- Leadership in public funding pursuits.
- Leadership in formal community engagement activities.
- Co-leadership with C4C in third-party funding pursuits.
- Participation in partnership coordination activities.

7.2 C4C assumes the following key roles in the partnership.

- Leadership in philanthropic pursuits and donor relationships.
- Leadership in Commons advocacy.
- Co-leadership with the City in third-party funding pursuits.
- Participation in partnership coordination activities.

8. ANTICIPATED OUTCOMES. The partnership between the City and C4C will allow investments and improvements in The Commons to be accomplished better and faster than would otherwise occur. Key outcomes include:

- Expanded range of revenue sources (especially philanthropy) that can be invested in The Commons capital projects, operations, and programming.

- Enhanced leverage of private sector expertise.
- A more robust and sustainable public space that meets ever-growing demands.
- Acceleration of needed capital investments.
- Heightened degree of park innovation.
- Broader and deeper community engagement, commitment, and advocacy.
- Innovative project delivery, operating, and programming models.

9. RECOGNITION OF CONSTRAINTS. Both parties recognize that constraints to the partnership are inherent and include.

- Efforts conducted by C4C and any commitments made to donors must abide by City ordinances and policies.
- The use of public funds in capital investments carry certain legal restrictions that may impact project delivery, operating, and programming flexibility.
- Neither the City or C4C can guarantee the fulfillment of funding aspirations and pursuits identified in subordinate agreements.
- Unforeseen fluctuations occur in the philanthropic environment and general economy that could impact C4C's or the City's ability to achieve funding milestones identified in subordinate agreements.
- The City and C4C have strong mutual interest in the community of Excelsior and The Commons but each has different organizational missions and inherent pressures.
- Both parties have limits to organizational capacity, especially in the areas of staffing and financial resources.
- Achieving the design intent laid out for capital projects and achieving elevated operating and programming standards in The Commons will positively impact the ongoing ability to raise philanthropic funds.

10. FUNDRAISING. Fundraising details will be articulated in subordinate agreements. Fundraising efforts will be structured around several core principles.

- The City will entertain subordinate agreements that grant C4C the right to conduct fundraising campaigns for capital investments, operations, and programming in The Commons.
- C4C will coordinate and lead the pursuit of philanthropy including donor relationships, pursuit strategy, marketing and communications, scheduling, etc.
- Either party will consider requests by the other to help close fundraising pursuits.
- The City will consult with C4C about Commons philanthropic inquiries it receives.
- Third-party funding pursuits as identified in subordinate agreements will be closely

coordinated between the City and C4C.

11. **PARTNERSHIP LIASONS.** The City-C4C partnership will likely benefit from ongoing review and modification over time. To facilitate these conversations a representative will be designated by each party as a partnership liaison and will serve as the first point of contact should issues or questions arise between the parties.

12. **MEASURES OF SUCCESS.** C4C will prepare an annual report and present it to the City Council. The report will measure past year's achievements in the categories of fundraising, operations, programs, and others C4C may choose.

13. **NOTICE.** Any notice required or permitted to be given by the terms of this Agreement will be in writing and will be deemed to be validly given when mailed. if mailed by first class mail, postage prepaid. addressed to the parties as follows:

City of Excelsior
339 3rd Street
Excelsior, MN 55331
Attn: City Manager

Community for the Commons
P.O. Box 333
Excelsior, MN 55331
Attn: Chair Person

14. **MISCELLANEOUS PROVISIONS.**

14.1 **No Assignment and Termination.** The terms of this MOU are not assignable by either party, with each party understanding that the terms of this MOU are peculiar to each such party. Either C4C or City may terminate this MOU upon written notice to the other party if, in its sole discretion, it is unwilling or unable to perform the duties and responsibilities required under the terms of this MOU.

IN WITNESS WHEREOF, the parties have executed this Agreement the Effective Date hereof.

City of Excelsior, a municipal corporation

Community for The Commons,
a Minnesota nonprofit corporation

By: 

By: 

Its: 

Its: 