

1. Closed Session Agenda And Packet

Documents:

[OCTOBER 5, 2020 CLOSED SESSION AGENDA.PDF](#)  
[OCTOBER 5 2020 CLOSED SESSION PACKET.PDF](#)

City of Excelsior  
Notice of Closed Meeting  
of the Excelsior City Council

NOTICE IS HEREBY GIVEN that the City Council of the City of Excelsior will hold a closed meeting on October 5, 2020 immediately following the regular Council Meeting via a telephonic and/or electronic meeting. The agenda for the meeting is attached hereto.

In accordance with the requirements of Minn. Stat. § 13D.021, the Mayor, the city manager, and the city attorney have determined that an in-person meeting is not practical or prudent because of the “COVID-19 Health Pandemic” emergency declared under Chapter 12 of the Minnesota Statutes. Due to the measures necessary to contain and mitigate the impacts of the Pandemic Emergency, it has been determined that attendance at the regular meeting location by members of the public is not feasible and that the physical presence at the regular meeting location by at least one member of the body, chief legal counsel or chief administrative officer is not feasible. Therefore, all staff and City Council members will be participating by telephone or other electronic means.

In accordance with Minn. Stat. § 13D.05, subject to approval of the Council, this meeting will be held in closed session for the purpose of considering offers for the purchase of real estate; in this case, a proposal to amend the purchase agreement between the City and 45 North Group regarding property located at 810 Excelsior Boulevard in Excelsior. No other business -- except for roll call, agenda approval, and adjournment -- shall be conducted during this meeting.

City of Excelsior  
City Council Closed Session

AGENDA

Monday, October 5, 2020

Immediately Following Regular Council Meeting

1. Call to Order/Roll Call
2. Agenda Approval
3. Closed Session to Discuss Proposed Extension of Purchase Agreement  
Deadline – 45 North Group
4. Adjournment

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STAUNTONLAW MEMORANDUM

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5277 lochloy drive  
edina, minnesota 55436  
(952) 836-1020

TO: Mayor and City Council

FROM: Kevin Staunton  
City Attorney

DATE: September 30, 2020

RE: Proposed Extension of Purchase Agreement Deadline

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In February of this year, the city entered into a purchase agreement to facilitate the sale of the property it owns at 810 Excelsior Boulevard. The agreement commits the city to selling (and 45 North Group to buying) the land after a number of conditions are met. Under section 3 of the agreement, 45 North Group had 150 days – until July 6 – to complete due diligence (and until a month later to secure any land use approvals necessary for the project). The agreement refers to this as the “Review Period.” It is entitled to extend that Review Period for an additional 30 days at any time before its expiration by providing an additional deposit of earnest money. Importantly, under the terms of the agreement, 45 North Group is entitled to terminate its obligation to purchase the property at any time during the Review Period or the 30-day extension of that Review Period. It needs no reason for the termination; the agreement provides 45 North Group with a unilateral right to abandon the purchase.

In May of this year, the council authorized execution of a First Amendment to Purchase and Sale Agreement that effectively extended the Review Period for 90 days until October 5. The Amendment was authorized as a result of difficulties 45 North Group had finding a tenant and securing financing as a result of the COVID-19 pandemic. Rather than grant the 180-day extension sought by 45 North Group, the council authorized a shorter 90-day extension in the hopes that progress could be made faster than they anticipated.

The good news is that 45 North Group appears to be making progress. The planning commission reviewed a sketch plan proposal for the new facility at its meeting on September 28 and it appears that a formal application will be forthcoming in October. Despite this progress, it is clear that an extension will be needed for the remaining conditions to be satisfied (by both the buyer and seller) before the closing date (November 4) anticipated by the May extension.

Accordingly, 45 North is requesting an additional extension of the Review Period until January 15, 2021. This would result in a closing date of February 14 (or March 16 if the

Mayor and City Council

September 30, 2020

Page 2

buyer chooses to extend the Review Period for an additional 30 days). Given that we still need to vacate the right of way, subdivide the property and process formal land use applications (and do so over a time period that includes the winter holidays), this seems like a reasonable timeframe. Accordingly, staff recommends that you authorize execution of the attached Second Amendment to Purchase and Sale Agreement.

**Recommended Action:** Approve the Second Amendment to Purchase and Sale Agreement.

cc: Kristi Luger  
Sarah Sonsalla  
Jonathan Septer

## SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT (this “**Amendment**”) is made effective as of this 6th day of October, 2020 by and between the **CITY OF EXCELSIOR**, a municipal corporation under the laws of the State of Minnesota (“**Seller**”), and **45 DEGREES NORTH GROUP, LLC**, a Minnesota limited liability company (“**Buyer**”).

### RECITALS

- A. Seller and Buyer entered into that certain Purchase and Sale Agreement effective as of February 7, 2020 (the “**Purchase Agreement**”), as amended pursuant to the terms of that certain First Amendment to Purchase and Sale Agreement dated May 4, 2020 (the “**First Amendment**” and together with the Purchase Agreement, the “**Original Agreement**”) for the purchase and sale of certain Property located in the City of Excelsior, County of Hennepin, State of Minnesota, as defined and legally described in the Original Agreement.
- B. Buyer and Seller mutually desire to further amend the Original Agreement by this Amendment to memorialize the parties’ agreement to extend the Review Period, as this term is defined at Section 3(a) of the Original Agreement, to expire on Friday, January 15, 2021, unless otherwise extended as provided by this Amendment.

NOW, THEREFORE, for good, fair and valuable consideration, the Buyer and Seller hereby agree as follows:

1. The above recitals are incorporated as part of this Amendment.
2. **Extension of Review Period.** Section 3(a) of the Original Agreement, as amended by Section 2 of the First Amendment, is hereby deleted and replaced with the following:
  - (a) **Review Period.** As used in this Agreement, “**Review Period**” means the period beginning on the Effective Date of the Purchase Agreement and ending on Friday, January 15, 2021; provided, however, Buyer may elect to extend the Review Period for an additional thirty (30) days by written notice to Seller of such extension delivered prior to the expiration of the initial Review Period. As a condition to the effectiveness of Buyer’s extension of the Review Period, Buyer acknowledges and agrees that Buyer shall be required to promptly make a deposit with Escrow Agent of an additional Five Thousand Dollars (\$5,000), which shall be deemed to constitute part of the Earnest Money (i.e., increasing the total Earnest Money to Fifteen Thousand and 00/100 Dollars (\$15,000)).
3. Wherever there is a conflict between the provisions contained in the Original Agreement, the provisions this Amendment shall control. Except as expressly amended, supplemented or modified by this Amendment, the Original Agreement shall continue in full force and effect. All capitalized terms contained in this Amendment, unless specifically defined herein, shall have the meaning ascribed to them in the Original Agreement. This Amendment shall bind and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.
4. This Amendment may be executed in any number of identical counterparts, any or all of which may contain the signatures of less than all of the parties, and all of which shall be construed together

as a single instrument. For purposes of this Amendment, signatures by facsimile or .pdf shall be binding to the same extent as original signatures.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Seller and buyer have executed this Amendment as of the date set forth in the opening paragraph.

**SELLER:**

**CITY OF EXCELSIOR, MINNESOTA  
a municipal corporation**

By: \_\_\_\_\_  
Kristi Luger  
Its: City Manager

By: \_\_\_\_\_  
Todd Carlson  
Its: Mayor

**BUYER:**

**45 DEGREES NORTH GROUP, LLC,  
a Minnesota limited liability company**

By: \_\_\_\_\_  
Matthew Tobin  
Its: Partner