

SPECIAL COUNCIL MEETING – AGENDA #46

If due to a disability, you need auxiliary aids or services during a City Council Meeting, please provide the City with 72 hours' notice by calling 763-493-8141 or faxing 763-493-8391.

Our Vision: Brooklyn Park, a thriving community inspiring pride where opportunities exist for all.

Our Brooklyn Park 2025 Goals:

• A united and welcoming community, strengthened by our diversity • Beautiful spaces and quality infrastructure make Brooklyn Park a unique destination • A balanced economic environment that empowers businesses and people to thrive • People of all ages have what they need to feel healthy and safe • Partnerships that increase racial and economic equity empower residents and neighborhoods to prosper • Effective and engaging government recognized as a leader

I. ORGANIZATIONAL BUSINESS

- 1. CALL TO ORDER/ROLL CALL**
- 2. APPROVAL OF AGENDA**

II. STATUTORY BUSINESS AND/OR POLICY IMPLEMENTATION

The following items relate to the City Council's long-range policy-making responsibilities and are handled individually for appropriate debate and deliberation. (Those persons wishing to speak to any of the items listed in this section should fill out a speaker's form and give it to the City Clerk. Staff will present each item, following in which audience input is invited. Discussion will then be closed to the public and directed to the council table for action.)

4. CONSENT (All items listed under Consent, unless removed from Consent in agenda item 2, shall be approved by one council motion.) Consent Agenda consists of items delegated to city management or a commission but requires council action by State law, City Charter or city code. These items must conform to a council approved policy, plan, capital improvement project, ordinance or contract. In addition, meeting minutes shall be included.

- 4.1** Award Bid to Tierney Brothers for City Hall Audio-Visual Package and Amend the 2020-2024 Capital Improvement Plan and 2020 Heritage Fund Budget to include \$223,538 for City Hall Audio-Visual Package
 - A.** RESOLUTION
 - B.** WOLD ARCHITECTS & ENGINEERS AWARD RECOMMENDATION LETTER/BID TAB
- 4.2** Authorize Mayor and City Manager to Enter into an Agreement for Surveying and Engineering Services for 93rd Avenue Reconstruction, CIP 4054-20.
 - A.** RESOLUTION

7. GENERAL ACTION ITEMS

- 7.1** Authorize Approval of a Ground Lease Agreement Between the City of Brooklyn Park and Excell Academy For Higher Learning, Inc. for the Development of a Parking Lot and Recreational Amenities on City-Owned Property (Fair Oaks Park)
 - A.** RESOLUTION
 - B.** GROUND LEASE AGREEMENT

III. ADJOURNMENT

Since we do not have time to discuss every point presented, it may seem that decisions are preconceived. However, background information is provided for the City Council on each agenda item in advance from city staff and appointed commissions, and decisions are based on this information and past experiences. If you are aware of information that has not been discussed, please raise your hand to be recognized. Please speak from the podium. Comments that are pertinent are appreciated. Items requiring excessive time may be continued to another meeting.

City of Brooklyn Park Request for Council Action

Agenda Item:	4.1	Meeting Date:	December 16, 2019
Agenda Section:	Consent	Originating Department:	Operations and Maintenance IT Division
Resolution:	X	Prepared By:	Wold Architects Keith Ehrlichman, IT Manager Dan Ruiz, O&M Director
Ordinance:	N/A		
Attachments:	2	Presented By:	Dan Ruiz
Item:	Approve the Requests from One Diversified and EPA Audio Visual to Withdraw their Bid for City Hall Audio-Visual Package due to Bidding Errors and to Award the Bid to Tierney Brothers for City Hall Audio-Visual Package and Amend the 2020-2024 Capital Improvement Plan and 2020 Heritage Fund Budget to include \$223,538 for City Hall Audio-Visual Package		

City Manager's Proposed Action:

MOTION _____ SECOND _____ TO WAIVE THE READING AND ADOPT RESOLUTION #2019-_____ TO APPROVE THE REQUESTS FROM ONE DIVERSIFIED AND EPA AUDIO VISUAL TO WITHDRAW THEIR BID FOR CITY HALL AUDIO-VISUAL PACKAGE DUE TO BIDDING ERRORS AND TO AWARD THE BID FOR CITY HALL AUDIO-VISUAL PACKAGE TO TIERNEY BROTHERS AND AMEND THE 2020-2024 CAPITAL IMPROVEMENT PLAN AND 2020 HERITAGE FUND BUDGET TO INCLUDE \$223,538 FOR CITY HALL AUDIO-VISUAL PACKAGE.

Overview:

This request is to award the bid to Tierney Brothers for audio-visual (AV) equipment as part of the rehabilitation of City Hall. On February 5, 2018, the City Council authorized staff to prepare plans and specifications and go out for bids on this project. On December 3, 2019, seven bids were received ranging from \$195,458 to \$265,000. The two lowest bidders, One Diversified (\$195,458) and EPA Audio Visual (\$220,109) both requested to withdraw their bids because of bidding errors. The lowest responsible bidder was Tierney Brothers, bidding \$223,538.

The current City Hall building was constructed in 1991 to be a minimum 50-year structure. Nearing mid-life, it has undergone several minor modifications to its floorplan and several remodeling projects including Council Chambers AV equipment, the roof, and conference rooms.

The AV equipment in existing conference rooms (except Lampi) was installed in 2008. It was expected to last approximately 10 years and needs replacement. AV equipment will also be added to the new conferencing suite on the second floor of the city hall addition. AV equipment in the council chambers was installed in 2012 and is tentatively scheduled for replacement in 2021 for approximately \$275,000.

The City Hall rehabilitation is part of the approved 2019-2023 Capital Improvement Plan (CIP) and is funded by the Heritage Fund. The City Council discussed the City Hall rehabilitation project on August 28, November 6, 2017, February 5, 2018, February 4, and May 13, 2019.

Primary Issues/Alternatives to Consider:

The consultant, Wold Architects & Engineers, IT Division and Operations and Maintenance staff recommend the City Hall AV project be awarded to Tierney Brothers as the lowest responsible bidder meeting all specifications.

The Council has the following alternatives to consider:

1. Authorize the bid award as recommended
2. Not authorize the bid award and redirect staff

Budgetary/Fiscal Issues:

The cost for AV equipment is \$223,538 and is part of the city hall rehabilitation project. The adopted version of the 2020-2024 CIP (adopted December 9, 2019) did not include the cost for AV equipment because bids were not received until December 3, 2019 and bidding errors led to a delay in the recommendation for bid award. Now that we have the actual cost, we are requesting to amend the 2020 CIP and 2020 Heritage Fund budget to include this cost. The potential cost of new AV equipment was discussed with the city council on May 13, 2019. Total city hall project cost is still estimated at approximately \$5,664,500, which is consistent with the estimate presented to the city council on May 13th.

Attachments:

- 4.1A RESOLUTION
- 4.1B WOLD ARCHITECTS & ENGINEERS AWARD RECOMMENDATION LETTER/BID TAB

RESOLUTION #2019-

RESOLUTION TO APPROVE THE REQUESTS FROM ONE DIVERSIFIED AND EPA AUDIO VISUAL TO WITHDRAW THEIR BID FOR CITY HALL AUDIO-VISUAL PACKAGE DUE TO BIDDING ERRORS AND TO AWARD THE BID FOR CITY HALL AUDIO-VISUAL PACKAGE TO TIERNEY BROTHERS AND AMEND THE 2020-2024 CAPITAL IMPROVEMENT PLAN AND 2020 HERITAGE FUND BUDGET TO INCLUDE \$223,538 FOR CITY HALL AUDIO-VISUAL PACKAGE.

WHEREAS, City Hall was originally constructed in 1991 and needs rehabilitation; and

WHEREAS, the Audio-Visual (AV) equipment in existing conference rooms (except Lampi) was installed in 2008, was expected to last 10 years and needs replacement; and

WHEREAS, AV equipment will also be added to the new conferencing suite on the second floor of the city hall addition; and

WHEREAS, AV equipment in the Council Chambers was installed in 2012 and is tentatively scheduled for replacement in 2021 for approximately \$275,000; and

WHEREAS, total city hall rehabilitation project costs including bid alternates, architectural fees, testing, contingency, and AV equipment is estimated at \$5,664,500; and

WHEREAS, bids for AV equipment were received on December 3, 2019 and seven (7) bids were submitted ranging from \$195,458 to \$265,000; and

WHEREAS, the lowest responsible bid of \$223,538 is from Tierney Brothers.; and

WHEREAS, the lowest responsible bid is recommended for approval by Wold Architects & Engineers, IT Division and Operations and Maintenance staff.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brooklyn Park to approve the requests from One Diversified and EPA Audio Visual to withdraw their bids for city hall audio-visual package due to bidding errors and to award the bid for city hall audio-visual package to Tierney Brothers in the amount of \$223,538 and to amend the 2020-2024 Capital Improvement Plan and 2020 Heritage Fund Budget to include \$223,538 for the city hall audio-visual package

December 4, 2019

Dan Ruiz, Director of Operations and Maintenance
City of Brooklyn Park
5200 85th Avenue North
Brooklyn Park, Minnesota 55443

Re: Brooklyn Park City Hall AV Bid Package
Commission No. 192114

Dear Dan:

On Tuesday, December 3, 2019 at 2:00pm bids were received for the Brooklyn Park City Hall AV Bid Package at the City Hall. A total of seven (7) bids were received, see enclosed bid tabulation. There were two low bidders One Diversified and EPA Audio Visual with bid errors due to inadequate product selection for the AV components. See attached letter from both One Diversified and EPA Audio Visual for their request to withdraw their bid.

Tierney Brothers from St. Paul, MN submitted the next low bid with the correct product selection for the AV components. Tierney Brothers from St. Paul, MN submitted a bid amount of \$223,538, this amount is under the estimated budget for the project.

We recommend council approve the requests from One Diversified and EPA Audio Visual to withdraw their bid, and to award the AV contract to Tierney Brothers in the amount of \$223, 538.

We have contacted Tierney Brothers and they are comfortable with their bid and are qualified for this project.

Sincerely,

Wold Architects and Engineers

A handwritten signature in black ink, appearing to read 'John McNamara', with a long horizontal flourish extending to the right.

John McNamara | AIA, LEED AP
Partner

Enclosure

cc: Melissa Stein (letter only)
Gordy Fransen (letter only) Contract File (letter only)



Project Name:
Commission No.:
Date:
Time:

Brooklyn Park City Hall AV Bid Package
192114
12/3/2019
2:00pm

BID TABULATION
Wold Architects and Engineers
332 Minnesota Street, Suite W2000
Saint Paul, Minnesota 55101
651.227.7773 Fax: 651.223.5646

Bidders Name	Addendum Numbers	Bid Security	MN Responsible Contractor	Base Bid	Remarks
One Diversified 1410 Energy Parkway Drive, Suite 16 Saint Paul, MN 55108 Phone: 800-448-8439	X	X		\$195,458.00	
EPA Audio Visual, Inc. 7910 State Highway 55 Rockford, MN 55373 Phone: 763-477-6931	X	X		\$220,109.00	
Timney Brothers, Inc. 1771 Energy Park Drive, Suite 100 Saint Paul, MN 55108 Phone: 612-331-3424	X	X		\$223,538	
Aufdenworld Corporation DBA Excel AV Group 2750 Niagara Lane N Plymouth, MN 55447 Phone: 763-233-7700	X	X		\$234,429.00	
Electronic Design Company 3225 E Hennepin Avenue Minneapolis, MN 55413 Phone: 612-355-2300	X	X		\$256,761.73	
Video Services, Inc 211 Mohr Drive Mankato, MN 56001 Phone: 507-625-1650	X	X		\$260,114.00	
Olympic Communications, Inc. 8201 Central Avenue NE, Suite A Minneapolis, MN 55432 Phone: 763-717-7000	X	X		\$265,000.00	



Melissa Stein <mstein@woldae.com>

FW: Brooklyn Park

Bradley Johannsen <bjohannsen@woldae.com>

Wed, Dec 4, 2019 at 3:10 PM

To: Melissa Stein <mstein@woldae.com>

Cc: John McNamara <jmcnamara@woldae.com>, Gordy Fransen <gfransen@woldae.com>

From: Dave Ewing <dewing@diversifiedus.com>**Sent:** Wednesday, December 4, 2019 3:07 PM**To:** bjohannsen@woldae.com**Subject:** Brooklyn Park

Hi Brad

Diversified is withdrawing our proposal for the AV system reasoning is bid error, Diversified designed the system around Crestron AV over IP solution instead of Extron NAV system

We are withdrawing with the understanding we will not be penalized

Thank You

Dave Ewing

Dave Ewing**Director MN, AR , UT**

T 952-486-6544 | C 651-260-6140

1410 Energy Park, St Paul MN 55108

dewing@diversifiedus.com | www.diversifiedus.com

Customer Service 800.448.8439

****Please note my new Diversified email address below. Our CompView and Diversified emails are both functional, so we will not miss your messages.**



This email, including any attachments or previous messages, may contain material that is confidential or proprietary to Diversified and its associates. It is meant solely for use by the intended recipient. Any review, reliance or distribution of such material by others, or forwarding of such material without express permission, is strictly prohibited. If you are not the intended recipient, please notify the sender immediately and destroy all copies.



Melissa Stein <mstein@woldae.com>

FW: EPA bid

Bradley Johannsen <bjohannsen@woldae.com>

Wed, Dec 4, 2019 at 3:05 PM

To: Melissa Stein <mstein@woldae.com>, John McNamara <jmcnamara@woldae.com>, Gordy Fransen <gfransen@woldae.com>

See below, and I have acknowledged receipt to him.

From: Shane King <Shane.King@epaaudio.com>**Sent:** Wednesday, December 4, 2019 2:42 PM**To:** bjohannsen@woldae.com**Cc:** gfransen@woldae.com**Subject:** EPA bid**Importance:** High

Hello Brad,

EPA is formally requesting to withdraw our bid response to the City of Brooklyn Park AV Package due to a bidding error.

Please confirm receipt/acknowledgement of the request.

Thank you.

Shane

Shane A King, CTS

Director of Sales & Marketing

EPA Audio Visual, Inc.

7910 State Highway 55

Rockford, MN 55373

Main: 763-477-6931

Cell: 612-385-6734

shane.king@epaaudio.com



City of Brooklyn Park Request for Council Action

Agenda Item:	4.2	Meeting Date:	December 16, 2019
Agenda Section:	Consent	Originating Department:	Operations and Maintenance Engineering Services Division
Resolution:	X	Prepared By:	Jesse Struve, P.E., City Engineer
Ordinance:	N/A		
Attachments:	1	Presented By:	Jesse Struve, P.E., City Engineer
Item:	Authorize Mayor and City Manager to Enter into an Agreement for Surveying and Engineering Services for 93 rd Avenue Reconstruction, CIP 4054-20.		

City Manager's Proposed Action:

MOTION _____, SECOND _____, TO WAIVE THE READING AND ADOPT RESOLUTION #2019-____ AUTHORIZING MAYOR AND CITY MANAGER TO ENTER INTO AN AGREEMENT FOR SURVEYING AND ENGINEERING SERVICES FOR 93RD AVENUE RECONSTRUCTION, CIP 4054-20.

Overview:

On December 9, 2019, the City Council authorized staff to reconstruct 93rd Avenue from Zane Avenue to Regent Avenue and replace the sidewalk with a trail on the north side of 93rd Avenue from Regent Avenue to Noble Parkway in 2020. Two engineering firms are working to complete quotes to perform the necessary survey and engineering to finalize plans by April 2020. Unfortunately, the firms were not able to complete these quotes in time for this meeting.

To meet the schedule outlined below, the engineering firm will need to start this as soon as possible. The next City Council meeting is on January 6th, and we cannot wait until that meeting to begin the project. The estimated fees to do the design and survey is approximately \$320,000. Staff is asking Council to authorize the Mayor and City Manager to accept the proposal that best meets the City's needs between the two firms.

The proposed schedule for the project is as follows:

- December 2019 – Survey and Begin Plans and Specifications
- January 2020 – Neighborhood Meeting to Present Proposed Layout
- April 2020 – Open Bids
- May 2020 – Start Construction
- October 2020 – Complete Construction

Primary Issues/Alternatives to Consider: N/A

Budgetary/Fiscal Issues:

The project was included in the adopted 2020-2024 Capital Improvement Plan (CIP) for a scheduled 2020 completion as Project No. 4054-20 with an estimated cost of \$3,240,000. In 2020, project costs will be paid using reallocated funds from the General Fund and transfers from Economic Development Authority and Housing and Redevelopment Authority. The remaining balance of the project will be funded by an interfund loan to be paid back by the General Fund yearly. Estimated yearly payments will be \$290,000 for the next 15 years and will be factored into future budgets.

Attachments:

4.2A RESOLUTION

RESOLUTION #2019-

RESOLUTION AUTHORIZING MAYOR AND CITY MANAGER TO ENTER INTO AN
AGREEMENT FOR SURVEYING AND ENGINEERING SERVICES FOR
93RD AVENUE RECONSTRUCTION, CIP 4054-20

WHEREAS, the City Engineer will prepare plans for the following improvements to wit:

CIP 4054-20: 2020 Street Reconstruction Project along 93rd Avenue bounded by Zane Avenue on the west and Regent Avenue on the east.

WHEREAS, said project is included in the City's 2020-2024 CIP as CIP 4054-20; and

WHEREAS, the City Council authorized staff to reconstruct 93rd Avenue from Zane Avenue to Regent Avenue in 2020; and

WHEREAS, the City Engineer is receiving quotes from two engineering firms to provide the survey and engineering costs for the project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brooklyn Park.

1. The City of Brooklyn Park authorizes the City Manager to enter into an agreement for surveying and engineering services for 93rd Avenue Reconstruction and Trail Improvement, CIP 4054-20.

City of Brooklyn Park Request for Council Action

Agenda Item:	7.1	Meeting Date:	December 16, 2019
Agenda Section:	General Action Items	Originating Department:	Recreation and Parks
Resolution:	X	Prepared By:	Jody Yungers, Director, Recreation and Parks; Jennifer Jordan, Senior Project Manager
Ordinance:	N/A		
Attachments:	2	Presented By:	Jennifer Jordan, Senior Project Manager
Item:	Authorize Approval of a Ground Lease Agreement Between the City of Brooklyn Park and Excell Academy For Higher Learning, Inc. for the Development of a Parking Lot and Recreational Amenities on City-Owned Property (Fair Oaks Park)		

City Manager's Proposed Action:

MOTION _____, SECOND _____, TO WAIVE THE READING AND ADOPT RESOLUTION 2019-_____ APPROVING A GROUND LEASE AGREEMENT BETWEEN THE CITY OF BROOKLYN PARK AND EXCELL ACADEMY FOR HIGHER LEARNING, INC. FOR THE DEVELOPMENT OF A PARKING LOT AND RECREATIONAL AMENITIES ON CITY-OWNED PROPERTY (FAIR OAKS PARK).

Overview:



Since August 2019, Excell Academy For Higher Learning, Inc., a charter school, and the city have been in discussions about purchase and/or use of Fair Oaks Park for Excell Academy's school campus expansion. The school is currently leasing the 6510 Zane building but is in the process of acquiring the property with plans to add an additional parking lot, improved bus circulation, and recreational amenities.

On December 9, 2019 after much consideration and discussion on whether to sell and vacate Fair Oaks Park, the City Council approved a Memorandum of Understanding (MOU) between the City and Excell Academy for Higher Learning, Inc. that outlined major points of a lease agreement for Fair Oaks Park.

Primary Issues/Alternatives to Consider:

The major points in the ground lease are as follows:

- Lease term of 40 years, plus three extension options of 5 years each.
- Nominal rental payment (i.e. \$1.00 per year).
- Restriction on use: Can only be used for parking, playground, and sports fields and related incidental facilities, and all of those uses are conditioned on Excell Academy remaining in operation as a public charter school.

- Excell Academy will maintain the site. Excell can restrict use to Excell pupils/staff/families during school hours and school extracurriculars, but otherwise the facilities will be open to public use.
- The city will have the right to terminate the lease if (a) the Excell facility located south of and adjacent to the site (the "Schoolhouse") ceases being used as a public charter school and such cessation continues for a period of three years following notice by the city; (b) if the Schoolhouse should be occupied and used by a for-profit user or a private, fee-based school; or (c) if the facilities are being used in violation of the terms of the Lease, including but not limited to, use of the facilities by third

parties. Upon termination or expiration of the lease, the city will be the owner of the facilities and will not be required to compensate Excell for the cost of the facilities.

- Subject to site plan approval by the city, Excell will install the facilities at Excell's sole cost and expense, provided that the lease will restrict Excell's use of the site to parking/vehicular traffic, playground, sports field, and recreational use. The facilities must be installed by Excell no later than December 31, 2020. No other improvements or facilities may be constructed on the site by Excell without the permission of the city.

Budgetary/Fiscal Issues:

The city retains ownership of the park but Excell Academy agrees to maintain the park in conjunction with their improvements.

Attachments:

7.1A RESOLUTION

7.1B GROUND LEASE AGREEMENT

RESOLUTION #2019-

RESOLUTION APPROVING A GROUND LEASE AGREEMENT
BETWEEN THE CITY OF BROOKLYN PARK AND EXCELL ACADEMY FOR HIGHER LEARNING, INC.
FOR THE DEVELOPMENT OF A PARKING LOT AND RECREATIONAL AMENITIES ON CITY-OWNED
PROPERTY (FAIR OAKS PARK)

WHEREAS, the City of Brooklyn Park ("City") is the owner of a parcel of land commonly known as Fair Oaks Park; and

WHEREAS, Excell Academy For Higher Learning, Inc., a charter school, and the owner of a parcel land adjacent to a portion of Fair Oaks Park, desires to enter into a long-term lease agreement for a portion of the Park; and

WHEREAS, the City finds that executing a ground lease agreement between the City and Excell Academy For Higher Learning, Inc. would serve a public purpose by providing space to develop parking, circulation, and a playground area for the school while preserving Fair Oaks Park as public park land; and

WHEREAS, the City and Excell Academy For Higher Learning, Inc. have negotiated a ground lease agreement that addresses the needs of both parties;

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Brooklyn Park as follows:

1. The ground lease agreement is approved and the appropriate City officials are authorized to sign the ground lease and to take all necessary steps to implement the ground lease.
2. The appropriate City officials are authorized to execute all appropriate documents on behalf of the City to facilitate the transactions and to take all steps and actions necessary or convenient to accomplish the intent of this Resolution.

GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (“Lease”) is entered into and effective as of December 16, 2019, by and between the City of Brooklyn Park, a Minnesota municipal corporation (the “**Landlord**”) and Excell Academy of Higher Learning, Inc., a Minnesota nonprofit corporation and public charter school (the “**Tenant**”).

WHEREAS, Landlord and Tenant have executed a Memorandum of Understanding, dated December 10, 2019 (“**MOU**”), a copy of which is attached as Exhibit B, describing, among other things, the general terms under which Landlord has agreed to lease the Premises (as defined herein) to Tenant and under which Tenant intends to construct or install, operate, use, and maintain certain improvements (the “**Improvements**”), including, paved parking areas together with paved traffic areas for vehicular ingress/egress, playground equipment, landscaping, sports field(s), and other improvements as authorized by Landlord for use by the public and by Tenant in connection with its operation of a public charter school on a parcel of real property located immediately south of and adjacent to the Premises, and operate the Improvements; and

WHEREAS, Landlord and Tenant wish to provide for a ground lease of the real property legally described in Exhibit A attached hereto (the “**Premises**”) on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual terms and conditions contained herein, the parties agree as follows:

1. **Premises.** Landlord is, or prior to the Effective Date will become the owner of the Premises. Pursuant to this Lease, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises. The Premises are park land, commonly known as Fair Oaks Park. The legal description of the Premises is contained in the attached Exhibit A.

2. **Term.**

2.1. The term of this Lease (“**Term**”) is approximately Forty (40) years, commencing on the Effective Date and expiring on June 30, 2060, unless earlier terminated in accordance with this Lease. When used in this Lease, the term “**Lease Year**” means each 12 month period ending on June 30, provided, however, that the first Lease Year will begin on the Effective Date and end on June 30, 2021, and each successive twelve-month period beginning on July 1 thereafter during the Term will be the next Lease Year. The Effective Date (“**Effective Date**”) is the date of this Lease. Tenant’s right to occupy the Premises will commence on the Effective Date.

2.2. Tenant has the right to extend the Term of this Lease for up to Three (3) consecutive period of Five (5) years each. Tenant will be deemed to have exercised each extension unless, prior to the end of the then-effective Term, Tenant provides written notice to Landlord that Tenant has elected to NOT extend the Term of this Lease beyond the then-applicable expiration date.

2.3. This Lease may be terminated by either party if the other party fails to substantially comply with any of its material obligations under this Lease and does not to cure any such failure within 30 days after written demand from the non-failing party to do so, or if the event is by its nature incurable within 30 days, the failing party does not, within such 30-day period, provide assurances reasonably satisfactory to the other party that the failure will be cured as soon as reasonably possible.

2.4. Notwithstanding anything to the foregoing to the contrary, Landlord may elect to terminate this Lease by written notice to Tenant if the property adjacent to the Premises and located at 6501 Zane Avenue North, Brooklyn Park, Minnesota, 55429, which is currently occupied and used by Tenant as a public charter school (the “**Excell Academy Schoolhouse**”), ceases being occupied and used as a public charter school, and remains unused as a public charter school for a continuous period of the longer of 5 years or the next July 1 following the expiration of 5 years after Landlord’s written notice.

3. **Rent.** Rent during the Term is in the annual amount \$1.00 per year, payable annually in advance. The Tenant may, at its option, elect to prepay rent for any number of future years.

4. **Use of Premises.**

4.1. Tenant will use the Premises only for the following purposes: as an outdoor facility for parking, vehicular traffic, playground, outdoor education, sports and recreation, and any other uses that are authorized by Landlord. Tenant will further comply with such legal requirements of the State of Minnesota and any municipal or public authorities which relate to Tenant’s use and occupancy of the Premises.

4.2. Tenant will, at Tenant’s sole cost and expense, perform all bituminous repair, snow plowing, grass mowing, tree, turf and landscaping maintenance, and playground equipment maintenance on the entire Premises as reasonably required by Landlord.

4.3. It is the intention of the parties that the Premises will be available for use by the public subject to the terms of the MOU. To that end, Tenant may erect a gate or other openable barrier that Tenant may close during Tenant’s use of the Premises for public charter school purposes, provided that Tenant will open such gate or barrier when Tenant is not using the Premises for public charter school purposes. Tenant shall keep the Premises open and available for use by the general public during non-school hours.

5. **Covenants of Tenant.** Tenant covenants to Landlord that:

5.1. Tenant will ensure that sufficient funds are maintained in its facility repair and replacement reserve to be allocated for the operation, maintenance, and repair of the Improvements.

5.2. Subject at all times to Tenant’s need for the Premises for Tenant’s operations as a public charter school, including, without limitation, curricular, extracurricular, and recreational uses by Tenant and Tenant’s students and their families and use of the Premises

by the general public as provided for in this Lease, the parties may agree to allow additional partners to use the Premises such as the following:

- (a) Brooklyn Park Recreation and Parks Department; or
- (b) Brooklyn Park Athletic Association; or
- (c) Other nonprofits that may be potential users of park space.

6. **Covenants of Landlord.** Landlord covenants to Tenant that:

6.1. **Right to Lease.** Landlord has the legal power and authority to lease the Premises on the terms set forth in this Lease.

6.2. **Title.** On the Effective Date, Landlord will have good and marketable legal title to the Premises, free and clear of any liens, encumbrances or interests other than have been previously disclosed to and accepted by the Tenant in writing, or are provided for in the MOU.

6.3. **Quiet Enjoyment.** Tenant, upon paying the rent and performing all of the covenants of this Lease, may quietly have, hold and enjoy the Premises during the Term.

7. **Real Estate Taxes and Special Assessments.** The Landlord represents that as of the Effective Date of this Lease the Premises are tax exempt. If Tenant's use of the Premises results in the imposition of real estate taxes, the Tenant will be responsible for the payment of any such taxes. The Tenant will not be responsible for the payment of real estate taxes assessed against the Premises for any other reason. The Landlord will be responsible for the payment of any installments of special assessments levied against the Premises during the term of the lease, including the payment of any special assessments resulting from the initial installation of any sanitary sewer and water systems constructed to serve the Premises. Tenant will have the right to contest or challenge any taxes or special assessments levied against the Premises.

8. **Alterations.**

8.1. Promptly after the Effective Date, the Tenant will commence construction of the Minimum Improvements, and will substantially complete construction not later than December 31, 2020. As used herein, "**Minimum Improvements**" means the vehicular parking and ingress/egress routes proposed by Tenant as part of its site plan application pending as of the Effective Date (which will be paved with bituminous road pavement and will have installed curbs and storm water drainage), as well as playground equipment. Landlord and Tenant acknowledge and understand that, prior to physical construction, Tenant must complete its site plan approval process. Commencement of such process will constitute commencement of construction under this Lease.

8.2. Tenant may have the right at any time during the Term, make reasonable changes, additions, and alterations, structural or otherwise, to the Improvements on the Premises which Tenant deems necessary or desirable for its operation of the Premises (such as the installation

of equipment storage sheds, a sports field, bleachers, and other uses consistent with public charter school outdoor curricular, extracurricular, or recreational use); provided that:

- (a) Tenant has submitted the proposed changes, additions, and alterations to Landlord's Park and Recreation Director for his or her review in order to determine whether the proposed changes, additions, or alterations are consistent with Landlord's Park System Plan;
- (b) the work is performed in a good and workmanlike manner and in accordance with all applicable laws, ordinances, rates, and regulations;
- (c) no change, alteration, modification, or addition may be undertaken until Tenant has first procured and paid for all required municipal and other governmental permits and authorizations required by municipal departments and governmental subdivisions that have jurisdiction thereof; and
- (d) at all times during which any change, alteration, modification, or addition is in progress, there is maintained, at Tenant's expense, workers' compensation insurance in accordance with laws governing all persons employed in connection with the change, alteration, modification, or addition; and Tenant will likewise, at its own expense, maintain general public liability insurance for the mutual benefit of both Tenant and Landlord, expressly covering the additional hazards due to the change, alteration, modification, or addition.

8.3. All work to be performed under this Section will be at the cost and expense of Tenant.

8.4. Subject to compliance with all local requirements of general application, Tenant may install and at its cost items of movable machinery and equipment or other personal property in or on the Premises. All such items will remain the property of Tenant and may be removed at Tenant's option at the expiration of the Agreement provided that the Premises is repaired from any damage resulting from such installation or removal of such items. Tenant may instead, at its option, leave such improvements or personal property in or on the Premises at the termination of this Lease and if it does so, such items will become the property of Landlord.

9. **Signs.** Tenant may install or affix signs on the Premises, upon receiving the written approval of Landlord's Park and Recreation Director as to the content and location of the signs. The signs must comply with all applicable laws, orders, ordinances, regulations and requirements of governmental authorities. Tenant agrees that Landlord may maintain a sign on the Premises that identifies the Premises as a city park in a location to be determined by Landlord.

10. **Indemnification.**

10.1. **Indemnification of Landlord.** Except where because of Landlord's gross negligence, willful misconduct, or failure to act in the manner required by this Lease, Tenant will indemnify and save harmless Landlord from and against all liabilities, damages, claims,

finances, penalties, costs and other expenses, including reasonable attorneys' fees, that may be imposed upon, incurred by, or asserted against Landlord by reason of any or all of the following: (a) any personal injury or property damage occurring on the Premises; (b) any negligence on the part of Tenant, its agents, licensees, or invitees; (c) any failure by Tenant, its agents, licensees or invitees to comply with any requirements of any governmental authority; (d) any prosecution or defense of any suit or other proceeding in discharging the Premises or any part thereof from any liens, judgments, or encumbrances, created upon or against the same or against Tenant's leasehold estate; (e) any proceedings in obtaining possession of the Premises after the termination of this Lease by forfeiture or otherwise; (f) any litigation commenced by or against Tenant to which Landlord is made a party without any fault on the part of Landlord; and (g) any failure on the part of Tenant to perform or comply with any covenant or agreement required by Tenant hereunder.

10.2. **Indemnification of Tenant.** Except where because of Tenant's gross negligence, willful misconduct or failure to act in the manner required by this Lease, Landlord will indemnify and save harmless Tenant from and against all liabilities, damages, claims, fines, penalties, costs and other expenses, including reasonable attorneys' fees, that may be imposed upon, incurred by, or asserted against Tenant by reason of any or all of the following: (a) any personal injury or property damage occurring on the Premises; by Landlord or those claiming through or under Landlord (b) any negligence on the part of Landlord, its agents, licensees, or invitees; (c) any failure by Landlord, its agents, licensees or invitees to comply with any requirements of any governmental authority to the extent such compliance is not the specific obligation of Tenant hereunder; (d) any prosecution or defense of any suit or other proceeding in discharging the Premises or any part thereof from any liens, judgments, or encumbrances, created upon or against the same or against Tenant's leasehold estate, to the extent such liens, judgements or encumbrances are not created by Tenant or by parties claiming through or under Tenant; (e) any proceedings in enforcing Tenant's rights and remedies hereunder; (f) any litigation commenced by or against Landlord to which Tenant is made a party without any fault on the part of Tenant; and (g) any failure on the part of Landlord to perform or comply with any covenant or agreement required by Landlord hereunder.

10.3. **Insurance.** Tenant must carry general commercial liability insurance with limits in the amount of \$2,000,000 each occurrence and \$3,000,000 aggregate throughout the term of this Lease. Tenant shall name Landlord as an additional insured on a primary, noncontributory basis and shall provide Landlord with copies of the certificate of insurance and insurance policy upon the request of Landlord.

11. **Hazardous Materials.**

11.1. **Defined Terms.**

- (a) **"Claim"** means and includes any demand, cause of action, proceeding or suit for any one or more of the following: 1) actual or punitive damages, losses, injuries to person or property, damages to natural resources, fines, penalties, interest, contribution or settlement; 2) the costs of site investigations, feasibility studies,

information requests, health or risk assessments, or Response (as hereinafter defined) actions; and 3) enforcing insurance, contribution or indemnification agreements.

(b) **“Environmental Laws”** means and includes all federal, state and local statutes, ordinances, regulations and rules relating to environmental quality, health, safety, contamination and clean-up, including, without limitation, the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq. and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act (**“FIFRA”**), 7 U.S.C. Section 136 et seq.; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C., Section 1401 et seq.; the National Environmental Policy Act, 42 U.S.C. Section 432.1 et seq.; the Noise Control Act, 42 U.S.C. Section 4901 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 6.51 et seq.; the Resource Conservation and Recovery Act (**“RCRA”**), 42 U.S.C. Section 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; the Comprehensive Environmental Response, Compensation and Liability Act (**“CERCLA”**), 42 U.S.C. Section 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act; the Emergency Planning and Community Right-to-Know Act, and Radon Gas and Indoor Air Quality Research Act; the Toxic Substances Control Act (**“TSCA”**), 15 U.S.C. Section 2601 et seq.; the Atomic Energy Act, 42 U.S.C. Section 2019 et seq.; the Nuclear Waste Policy Act of 1982, 42 U.S.C. Section 10101 et seq.; the Minnesota Environmental Response and Liability Act (**“MERLA”**), Minn. Stat. Ch. 115B; and the state super lien and environmental clean-up statutes, with implementing regulations and guidelines, as amended from time to time. Environmental Laws shall also include all state, regional, county, municipal and other local laws, regulations, and ordinances insofar as they are equivalent or similar to the federal laws recited above or purport to regulate Hazardous Materials (as hereinafter defined).

(c) **“Hazardous Materials”** means and includes the following, including mixtures thereof: any hazardous substance, pollutant, contaminant, waste, medical waste by-product or constituent regulated under CERCLA; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel, pesticides regulated under the FIFRA; asbestos and asbestos containing materials, PCBs, and other substances regulated under the TSCA; source material, special nuclear material, by-product material and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. Section 1910.1200 et seq.; and industrial process and pollution control wastes, whether or not hazardous within the meaning of RCRA; any substance whose nature and/or quantity or existence, use, manufacture, disposal or effect render it subject to federal, state or local regulation, investigation, remediation, or removal or potentially injurious to public health or welfare.

(d) **“Use”**, as a verb, means to manage, generate, manufacture, process, treat, store, use, re-use, refine, recycle, reclaim, blend or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of, or abandon Hazardous Materials.

(e) **“Release or Released”** means any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of Hazardous Materials into the environment, as ‘environment’ is defined in CERCLA.

(f) **“Response or Respond”** means action taken in compliance with Environmental Laws to correct, remove, remediate, cleanup, prevent, mitigate, monitor, evaluate, investigate, assess or abate the Release of a Hazardous Material.

11.2. **Tenant’s Obligations with Respect to Environmental Matters.**

(a) During the term of this Lease, Tenant will, in its use of the Premises, comply at its own cost with all Environmental Laws.

(b) Landlord will remain liable for its own compliance with all Environmental laws and for any claims that arise with regard to the Premises for any reason other than as a result of the actions of Tenant.

(c) Except to the extent included as the **“Permitted Use”** described below but in all events subject to Environmental Laws governing such Permitted Use, Tenant will not use, or authorize the use of, any Hazardous Materials on the Premises, including installation of any underground storage tanks, without prior written disclosure to and approval by Landlord. Unless previously approved in writing by Landlord, Tenant will not take any action that would subject the Premises to permit requirements under RCRA for storage, treatment or disposal of Hazardous Materials. Tenant will not dispose of Hazardous Materials on, in, under or about the Premises. Tenant will not discharge Hazardous Materials into Premises’ drains or sewers. Tenant will not cause or allow the Release of any Hazardous Materials on, to, or from the Premises. Tenant will arrange at its own cost for the lawful transportation and off-site disposal of all Hazardous Materials that Tenant generates. Tenant will indemnify, defend and hold Landlord harmless from any and all costs, expenses, claims, remediation requirements, reasonable attorney’s fees and any other liability of any nature arising from or related to Tenant’s breach of Tenant’s obligations hereunder, which indemnification and hold harmless agreement shall survive the expiration or termination of this Lease.

11.3. **Copies of Notices.** During the term of this Lease, Tenant will provide Landlord promptly with copies of all summons, citations, directives, information inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, Claims, complaints, investigations, judgments, letters, notices of environmental liens or Response actions in progress, and other communications, written or oral, actual or threatened,

from the United States Environmental Protection Agency, Occupational Safety and Health Administration, Minnesota Pollution Control Agency, or other federal, state or local agency or authority, or any other entity or individual, concerning any Release of a Hazardous Material on, to or from the Premises, the imposition of any lien on the Premises, or any alleged violation of or responsibility under Environmental Laws. Landlord and Landlord's beneficiaries, agents and employees may, upon reasonable advance notice, to enter the Premises and conduct appropriate inspections or tests in order to determine Tenant's compliance with Environmental Laws.

11.4. **Tests and Reports.** Upon written request by Landlord, Tenant will provide Landlord with transportation and disposal contracts for Hazardous Materials, with any permits issued under Environmental Laws, and with any other applicable documents to demonstrate that Tenant complies with all Environmental Laws relating to the Premises.

11.5. **Tenant's Obligation to Respond.** If Tenant's Use of Hazardous Materials at the Premises gives rise to liability or to a Claim under any Environmental Law, causes a significant public health effect, or creates a nuisance, Tenant will promptly, at its expense, take all applicable action in Response.

12. **Surrender: Holding Over.** At the expiration of the Term, or upon its earlier termination, Tenant shall surrender to Landlord, the Premises in its then existing condition free and clear of all liens created by the Tenant. Unless Landlord agrees otherwise, the Improvements shall remain on the Premises and shall be the property of Landlord without any compensation due to Tenant. Tenant shall have the right to remove all of Tenant's moveable equipment and personal property as Tenant sees fit. Title to Tenant equipment and personal property remaining on the Premises upon the expiration of the Term shall automatically pass to Landlord without the necessity for the execution of any instrument of conveyance. If Tenant fails to vacate and surrender the Premises upon the expiration of the term of this Lease, Landlord may, at its option, by notice in writing delivered to Tenant, declare Tenant to be a holdover tenant for a month-to-month term.

13. **Default.** It is an event of default by Tenant hereunder if Tenant defaults in the performance of or compliance with any terms, conditions, and covenants of this Lease or the Development Agreement, when the default is not cured within 30 days after written notice thereof from Landlord to Tenant, except for any default not capable of being cured within that 30 day period, in which event the time permitted to Tenant to cure the default will be extended for as long as necessary to cure the default, provided that Tenant commences promptly and proceeds diligently to cure the default, and provided further that the period of time will not be so extended as to jeopardize the interest of Landlord in this Agreement or as to subject Landlord or Tenant to any civil or criminal liabilities;

14. **Remedies.** If a default occurs, Landlord may be entitled to terminate this Lease and reenter and take possession of the Premises following an event of default and expiration of any applicable cure period pursuant to Section 9.3 of the Development Agreement. Landlord's right to re-enter and take possession of the Premises includes an obligation on Tenant's part, upon notice of intention to re-enter, peacefully to surrender the Premises to Landlord, and Landlord's right to re-enter and take possession also includes the right of Landlord to repossess the Premises by force if necessary, or by

summary proceedings or otherwise, and to dispossess Tenant and remove Tenant and all other persons and property from the Premises and to have, hold, and enjoy the Premises and the right to receive all rents and income therefrom.

15. **Non-Waiver.** The failure of Landlord to insist at any time upon Tenant's strict performance of any of the covenants or agreements contained in this Lease is not be construed as a waiver or relinquishment of such covenants or agreements for the future. No waiver by any party of any provision of this Lease is to be deemed to have been made unless expressed in writing and signed by the party waiving same.

16. **Binding Clause.** The covenants, conditions and agreements contained herein bind, and inure to the benefit of, Landlord and Tenant and their respective legal representatives, successors and assigns.

17. **Estoppel Certificate.** Tenant agrees, within ten days after written request by Landlord, to execute, acknowledge and deliver an estoppel certificate stating among other things: (a) whether this Lease is in full force and effect; (b) whether this Lease has been modified or amended, and if so, identifying and describing any such modification or amendment; (c) the date to which rent and any other charges have been paid; and (d) whether Tenant knows of any default on the part of Landlord or has any claim against Landlord and if so, specifying the nature of such default or claim.

18. **Relationship of the Parties.** The Parties do not intend this Lease to create a legally recognized partnership, joint enterprise, or joint venture between or among the parties. Neither party nor its employees or agents have authority to enter into contracts or agreements on behalf of the other party. Unless specifically described herein, no obligation shall be inferred or construed.

19. **Miscellaneous**

19.1. **Defined Terms.** Any capitalized term that is used but not defined in this Lease but that is defined in the MOU has the meaning defined in such other agreement.

19.2. **Notices.** Any notice or other communication or payment herein required or permitted to be given is to be deemed given if and when personally delivered in writing or if and when mailed in a sealed wrapper by United States registered or certified mail, postage prepaid, properly addressed to the address specified in Section 10.5 of the Development Agreement. Unless and until changed by notice as herein provided, notices and communications are to be addressed as provided in the Development Agreement.

19.3. **Other Provisions.** This Lease is subject to the provisions of the Development Agreement. Any term in this Lease that is inconsistent with the provisions of the Development Agreement is to be interpreted as provided in the Development Agreement.

19.4. **Recording of Lease.** This Lease shall be recorded in the property records of the County at the expense of the Tenant.

IN WITNESS WHEREOF, the City of Brooklyn Park has caused this Lease Agreement to be executed on its behalf by its Mayor and its City Manager, respectively, on behalf of the City. **EXCELL ACADEMY OF HIGHER LEARNING, INC.** has caused this Lease Agreement to be executed on its behalf by its _____ and _____, respectively, on behalf of the District, all as of the Effective Date.

THE CITY OF BROOKLYN PARK

By: _____
Mayor

By: _____
City Manager

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing Ground Lease was acknowledged before me this _____ day of _____, 2019, by _____ and _____, the Mayor and City Manager of the City of Brooklyn Park, a Minnesota municipal corporation ad political subdivision of the State of Minnesota, on behalf of said municipal corporation.

Notary Public

**EXCELL ACADEMY OF HIGHER
LEARNING, INC.**

By: _____
Its: _____

By: _____
Its: _____

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing Ground Lease was acknowledged before me this _____ day of
_____, 2019, by _____ and
_____ the _____ and
_____ respectively of The Excell Academy of Higher Learning, Inc., a
Minnesota nonprofit corporation and public charter school, on behalf of the corporation.

Notary Public

THIS DOCUMENT DRAFTED BY:

Best & Flanagan (CAK)
60 South Sixth Street, Suite 2700
Minneapolis, MN 55402
(612) 339-7121

EXHIBIT B

MOU