

City of Excelsior
Park and Recreation Commission

Agenda

Tuesday, April 15, 2025

106 Center Street (new temporary Council Chambers)

6:15 PM

1. CALL TO ORDER/ROLL CALL
2. AGENDA APPROVAL
3. APPROVAL OF MINUTES
 - a) March 11, 2025 PNR Meeting Minutes
4. CITIZEN REPORTS or COMMENTS
5. NEW BUSINESS
 - a) Election of Officers
 - b) Commons Use Policy following City Council Review
 - c) Parks and Recreation Commission Council Goals
 - d) Arbor Day Celebration
6. UNFINISHED BUSINESS
 - a) 2025 Projects- Discussion Only
7. MISCELLANEOUS / COMMISSIONER COMMENTS
 - a) Recent City Council Action
8. VERBAL REPORTS FOR DISCUSSION
 - a) Updates on Oak Savanna Project, Commons Ballfield and other Commons Projects
9. UPDATES/INFORMATION
 - a) Community Gardens and Garden Plot Committee
 - b) Adopt-a-Seat, Adopt-a-Garden, and Adopt-a-Tree Programs
 - c) Oak Hill Cemetery
 - d) Concerts in the Park/Bandshell Update/ Concession Stand PAC
 - e) Excelsior Park Maintenance Log
 - f) Discussion on Port Bell
 - g) Studer Park
 - h) Gazebo/Mitten Pond
10. MONTHLY FINANCIAL REPORTS
 - a) March 2025 Park Fund Report
11. ADJOURNMENT

Notice: Some items on this agenda are important enough to City Councilmembers that a quorum of the Council may be present to receive information leading to their future deliberations and eventual decision.

City of Excelsior
Hennepin County, Minnesota
Minutes
Parks and Recreation Commission
Tuesday, March 11, 2025

1. CALL TO ORDER

Commissioners present: Chair Wolfe, Bolles, Schmidt, Sobiech
Commissioners absent: Smith, Vogel

Also present: Public Works Director Amundsen, Parks Manager Quinn, Sheila McMillan, Dave Nelson, Councilmember Rob Tyler

2. AGENDA APPROVAL

Commissioner Bolles moved, Commissioner Sobiech seconded to approve the agenda. Carries 4/0.

3. APPROVAL OF MINUTES

a) Commissioner Bolles moved, Commissioner Sobiech seconded, to approve the minutes from the February 11, 2025 PNR Commission Meeting. Carries 4/0.

4. CITIZEN REPORTS OR COMMENTS

a) Councilmember Rob Tyler was in attendance as the City Council Liaison. Councilmember Tyler provided an update on the Council Liaison process and how Councilmembers would rotate quarterly and provide a line of communication between the Commission and Council. Councilmember Tyler provided an update on the Council work session where Commission Goals would be established and how the Council would be looking for input on project prioritization within The Commons. Commissioner Bolles asked a question about filling vacancies within the Commission and Councilmember Tyler provided an update.

5. NEW BUSINESS

a) Joint Meeting with Community for The Commons (C4C)
Sheila McMillan and Dave Nelson from C4C were present at the meeting to provide insight into C4C and to receive questions from PNR. C4C is a 501(c)3 non-profit organization that was formed in 2015 that is dedicated to the long-term enhancement and improvement of the Excelsior Commons park. The park conservancy model is based off Central Park in New York and their conservancy was started to help manage and maintain the park. McMillan stated that the conservancy is a tried-and-true method of preserving historic parks. McMillan also stated that revenue generated by the park needs to go back to supporting the park so the Commons can be self sustainable. McMillan also provided an update on the history of the conservancy that started as 5 members and has grown to 13 members that work approximately 4-20 hours per week. McMillan provided an update on how the sales tax was implemented and how the master plan

was developed. McMillan stated that the funds they receive can only be spent on projects within The Commons and described the project advisory committee process for how projects are designed and implemented. The Commission and C4C discussed how smaller events such as movie nights could help to generate more funding for The Commons to raise money for maintenance. PNR and C4C also discussed how they could collaborate on future survey efforts to gain insight from residents and visitors. PNR and C4C also discussed collaboration at events such as sharing a booth to provide information to visitors.

6. UNFINISHED BUSINESS

a) Commons Use Policy

The PNR Commission discussed the Commons Use Policy which intends to implement certain criteria on how proposals for different uses in The Commons are evaluated. The Commission made some minor changes to the draft use policy. Staff stated that the draft Commons Use Policy would be placed on an upcoming agenda for review by the City Council.

b) 2025 Projects- Discussion Only

Continued to a future meeting.

7. MISCELLANEOUS/ COMMISSIONER COMMENTS

a) Recent City Council Action

No recent action discussed.

8. VERBAL REPORTS FOR DISCUSSION

a) Updates on Oak Savanna Project, Commons Ballfield and other Commons Project
Parks Manager Quinn provided an update on the Arbor Day Celebration.

9. UPDATES/INFORMATION:

- a) Community Garden Plots and Garden Plot Committee; no action taken.
- b) Adopt-a-Seat, Adopt-a-Garden, and Adopt-a-Tree Programs; no action taken.
- c) Oak Hill Cemetery; no action taken
- d) Concerts in the Park/Bandshell Update/Concession Stand; no action taken.
- e) Excelsior Park Maintenance Log; no action taken.
- f) Discussion on Port Bell; no action taken.
- g) Studer Park; no action taken.
- h) Gazebo/Mitten Pond; no action taken.

10. MONTHLY FINANCIALS:

a) February 2025 Park Fund Report; no action taken.

11. ADJOURNMENT

Motion by Sobiech to adjourn, seconded by Bolles. Carries 4/0.

Respectfully submitted,

Tim J. Amundsen



MEMORANDUM

5(b)- Commons Use Policy following City

Re: Council Review

Date: April 15, 2024

Tim Amundsen, Public Works Director

To: Parks and Recreation Commission

From: Kevin Quinn, Parks Manager

The City Council reviewed the draft Commons Use Policy at their April 7th meeting and provided feedback, potential changes and direction for the PNR Commission's consideration in working toward finalizing the Commons Use Policy. Staff received feedback and direction. Below are the notes taken by staff:

- The City Council thanked the PNR Commission for all the good work they did on the draft Commons Use Policy.
- The Council asked the PNR Commission to consider what should be introduced into the City Code and what should be included in the policy. City code amendments are inherently more difficult to change whereas policy is more easily changed by the City Council.
- The Council asked that the introductory section be condensed and be more of a purpose statement.
- The City Attorney should review the document to provide feedback on potential legal issues with the policy.
- Physical Structures feedback:
 - The PNR Commission should better define view corridors. Staff recommends more detailed language such as "impacting lake views from adjacent properties or streets."
 - PNR Commission should soften language regarding leaving seasonal structures in place. Staff has attached the Wai Nani Agreement for review by the PNR Commission. The Council asked whether Wai Nani would be "grandfathered in" or the PNR Commission changes the policy regarding leaving structures. Removal of the temporary kayak rental structure is currently silent in the Wai Nani agreement.
 - City Council stated that physical structures should have "low impact" to The Commons and that if structures are removed it should be as if they were not ever located there.
 - The Council asked for clarification regarding tents and PNR Review.
 - The City Council asked whether structures placed in The Commons should also be reviewed by the Heritage Preservation Commission (HPC). Staff has attached the HPC and PNR review table for considerations as to what uses or structures would also need to be reviewed by HPC along with PNR and could be implemented into the policy.
 - The Council felt that smaller items such as walking tour booths and other smaller installations should also be restricted in the policy to avoid organizations from cluttering up the Commons with such items.
 - The Council also stated that lighting to include flashing signs or lights should also be included in the policy.
- Commercial fliers advertising businesses should be restricted.
- The Council felt that Part II should be included in the City Code.

- The Council also stated that banners and signage on fencing should be restricted.
- Terms of donation should also be included. For benches and picnic tables the term is 10 years. Attached is the gift agreement for the Overlook project that also includes a 10-year term for reference.

The PNR Commission should review the feedback from the City Council and discuss recommended changes or amendments to the draft Commons Use Policy document.

Action:

Review the direction and recommended changes from the City Council regarding the draft Commons Use Policy and provide final guidance and recommendations to include in the final policy to be reviewed and approved by City Council. .

EXCELSIOR RECREATIONAL EQUIPMENT RENTALS SEASONAL LEASE AGREEMENT

THIS AGREEMENT is made as of the 12th day of May, 2022 (the "Effective Date"), by and between the City of Excelsior (the "City") and Wayzata m32, LLC a Minnesota Limited Liability Corporation doing business as Wai Nani Surf & Paddle with an address of 315 Barry Ave N, Wayzata ("Lessee").

- A. The City has determined that it is in the public interest to provide Recreational Equipment Rentals at The Commons park in Excelsior to residents and visitors, and such rentals would be best managed and operated by a private contractor.
- B. The Lessee has submitted a Proposal to manage and operate Recreational Equipment Rentals at The Commons park in Excelsior, commencing on or about May 15, 2022, attached hereto as Attachment A (the "Proposal").
- C. The parties acknowledge and agree that the Lessee, in addition to operating the Recreational Equipment Rentals during the Operating Season, as defined herein, will be required to maintain the Leased Area in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

- 1. Definitions.
 - a. *Recreational Equipment Rentals* means the equipment rental business described in the Proposal.
 - b. *Leased Area* means the area depicted on Attachment B.
 - c. *Net Sales* means the total revenue derived from the Recreational Equipment Rentals at the Lessee's location, less any sales tax, booking and credit cards fees thereon.
 - d. *Operating Season* means the period from May 1 to September 30 each year.
- 2. Term of Agreement. Unless terminated earlier pursuant to the termination provisions of this Agreement, the term of this Agreement shall be five (5) years, commencing on the Effective Date and terminating on September 30, 2026 (the "Term"). The Term may be extended an additional five (5) years thereafter if agreed upon by both parties in writing.
- 3. Use of Leased Area. Unless specifically agreed to in writing by City, Lessee shall use the

Leased Area only during the Operating Season and only for Recreational Equipment Rentals. Lessee shall not use or occupy the Leased Area or knowingly permit the Leased Area to be used or occupied: contrary to any statute, rule, order, ordinance, requirement or regulation applicable thereto; or in any manner which would cause damage to, or cause the value or usefulness of the Leased Area or any part thereof substantially to diminish (reasonable wear and tear excepted); which would adversely affect City's activities on property owned by City adjacent to the Leased Area; or which would constitute a public or private nuisance or waste. Lessee shall promptly upon discovery of any such prohibited use take all necessary steps to compel the discontinuance of such use. Lessee may store its City approved non-permanent building, furniture, fixtures, solar power and rental equipment in the Leased Area between Operating Seasons and, in such case, Lessee shall insure such property as required hereunder during the Operating Season. The Lessee shall have no other rights or obligations under this Lease with respect to the Leased Area except during the Operating Season, provided it meets all of its obligations during the Operating Season.

4. Operations of the Recreational Equipment Rentals by Lessee.

- a. *General Description.* Lessee shall manage and operate the Recreational Equipment Rentals at The Commons during the Operating Season in accordance with the Proposal.
- b. *Hours of Operation.* Lessee shall provide Recreational Equipment Rentals between the hours of 7:00 a.m. through 8:00 p.m. (or half an hour before sunset, whichever is later). Lessee has the discretion to close operations dependent on weather conditions.
- c. *Staffing.* Lessee shall, at its sole cost, be responsible for providing adequate staffing for the Recreational Equipment Rentals at the Leased Area.
- d. *Other Operating Costs.* Lessee is solely responsible for all other costs associated with the operation of the Recreational Equipment Rentals.
- e. *Other Obligations Under This Agreement.* Lessee shall perform such other duties and obligations as specifically set forth herein.

5. No Discounts to City Employees. Lessee shall not provide any rental equipment or other offering of the Recreational Equipment Rentals to City employees at a discount or without charge.

6. Condition of Leased Area.

- a. *"As Is".* Lessee hereby agrees to accept the Leased Area "as is," in its current condition, without any representation from City as to the condition, state of repair, existence of latent or apparent defects, or safety of the Leased Area, and City shall not be obligated to make or pay for any improvements to the Leased Area prior to the first Operating Season.

- b. *Repair and Maintenance - Obligations of City.* The City will maintain grass and landscaping around the Leased Area. City does not warrant that any of the foregoing will be free from temporary interruption for reasons beyond City's control. Such temporary interruption of service shall never be deemed an eviction or disturbance of Lessee's use and possession of the Leased Area or render City liable to Lessee for damages, or relieve Lessee from performance of Lessee's obligations under this Agreement. The parties acknowledge that the City obligations under this section shall be performed in accordance with its practices consistent with its maintenance of similar facilities within the City.
- c. *Repair and Maintenance - Obligations of Lessee.* Lessee agrees that it will undertake the following responsibilities with regard to the Leased Area during the term of this Agreement:
 - i. Keep the Leased Area and surrounding area customarily used by Lessee's customers reasonably free from trash, rubbish, and surfaces cleaned on a daily basis, including tables, benches and chairs.
 - ii. Provide trash receptacles on the Leased Area and, as necessary, empty such receptacles into the City dumpsters for removal.
 - iii. Lessee shall promptly pay City, upon request, an amount equal to any cost incurred by City in repairing any part (structural or otherwise) of the Leased Area where such repairs were made necessary by the negligence of or misuse by the Lessee, its agents, customers, employees or invites, except to the extent the damage or loss resulting from such negligence is covered under any policy of insurance and the full amount of such loss is paid to or on behalf of City pursuant to such insurance coverage.
- d. Lessee shall not store, keep, dispose of, transport or generate in the Leased Area or any hazardous substances or wastes or dangerous materials.
- e. *No Alterations Without Prior Approval.* Lessee shall not make any alternations to the Leased Area without the prior written approval of the City not unreasonably conditioned, withheld or delayed. All of Lessee's alterations or improvements to the Leased Area paid for by Lessee, except for non-permanent building, furniture, fixtures, solar power and rental equipment, shall, upon termination of this Agreement, become property of the City and shall at the option of the City, either remain upon and be surrendered with the Leased Area, at the termination of this Agreement, or be removed, at Lessee's expense, in which case, Lessee shall also repair all damage done to the Leased Area resulting from such alterations or improvements, and the removal thereof, by Lessee.

- 7. Ownership, Maintenance, Insurance and Risk of Loss of Equipment. All furniture, fixtures, and equipment owned by the Lessee, including all solar power equipment, recreational equipment, portable kiosks, storage units and the non-permanent building

associated, shall remain the property of the Lessee. Lessee shall be solely responsible for maintaining and cleaning all of its property and for City property used by it. During the Operating Season, Lessee shall maintain insurance covering its property maintained by and customarily used by Lessee and its customers at the Leased Area. Lessee shall name the City as an additional insured on all insurance policies relating to its use and its customers use and possession of the Leased Area and adjacent areas.

8. Signs. Lessee shall not erect, install or maintain any additional signs, advertising media, product logo displays or other signs in the Leased Area without the prior written approval of the City Manager or that are in violation of City Code.
9. Taxes. Lessee is responsible for and shall pay any sales taxes and personal property taxes. In the event the Leased Area ever becomes subject to real estate taxes, Lessee agrees to negotiate in good faith with the City to determine payment structure of real estate taxes.
10. Utilities. Not applicable.
11. Assumption of Risks. Lessee assumes all risk of loss or damage of Lessee's business or property within or related to the or the Leased Area, including any loss or damage caused by weather, theft, vandalism or other cause. The City shall not be liable to Lessee, or those claiming through Lessee, for injury, death or property damage occurring on, in, or about the Leased Area or in connection with the Recreational Equipment Rentals, except as may be caused by the willful misconduct or negligence of the City. Nothing herein shall be deemed to be a waiver of any limits of liability granted the City under statutory or common laws.
12. Consideration for Use of Leased Area. As for consideration to the City for the right of the Lessee to operate the Business from the Leased Area, Lessee shall compensate the City pursuant to the terms of this Section.
 - a. *Percentage of Revenue - Sales:* Lessee shall pay to the City five percent (5%) of annual Net Sales derive from the Recreational Equipment Rentals with a minimum of \$500 annually.
 - b. *Annual Payments.* On or before the 31st day of October, Lessee shall submit payment to the City of the amounts due under subparagraph a. for the prior season. Each payment shall be accompanied by a statement showing the Net Sales during the payment period itemized by total daily receipts, including the original cash register tapes or satisfactory copies showing the dates and register numbers. If original tapes are submitted, they will be returned to Lessee after they have been reviewed and verified.
 - c. *Audit.* Lessee shall maintain, at its main office, complete and accurate financial books and records of its operations in the Leased Area in accordance with generally accepted accounting principles. Upon reasonable notice, the City or its representatives shall be entitled to inspect the books and records of Lessee's

operations related to City property during regular business hours and at Lessee's main office, at least once per Operating Season. In the event that such audit by the City or its representatives determines that the City has been underpaid or overpaid: the amount of any such underpayment shall be remitted to the City within ten (10) days of written notice to Lessee; and any such overpayment may be subtracted from future payments by Lessee.

13. Destruction of Leased Area by Fire or Casualty. If the Leased Area, or any part thereof, shall be partially or totally destroyed by fire or other casualty, the City retains the exclusive right to determine whether it will repair or rebuild the Leased Area. The City shall have at least thirty (30) days in which to determine whether to re-build the Leased Area or terminate this Lease. In the event that the City determines that it will not repair or rebuild the Leased Area and the damage to the Leased Area materially impairs the ability of the Lessee to conduct the business contemplated hereunder, either party may terminate this agreement upon thirty (30) days advance written notice to the other party. Under any such circumstances, or in the event of any interruption in the operation of the Leased Area by Lessee resulting from any fire or casualty, City shall not be liable to Lessee for any loss or interruption of business or for any loss or damage to Lessee's fixtures, furniture, furnishings or equipment, and Lessee shall not be liable to the City during such period for any consideration specified under the preceding section.
14. Indemnification. Lessee shall defend and indemnify City, its employees, agents, Lessees and invitees against all claims, demands and actions, and all related costs and expenses (including reasonable attorneys' fees) for injury, death, disability or illness of any person, or damage to property, occurring on or about the Leased Area during the Operating Season or arising from Lessee's operations on City property during the Operating Season. Notwithstanding the foregoing, Lessee shall not be obligated to indemnify City for claims, demands and actions arising out of or caused by the negligence or willful misconduct of City's employees or agents, nor for any injury, death, disability or illness of any person, or damage to property, occurring on or about the Leased Area at any time other than during the Operating Season unless any of the foregoing is related to Lessee's operations on or about the Leased Area.
15. Payment of Others. The Lessee shall pay all of the Lessee's employees, agents, and subcontractors furnishing service, labor, equipment, or materials incidental to the performance of the Lessee's obligations under this Agreement and the Lessee will furnish the City with satisfactory evidence that all of its subcontractors have been fully paid to accordance with the Lessees payment terms.
16. Assignability. The rights and obligations of the Lessee under this Agreement shall not be assignable or transferable without the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned, or delayed.
17. Compliance of all Laws; Ability to Perform. The Lessee shall comply with all applicable federal, state, regional, and local laws, ordinances and regulations applicable to the Lessee. The Lessee represents and warrants to City that if a license is required, the Lessee is duly licensed and qualified to conduct business in the State of Minnesota, and that the Lessee is

not aware of fact or circumstance which would prevent the Lessee from performance in accordance with this Agreement.

18. Entire Agreement; Amendments. This Agreement, and any documents incorporated herein, represent the entire integrated agreement between the Lessee and the City and supersedes all prior negotiations, representations, or agreements, either written or oral. No amendment or modification of the terms of this Agreement, except as may be expressly authorized herein, may be made and will not be effective unless agreed upon in writing by the City and the Lessee.
19. Interest of Members of City Staff. No member of the governing body, officer, employee, or agent of the City who exercises any functions or responsibilities in the carrying out of this project to which this Agreement pertains shall have any interest, financial or otherwise direct or indirect, in this Agreement. The City may terminate this Agreement if the City has reasons to believe that gratuities in any form were offered or given by the Lessee or any representative of the Lessee to any officer or employee of the City for receiving favorable treatment with respect to the award of, or the making with respect to the performance of, this Agreement.
20. Insurance. This Agreement shall be effective only upon approval by the City of acceptable evidence of the insurance coverage in amounts not less than that referenced in Minnesota Statutes Section 466.04 issued by reputable insurers authorized to conduct insurance in the State of Minnesota. Such insurance shall be in force on the date of execution of this Agreement and shall remain continuously in force until the termination of this Agreement. The Lessee shall provide evidence of workers' compensation insurance covering its employees in accordance with statutory requirements, and evidence of general liability insurance naming the City its officers and employees as additional insureds under the policy. The Lessee shall submit to the City, prior to the beginning of each operating season, certificates of insurance verifying the insurance coverage required under this Agreement.
21. Equal Opportunity Statement. The Lessee shall comply with the provisions of all applicable federal, state, and local statutes, ordinances, and regulations pertaining to human rights and non-discrimination including, without limitation, Minnesota Statutes Section 181.53 and Chapter 363A.
22. Default. If the Lessee shall vacate or abandon the Leased Area during the Operating Season; shall allow the Leased Area to be appropriated to or used for any other purpose or use than those set forth in this Agreement; or if any term, condition or covenant of this Agreement shall be violated by Lessee; then and in any of said cases Lessee shall be in default. If such default is not cured by Lessee within thirty (30) days, or ten (10) days in the event of any monetary default, after mailing of written notice of the conditions of default, Lessee does hereby authorize and fully empower City to cancel and terminate this Agreement, and to remove all of Lessee's property pursuant to lease. City's failure to give immediate notice of default or agreement to allow more than thirty (30) days to cure a default, shall in no way constitute a waiver of any remedy available to City upon default by Lessee.

23. Termination. The City or Lessee may terminate this Agreement for any reason by giving the other party notice no less than forty-five (45) days after the end, or ninety (90) days prior to the beginning, of any Operating Season during the Term. Notwithstanding any other provision contained herein, this Agreement shall automatically terminate upon the occurrence of any of the following events:
- a. A petition by or against Lessee under the bankruptcy laws of the United States, which petition is not dismissed within ninety (90) days from the date of such filing;
 - b. The assignment by Lessee of its assets for the benefit of creditors under any state insolvency laws;
 - c. Conduct by Lessee of its business under any trustee or other person appointed pursuant to judicial proceedings; or
 - d. The taking by a court of jurisdiction of the Lessee and its assets pursuant to proceedings brought under the provisions or any federal reorganization act;
 - e. The appointment of a receiver of Lessee's assets;
 - f. A lapse in the insurance coverage Lessee is required to maintain pursuant to this Agreement which continues for ten (10) days after written notice by City to Lessee specifying such lapse in such insurance coverage.
24. Lessee's Obligations Upon Termination. Upon the expiration or termination of this Agreement, Lessee shall remove, at its expense, all of its goods and effects and other items of personal property, furniture, fixtures and equipment, repairing any damage caused, and leave the Leased Area in as good order, condition and repair as the same were in at the commencement of this Agreement, reasonable wear and tear, fire and casualty excepted. Goods and effects not removed by Lessee at the expiration or termination of this Agreement shall be considered abandoned and City may retain or dispose of the same as it deems expedient.
25. City's Right to Perform Obligations. If Lessee fails to make any payment or perform any act required to be made or performed hereunder, City, without waiving or releasing any obligation or default, may make such payment or perform such act for the account and at the expense of Lessee, and may enter upon the Leased Area or any part thereof for such purposes and take such action thereon as, in City's opinion, may be necessary or appropriate therefore. All sums so paid by City and all costs, fees and expenses incurred shall, upon written request for payment by City, be immediately due and payable by Lessee. Nothing herein shall create any obligation of City to make such payments.
26. Financial Statement. Upon written request, and not more than once in an Operating Season, Lessee shall provide the City access to review their Financial Statement related to the Leased Area prepared by Lessee's Certified Public Accountant.

27. Headings. The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the interpretation of this Agreement.
28. Notices. All notices or communications relating to this Agreement shall be in writing and shall be deemed given upon hand delivery or deposit in the United States mail, return receipt requested, and addressed as follows:

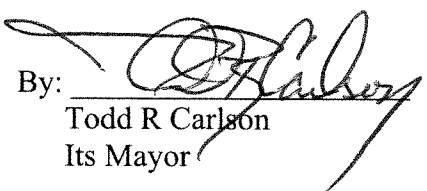
To the City: Excelsior City Hall
 339 Third Street
 Excelsior, MN
 55331
 Attention: City Manager

To
Lessee: Wayzata m32, LLC
 315 Barry Ave N
 Wayzata, MN 55391
 Attention: Andrew Mullin

29. Independent Contractor. The City and the Lessee agree that the relationship created by this Agreement is that of lessee and landlord and independent contractor, and not of employer and employee, a joint venture or a partnership. The Lessee retains the sole and exclusive right to control the manner, time, place and means by which the services are performed under this Agreement. The Lessee shall be solely and entirely responsible for its acts and for the acts of its employees, agents, and subcontractors in connection with the Project. The Lessee shall be responsible for the compensation and benefits of the Lessee's employees and for payment of all federal, state and local taxes payable with respect to any amounts paid to the Lessee under this Agreement. No payroll or employment taxes of any kind shall be withheld or paid with respect to payments to the Lessee including but not limited to, FICA, FUTA, federal and state personal income tax, state disability insurance tax and state unemployment tax.
30. Governing Law; Jurisdiction. This Agreement shall be construed in accordance with and governed by the laws of the State of Minnesota. The parties agree to submit to the jurisdiction of the courts of the State of Minnesota, and that any litigation related to this Agreement will be brought in the state or federal courts in Hennepin County, Minnesota.
31. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same document.

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

FOR THE CITY

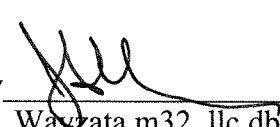
By: 

Todd R Carlson
Its Mayor

By: 

Kristi Luger
Its City Manager

FOR THE LESSEE

By: 

Wayzata m32, llc dba
Wai Nani Surf and Paddle
James Andrew Mullin

ATTACHMENT A
Lessee's proposal



Wai Nani Surf Paddle & Pedal at Wayzata Beach

2022 Proposal for
EXCELSIOR RECREATIONAL EQUIPMENT RENTALS SEASONAL LEASE
AGREEMENT

Prepared for: City of Excelsior
Prepared by: Andrew Mullin
Date: May 2022



Lessee's proposal to manage and operated recreational equipment rentals
at Excelsior Playground Beach

Operational Roadmap

- Standup Paddleboard (SUP) & Kayak Rentals
- Bikes (no more than 4 at Excelsior location)
- SUP Beginner Clinics/Lessons/Demonstration of equipment
- SUP Yoga/Fitness Classes
- Hourly rentals / classes WED, THU, FRI 3-7pm & SAT – SUN 11am – 7pm or by appointment (may shorten hours based on demand)
- Lessons/Classes (Varies by Week/Demand)
- On-Site Storage & Structure
- “Sandwich” Board directing people to Beach (only out during hours of operation)
- Tear Drop Signage (only out during hours of operation)
- Age 12+ With Waiver and Rental Agreement
 - Parent/Legal Guardian must be on water with participants ages 12-15
- All renters/participants must sign liability waiver prior to entering the water
 - <https://wainanisup.com/safety-policy/>
- Full Insured (General Liability, Professional Liability, Marine Renter Liability, Workers Compensation, Property & Causality) with City as Named Insured
- Inspection of equipment and safety plan by Hennepin County Water Patrol (Annually)
- Wai Nani will always close operations in event of inclement Wind and or Weather

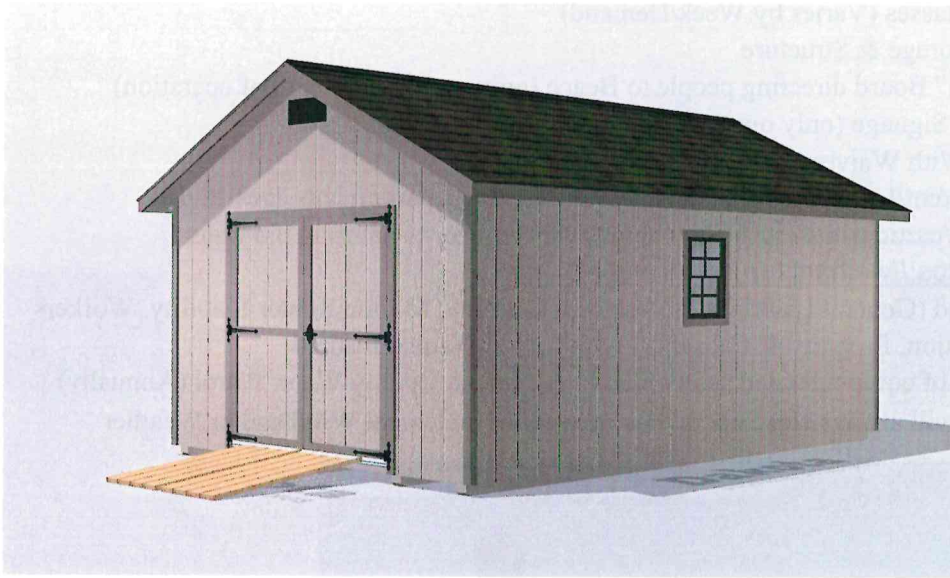


Designated Operational/ Paddle Area

- Rental equipment will be stored inside locked storage structure at rental "home base" when not actively in use and during closed business hours
- After safety instruction, renters will be directed to paddle to "recommended paddle/play area" west of the swim area and along the Ferndale shoreline.

On-Site Operational Features:

- Beach Umbrella and Beach Chair at rental "home base" - stored every night
- (1) Tear Drop Flags near "home base" raised during operational hours only (put up on occasion and stored at night.)
- (1) Board/Gear Storage Unit at rental "home base" - will house bikes, kayaks paddleboards, paddles, lifejackets, leashes, storage totes and other misc. rental needs (i.e. waivers and clip boards.)

Additional Information

Temporary Structure



TearDrop Signage



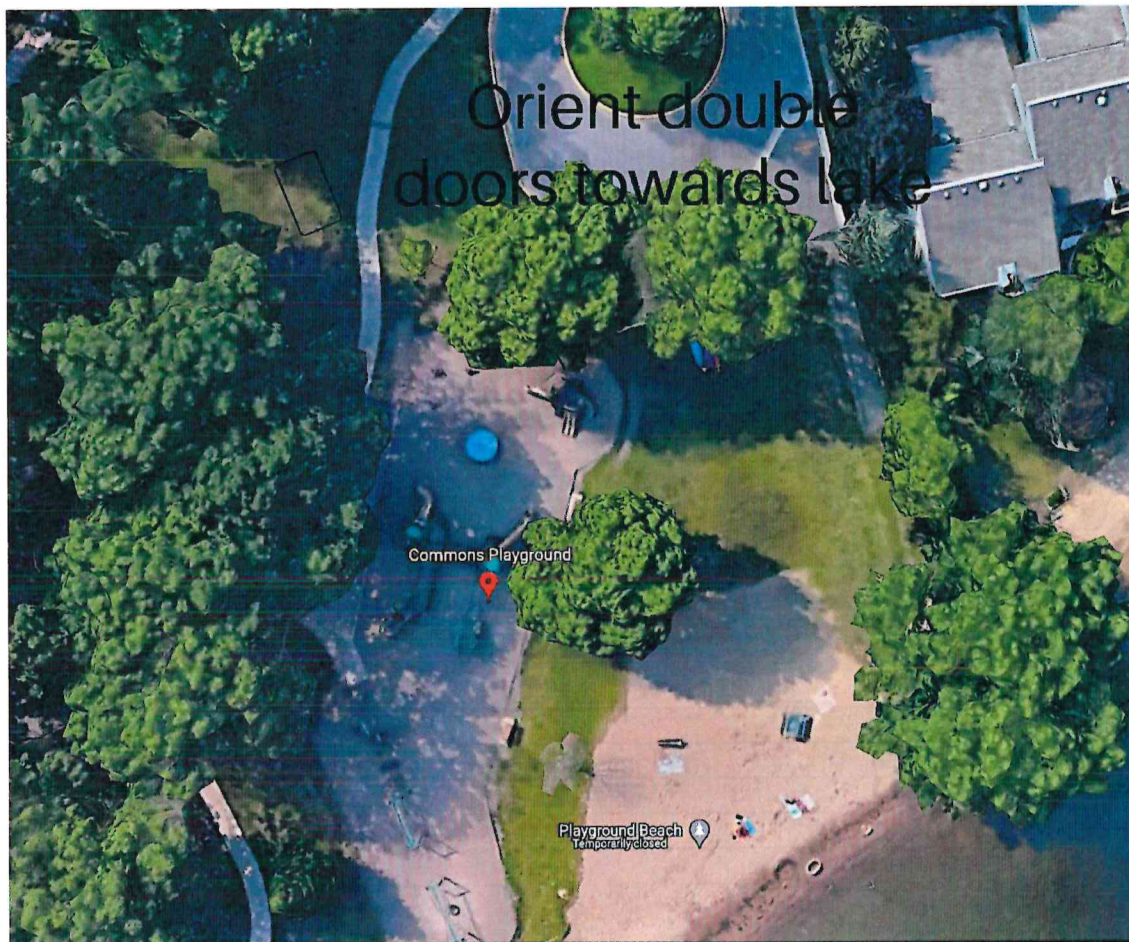
Sandwich Board Signage

Rental Equipment / Pricing

(Price does not include sales tax, booking fee or credit card fee)

Item	Description	Price
1	SUP 1 Hour Rental	\$30
2	SUP 2 Hour Rental	\$50
3	Kayak 1 Hour Rental	\$30
4	Kayak 2 Hour Rental	\$50
5	Bike 1 Hour Rental	\$25
6	Bike 2 Hour Rental	\$40
7	Bike ½ Day Rental	\$65
8	Bike Full Day Rental	\$90
9	Hybrid 1 Hour Rental	\$35
10	Hybrid 2 Hour Rental	\$50
11	Hybrid ½ Day Rental	\$75
12	Hybrid Full Day Rental	\$100

ATTACHMENT B
Map depicting "Leased Area"



Commission Review Table for The Commons and Port				
Reference to PVN Report or City Ordinance	Structures	HPC	PRC	Staff
P. 37 – Lists the Secretary of the Interior’s Standards for Rehabilitation, which state that new construction and additions should not destroy historic significance or affect integrity of the property. P. 19-25 – The docks and gates, Port of Excelsior Entry Plaza, concession cart, garbage enclosure, bandshell, concession stand building, and bathhouse are not character defining features, while the Blue Line Ticket Booth is considered a contributing structure.	- Demolition or construction of a new building or auxiliary structure. - Any addition, painting of a non-historic color, architectural details or other related exterior alterations, installation or removal of awnings, shutter, canopies or similar appurtenances; application or use of exterior materials of a different kind, type or texture than those already in use which would substantially cover one or more sides of the structure; exterior signs; change or alteration of a structure’s architectural style; alteration of roof line; relocation of; or total or partial demolition to an existing building or structure.	X	X	
P. 20 – The Blue Line Ticket Booth was deemed a contributing structure; a move would not further damage its historic integrity.	Changes (including alteration or relocation) to the Blue Line Ticket Booth.	X	X	
P. 21-23 – The concession cart, concession stand building, bathhouse, bandshell, and garbage enclosure are not character defining features.	Minor changes to the concession cart, concession stand building, bathhouse, bandshell, charter boat structure, or garbage enclosure including but not limited to painting (so long as it is an approved historic color and except for murals); changes in roofing material; replacement in kind (or substantially in-kind) of windows using the same or similar sash.		X	
P. 16 & 18 – The specific arrangement of and materials used to construct the docks are not character defining features.	In-kind repairs and/or replacement of docks and canoe racks, including reasonable substitution of similar items whose scale and location have not changed substantially		X	X

• P. 19 – The existing docks and their gates are not character defining features. • There is no reference to canoe racks within the PVN Report.	and will not impact character-defining aspects of the site (identified in the PVN Report).			
• P. 24 – The playground equipment does not meet the 50-year rule and is not a character defining feature.	In-kind repairs and/or replacement of playground items, including reasonable substitution of similar items whose scale and location have not changed substantially and will not impact character-defining aspects of the site (identified in the PVN Report).		X	X
• P. 24-25 – The general location of the baseball field and the baseball seating installed by the WPA are character defining features.	Changes to the permanent WPA-era seating for the baseball field or location of the baseball field.	X	X	
• P. 25 – The tennis and basketball courts are not character defining features.	Changes to the tennis and basketball courts.		X	
• P. 19 – The entry plaza in general is not a character defining feature. • While the entry plaza in general is not a character defining feature, the Port of Excelsior is characterized as a contributing property to the locally-designated Excelsior Downtown Historic District.	Changes to Port of Excelsior Entry Archway.	X	X	
• P. 33 – The marker is not a character defining feature of the Port of Excelsior; however, the HPC had requested that it be noted that while the marker does not meet the criteria to be a Character Defining Feature of the Port, it does contain important and relevant historical information and should be retained in the Port area. • There is no reference to the memorial bricks in the PVN Report.	Alteration or relocation of the geological marker at the Port area, and removal or relocation of memorial bricks.	X	X	
• Section 20-10 (c) of the City Code	Minor exterior repairs to non-character defining structures.			X
• Section 20-10 (c) of the City Code	Re-painting of buildings using the pre-approved historic colors.			X
• Section 20-10 (c) of the City Code	Work affecting only the interior of a structure (plumbing, insulation, flooring, etc.).			X

Reference to PVN Report or City Ordinance	Landscaping & Topography	HPC	PRC	Staff
P. 3 – Character defining features include topography including change in grade along Lake Street, the knolls and lawn area. P. 8 & 9 – The change in grade along Lake Street, the knolls, and the lawn are character defining features.	- Significant topographical changes to character-defining areas (including changes in grade along Lake Street, knolls, and the lawn area). - Removal, replacement, or installation of retaining walls.	X	X	
P. 3 & 10 – Tree cover and quality of tree cover on the knolls are character defining features.	Removal of mature trees (unless dead or dying, or undesirable invasive species--e.g., buckthorn).	X	X	
P. 10 & 12 – The manicured nature of the lawn and the presence of a lawn at the ‘wedge’ of Commons land west of Lake Street are character defining features.	Significant vegetative changes to the manicured lawn or the lawn west of Lake Street (not including the hedge).	X	X	
P. 12 – The hedge is not a character defining feature.	Removal of hedge at the ‘wedge’ of Commons land west of Lake Street.		X	
There is no reference to landscape gardens within the PVN Report.	Addition of landscape gardens.		X	X
P. 11 – The restored shoreline planting does not meet the 50-year rule and is not a character defining feature.	Shoreline restoration to stabilize the shoreline from erosion.		X	X
P. 3 & 18 – The shoreline and overall alignment are character defining features.	Significant changes in the overall alignment of the shoreline.	X	X	
Reference to PVN Report or City Ordinance	Circulation	HPC	PRC	Staff
P. 13 – The location of the path is a character defining feature.	Moving the location of the path parallel to Lake Street.	X	X	
P. 14 & 15 – The paths through the northwest portion of the park and the diagonal path at the corner of Water Street and Lake Street are not character defining features.	Moving the location of paths throughout the northwest portion of The Commons and the diagonal path at the corner of Water Street and Lake Street.		X	
P. 13 – The specific materials used to construct a path are not character defining features.	Changes to path materials.		X	

P. 13 – The existence of vertical connections at the Lake Street slope is a character defining feature, but the two extant sets of stairs are not.	Changes to vertical connections at Lake Street slope.	X	X	
P. 16 – Circulation at the Water Street Terminus, including Lake and Port access and the existence of public docks is a character defining feature.	Changes to Water Street Terminus (excluding docks and their configuration).	X	X	
Reference to PVN Report or City Ordinance	Accessories	HPC	PRC	Staff
P. 27 – Signage is not a character defining feature. - Section 20-10 (d) of the City Code indicates that signs are subject to administrative approval. - Section 20-10 (b) of the City Code indicates that City activities shall not require a site alteration permit provided that the commission shall review and make recommendations to the city council concerning city activity that could change the nature or appearance of a landmark or site.	Permanent signs identifying the park and park areas and structures.	X	X	
P. 27 – Signage is not a character defining feature. - Section 20-10 (d) of the City Code indicates that signs are subject to administrative approval.	City regulatory and instructional signage or temporary signs.			X
P. 26-31 – Benches, grills, light fixtures, picnic tables, signage, garbage and recycling receptables, fencing, water fountains, and electrical equipment are not character defining features.	Pre-approval of the design, materials, and manner of installation of parkscape items, including benches, planters, trash receptacles, light fixtures, park furniture and memorial plaques.	X	X	
P. 26-31 – Benches, grills, light fixtures, picnic tables, signage, garbage and recycling receptables, fencing, water fountains, and electrical equipment are not character defining features.	Installation of parkscape items, including benches, planters, trash receptacles, light fixtures, park furniture and memorial plaques.		X	X
P. 32 - “Sails” and “Debbie’s bench” are not a character defining features.	Proposed installation of new artwork, including murals.	X	X	
P. 32 - “Sails” and “Debbie’s bench” are not a character defining features.	Repair, relocation or alteration of existing artwork (mosaic bench and ‘sails’ sculpture).			X

Reference to PVN Report or City Ordinance	Overarching	HPC	PRC	Staff
• P. 7 – The overall landmass as well as the overall spatial organization of The Commons and the Port are character defining features. • P. 17 – A bathing beach located at the northwest portion of The Commons and the area currently known as the Children’s Beach are character defining features. • Commons Guidelines C.1 from the City of Excelsior Preservation Design Manual states that uninterrupted scenic views to Lake Minnetonka from the downtown should be preserved.	• Changes to Commons and Port property boundaries. • Changes to use pattern of active and passive spaces (including the location of the beaches). • Changes to scenic views from downtown to Lake.	X	X	
• Not addressed in the PVN Report.	Ordinary maintenance (lawn mowing, shrub trimming, re-painting with existing colors, etc.).			X



COMMUNITY
FOR
THE COMMONS

C202308

Gift Agreement

Introduction

When the Master Plan for the Excelsior Commons park was established and adopted in 2017, one of the recommendations in the Plan was the creation of more formal seating & gathering opportunities on the “knolls” of the park (see Exhibit A). More recently, the City of Excelsior and Community for The Commons have worked to identify sites and design guidelines for a limited number of seating installations on the “West Knoll” of the park. It is envisioned that these “seating installations” could be developed and funded through charitable donations.

Purpose

Teri Haugland, an Excelsior resident residing at 4 Maclynn Road, has indicated her interest in providing a charitable gift to support the development and maintenance of a seating installation located on the West Knoll of the Commons (the Project). The purpose of this document is to describe the nature and detail of the Project and to articulate the roles and responsibilities of the three parties to the Agreement: the City of Excelsior (Owner), Teri Haugland (Donor), and Community for The Commons (Gift Administrator).

Project Detail

The seating installation in question will be located on the West Knoll of the Commons. (See Exhibit B for a detailed location.) The installation will consist of two curved benches comprised of Corten steel and wooden slat seats and backs, set on a foundation of stabilized crushed stone, with native plantings and stone curbing. (Refer to Exhibit C for more details of the installation.)

The Project will be designed and implemented with the oversight of Damon Farber, a landscape architecture firm that has been integrally involved in the development of the Commons Master Plan as well as the Commons Pavilion and Commons Plaza projects. Construction of the hardscape and landscaping will be conducted by a landscape contractor selected and managed by Damon Farber. All work on the project shall be subject to review and approval by city staff.

Project Budget

The comprehensive budget for the Project is \$65,000, which is the same amount as the gift amount Donor has agreed to convey to Community for The Commons. (See Exhibit D for a description of the Project budget.) Community for The Commons will take receipt of the charitable funds and disburse them according to the Project budget which, as part of this Agreement, is agreed to by the parties.

Term

The term of the Agreement will be 10 years from the date of signing. The current donor (or appointee) retains the right of first refusal at the end of the Agreement term unless it has been determined by the city prior to that time that continued recognition is not in the best interest of the city as provided in the Donor Acknowledgment section below. The fee for renewal will be established by Community for The Commons and the City at that time.

Donor Acknowledgement

The City retains the right to approve name/dedication text at the Project and may remove the dedication plaque from installation if the Council determines that it is not in the best interest of the City to be publicly affiliated with the donor.

Dedication Plaque

The Donor's gift will be recognized with a plaque affixed to one of the benches at the installation with the following inscription:

A place for reflection, connection and appreciation.

Dedicated by:

Teri Haugland with gratitude for the lake, the park and the City of Excelsior

Note: room will be left on the plaque for future donors and dedications to be listed under Teri Haugland.

Unspent Funds

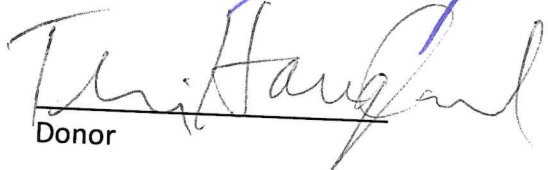
Should the Project be completed for less than the amount of the Donor's gift, unspent funds will be directed to Community for the Commons to support future projects in the park.

Project Timeline

Upon signing of this Agreement, the Project will commence immediately. Completion of the installation is targeted for late summer / early fall of 2023.

Agreed upon this 6th day of June, 2023.


City of Excelsior


Donor

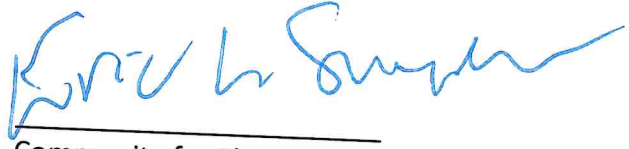

Community for The Commons

Exhibit B – Project Location



Exhibit D – Project Budget

SOFT COSTS		
Item	Description	Cost
1	Concept Design & Cost	\$5,500
2	Construction Documents	\$10,000
	Construction Drawings	
	Construction Specifications	
3	Construction Administration	\$4,500
	Cost estimation	
	Bidding / contractor selection	
	Permitting	
	Construction observation (meetings, site visits, coordination)	
		\$20,000

CONSTRUCTION + MAINTENANCE		
Item	Description	Cost
1	Benches with delivery	\$15,260
2	Bench installation	\$10,000
3	Hardscape	
	Stone curb	\$4,290
	Stone edger	\$3,800
	Crushed stone surfacing	\$3,000
4	Planting	
	Planting soil and ground preparation	\$650
	Plant material + install	\$1,000
5	Dedication Plaque	
	Plaque and installation	\$1,000
6	Construction contingency	\$3,000
7	10 years project maintenance	\$3,000
		\$45,000

TOTAL PROJECT COST		\$65,000
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MEMORANDUM

5(c)- Parks and Recreation Commission

Re: Council Goals

Date: April 15, 2025

Tim Amundsen, Public Works Director

To: Parks and Recreation Commission

From: Kevin Quinn, Parks Manager

The City Council provided staff with the objective for 2025 for the Parks and Recreation Commission. Below is a table that was brought forward to the City Council at their April 7th City Council Work Session:

Parks and Recreation Commission												
Item	Action Steps	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Council Question	
Commons Use Policy												
<u>Objective:</u> The City will have a policy that clearly guides the use of The Commons	CC reviews and provides feedback on the draft policy	CC										
	The PNR refines policy											
	CC reviews and approves policy											
Excelsior-Studer Park											Delay until 2026	
Item	Action Steps	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Council Question	
Programming The Commons	The Council is looking for events that are a couple hours in length - should this be assigned to a special event person? Should PNR identify partners to work with us on programming? What are the action steps for this item? Look at restructuring the special event fees.										Does the Council want more programming at the Commons? If so, what does that look like? For example, movies in the park, more weddings, winter activities, etc.?	
Oak Hill Cemetery Improvements	PNR is actively working on the potential of the installation of a columbarium to create more spaces and generate revenue.										The needed cemetery improvements have already been identified, should PNR work on creating an implementation plan?	

Following discussion, the City Council made recommendations for the PNR Commission's objectives.

For The Commons Use Policy, the Council was aligned with refining the policy and bringing back to Council for review. In terms of special events, the Council recommended looking at the current special event policy and potentially making use amendments to it as it exists today rather than creating a separate policy for The Commons. The PNR Commission will review the Special Event Policy at an upcoming meeting.

Excelsior-Studer Park and recommended projects or changes of use were to be considered a 2026 goal following Council direction. The Commission should discuss Studer Park to begin developing ideas and a process as to how to make recommendations for the space moving forward.

For Programming in The Commons, the City Council had a lot of feedback. The City Council would like the PNR Commission to work on potential community events such as movies in The Commons, low impact uses that generate revenue to be used in The Commons, temporary or seasonal winter programming that activates The Commons, and community-oriented events that could be charitable to The Commons such as a charity baseball/softball game. In working on the special event policy, the PNR Commission should also look at developing fee structures for rental of the Pavilion and Plaza to help market and generate revenue through usage of these spaces. The City Council also discussed potentially lowering fees for permitting winter activities. The Council also was amenable to revisiting the sauna proposal for the upcoming winter season which could be facilitated by staff.

For the Oak Hill Cemetery, the Council would like the PNR Commission to develop an implementation plan for future improvements at the cemetery to include pathways, erosion control, gravestone restoration, and other items. The implementation plan would be a phased approach that would be included in the Parks budget and be implemented with certain activities scheduled in the capital improvement plan annually.

Action:

Review the direction from the City Council regarding the 2025 PNR Commission objectives. Discuss the approach and how to schedule implementation of these objectives into the upcoming PNR Commission meeting schedule for 2025..



MEMORANDUM

Re: 5(d)- Arbor Day Celebration

Date: 4/15/2025

Tim Amundsen, Public Works Director

To: Parks and Recreation Commission

From: Kevin Quinn, Parks Manager

For our 2025 Arbor Day Celebration Event, The City of Excelsior is teaming up with Tree Trust to plan a tree planting event at SoHi Community Park located at 881 3rd Ave.

City staff have met with representatives from SoHi Community Park and Tree Trust to review the site and to develop a plan to plant approximately 8 trees on the grounds near the playground and along the property border to better screen Highway 7.

The date has yet to be determined, but we are targeting May or June 2025.

Currently, the Uncommon Gardeners and Bartlett Tree Experts are hoping to have a presence at the event.

Action:

Please provide guidance to staff for additional event improvements and community engagement efforts.

**City of Excelsior
Park Capital Improvement Fund
As of 03/31/2025**

	<u>2025 Budget</u>	<u>MARCH Actual</u>	<u>2025 YTD Actual</u>
PARK IMPROVEMENT FUND			
Park Improvements			
Revenue			
Interest Earnings	10,000		-
County Grants			
Contributions and Donations	40,000		
Charitable Gambling - Designated Donations	15,000	3,446	7,146
Park Dedication Fees	10,000		
Miscellaneous (Winter Storage)	21,755	7,795	7,795
Transfers From Other Funds	-	-	-
	<u>96,755</u>	<u>11,241</u>	<u>14,941</u>
Expenditures			
Professional Services	10,000		
Engineering Fees	1,500		
Other Equipment	50,000	542	13,334
Charitable Gambling Expenditures - C4C			
Improvements Other Than Bldgs	248,000		
Improvements - Playground Equip			
Improvements - Charitable Gambling			
Transfers To Other Funds			
	<u>309,500</u>	<u>542</u>	<u>13,334</u>
Net Change in Fund Balances	<u>(212,745)</u>	<u>10,699</u>	<u>1,607</u>
Cash Balances			
Cash Balance -03/31//2025			800,421
Designated for Playground Equipment			3,926
Committed for Commons Master Plan - Charitable Gambling Projects*			138,752
Committed for Commons Master Plan			-
Balance Available for Park Projects			<u>657,743</u>
Fund Balance			<u>800,421</u>