

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT (“Agreement”) with an Effective Date as provided below is entered into by and between **THE TRUST FOR PUBLIC LAND**, a nonprofit California public benefit corporation authorized to do business in Minnesota as The Trust For Public Land, Inc. (“Seller”) and **THE CITY OF SAINT PAUL, MINNESOTA**, a municipal corporation under the laws of the State of Minnesota (“Buyer”).

RECITALS:

A. The addresses and telephone numbers of the parties to this Agreement are as follows. Telephone numbers are included for information only.

SELLER:

The Trust for Public Land
2610 University Avenue, Suite 300
St. Paul, MN 55114
Attn: Bob McGillivray
Tel: (651) 999-5307
Fax: (651) 917-2248
Email: bob.mcgillivray@tpl.org

With copies to:

The Trust for Public Land
2610 University Avenue, Suite 300
St. Paul, MN 55114
Attn: Mike Zender
Tel: (651) 999-5319
Fax: (651) 917-2248
Email: mike.zender@tpl.org

BUYER:

The City of Saint Paul
1000 City Hall Annex
25 West Kellogg Boulevard
St. Paul, MN 55102
Attn: Bruce Engelbreckt
Tel: (651) 266-8854
Fax: (651) 266-8855
Email: Bruce.Engelbreckt@ci.stpaul.mn.us

With copies to:

City Attorney’s Office
400 City Hall
15 West Kellogg Boulevard
St. Paul, MN 55102-1621
Attn: Virginia Palmer
Tel: (651) 26608710
Fax: (651) 298-5619
Email: ginger.palmer@ci.stpaul.mn.us

B. Amherst H. Wilder Foundation (“Current Owner”) is the owner of certain real property located in the City of St. Paul, County of Ramsey, State of Minnesota legally described on **Exhibit A** attached hereto and made a part hereof. Said real property, together with any and all improvements, fixtures, minerals, timber, water located thereon and any and all rights appurtenant thereto including but not limited to timber rights, mineral rights, water rights, grazing rights and access rights shall be referred to in this Agreement as the “Property” or the “Subject Property.”

C. Seller has proposed to acquire the Property from Current Owner for the sum of \$2,200,000.00, with a portion of the money being obtained through grants from the State of Minnesota.

D. Buyer wishes to purchase the Property from Seller and Seller wishes to sell the Property to Buyer upon Seller's acquisition of the Property from Current Owner in accordance with the terms and conditions set forth in this Agreement.

1. **Purchase and Sale.** Seller agrees to sell to Buyer and Buyer agrees to buy from Seller the Subject Property on the terms and conditions set forth herein.

2. **Purchase Terms.**

(a) **Price.** The purchase price (the "Purchase Price") for the Subject Property under this Agreement shall be One Million and 00/100 Dollars (\$1,000,000.00).

(i) If Seller successfully obtains funding from the Environment and Natural Resources Trust Fund (ENRTF)(as recommended by the LCCMR), or obtains other funding for this project restricted to use as acquisition capital only, and such restricted funds total in excess of \$1,200,000, then the Purchase Price for the Property shall be reduced by such amount dollar for dollar; provided, however, that Buyer shall commit to use such reduced amount for initial improvements to the Property. For example, if Seller obtains \$1,500,000 for acquisition capital in ENRTF funding (the amount currently recommended by the LCCMR subject to legislative approval), then the Purchase Price shall be \$700,000, but Buyer shall commit to spending \$300,000 toward initial improvements for the Property.

(ii) Seller is conducting a fundraising campaign in connection with this project for a total amount of \$3,450,000. If Seller successfully completes this entire campaign, Seller will grant \$500,000 to Buyer after closing to be used for initial improvements to the Property, including associated professional services, subject to execution of a grant agreement acceptable to both parties.

(b) **Method of Payment.** The Purchase Price shall be payable in cash, at Closing (as defined below), subject to any credits, prorations and adjustments provided elsewhere in this Agreement.

3. **Contingencies.** (a) Buyer acknowledges that Seller does not presently own the Subject Property and that Seller's duties hereunder and Buyer's rights hereunder are both expressly contingent upon the acquisition by Seller of the Subject Property. In the event Seller does not

acquire the Subject Property from Current Owner this Agreement shall terminate, and thereafter neither party shall have any further obligations hereunder.

(b) Seller is committed to fundraise \$3,450,000.00 in order to purchase the property. If Seller fails to have commitments for the entire amount by November 13, 2013, the Buyer may either: 1) cooperatively work with the Seller on alternative plans to meet this requirement; or 2) have this Purchase Agreement voided.

(c.) Seller agrees to work with the buyer in determining the assignment of Parkland on the site. This assignment will be directed by the funding sources that the Buyer acquires when assembling Financing for the Project.

4. **Condition of the Subject Property.**

(a) Buyer agrees that from the Effective Date through, to and including October 15, 2012 (the "Inspection Period"), Buyer will:

(i) make an independent investigation of the physical condition of the Subject Property including but not limited to, the condition of the soil, the presence of hazardous materials or contaminants, other physical characteristics, and compliance with any statutes, ordinances or regulations;

(ii) study all aspects or circumstances of the Subject Property which Buyer deems material or relevant; and

(iii) make all inspections and verifications which Buyer deems necessary for the completion of Buyer's due diligence review for the transactions covered by this Agreement.

Buyer shall be solely responsible for conducting any inspections or tests required by law at its sole cost and expense. Seller has provided Buyer with all of the environmental assessment reports provided to Seller by Current Owner (the "Existing Environmental Reports"). In addition, when available, Seller will provide Buyer with a Phase I Environmental Site Assessment prepared by Braun Intertec and any reports resulting from additional studies (the "EA Reports"). Should Buyer determine in its sole discretion based on its investigation of the Subject Property and its review of the EA Reports that the condition of the Subject Property is unacceptable to Buyer, prior to the expiration of the Inspection Period, Buyer shall so notify Seller in writing of its objections ("Objections"). In the event that Seller is unable to cause Buyer's Objections to be remedied, Buyer may elect to: (a) terminate this Agreement in which case Buyer shall have no obligation to purchase the Subject Property, and the parties' obligations hereunder shall terminate or (b) proceed to Closing, and accept title to the Property subject to such Objection(s) which are not remedied. Buyer's failure to make timely Objections will constitute a waiver of its rights to raise any Objections hereunder and Buyer will accept title to the Subject Property subject to such conditions.

Before entering upon the Subject Property to conduct the investigations provided for herein, Buyer shall notify Seller and Seller shall have obtained Current Owner's permission for Buyer to enter upon the Subject Property to conduct said investigations.

If Buyer does any excavation, Buyer agrees to restore the Subject Property to its natural condition if Buyer's acquisition of the Subject Property is not consummated as contemplated by this Agreement.

(b) Buyer agrees that Seller has made no representations or warranties with respect to the Subject Property except as set forth in this Agreement.

(c) Buyer will not undertake any activity which will jeopardize Seller's efforts to acquire the Subject Property.

5. **Closing.** Final settlement of the obligations of the parties hereto shall occur on or before December 4, 2013 (the "Closing"). This transaction shall be closed in escrow with Chicago Title Insurance Company, 222 South 9th Street, Suite 3060, Minneapolis, MN 55402 ("Escrow Holder") in accordance with the general provisions of the usual form of deed and money escrow agreement then in use by Escrow Holder, with such additional special provisions inserted in said escrow agreement as may be required to conform with the terms and conditions of this Agreement. The cost of the escrow and closing fee shall be divided equally between Seller and Buyer.

6. **Title.** Seller shall by limited warranty deed convey to Buyer its interest in the Subject Property; provided, however, Seller at its option may convey the Subject Property to Buyer by deed directly from Current Owner to Buyer, subject only to the following:

- (i) any federal, state or local laws, ordinances, regulations and/or orders whatsoever;
- (ii) liens for real estate taxes not yet due and payable and other taxes and assessments of any kind or nature assessed (not yet due and payable) with respect to the Subject Property;
- (iii) the matters of record contained in **Exhibit B** attached hereto and incorporated herein;
- (iv) such other title objections and exceptions as may be waived by Buyer;
- (iv) any restrictions or conditions required by any entity providing grants or funding for the acquisition of the Property; and
- (v) the standard printed exceptions on the form of title insurance issued pursuant to Section 7.

The foregoing shall be referred to collectively as "Permitted Exceptions." Seller shall deliver to

Buyer a copy of the commitment for title insurance issued by Escrow Holder committing the company to issue an Owner's Policy insuring title to the Subject Property in Seller. Buyer may at its cost and expense obtain a title commitment from Escrow Holder committing the company to issue an Owner's Policy insuring title to the Subject Property in Buyer. On or before October 2, 2012, Buyer shall advise Seller in writing of any exceptions other than the Permitted Exceptions which Buyer will require to be removed on or before Closing (such exceptions which are not Permitted Exceptions being hereafter referred to as "Impermissible Exceptions"). In the event Seller is unable to cause Current Owner to remove any such Impermissible Exceptions, Buyer may elect to terminate this Agreement in which case Buyer shall have no obligation to purchase the Subject Property and the parties' obligations hereunder shall terminate. If Buyer fails to notify Seller of any objection to exceptions in the time period provided herein, Buyer shall be deemed to have accepted all matters set forth in the title commitment and the same shall be deemed Permitted Exceptions.

7. **Title Insurance.** Buyer may, at its option, and its cost and expense procure a standard owner's policy of title insurance from the Escrow Holder insuring that Seller's interest in the Subject Property is vested in Buyer upon Closing, subject to the exceptions which are acceptable or are deemed acceptable pursuant to Section 6.

8. **Seller's Promise not to Further Encumber.** Seller shall not, without the prior written consent of Buyer, make any leases, contracts, options or agreements whatsoever affecting the Subject Property which would in any manner impede Seller's ability to perform hereunder and deliver title as agreed herein.

9. **Seller's Representations.** Seller makes the following representations:

(a) At Closing, Seller will have the power to sell, transfer and convey all of Seller's right, title and interest in and to the Subject Property in accordance with the terms and conditions of this Agreement.

(b) Seller represents and warrants that it is not a "foreign corporation" as defined in Section 1445 of the Internal Revenue Code. Seller's United States Taxpayer Identification Number is 23-7222333.

10. **Prorations, Closing Expenses and Fees.** Real estate taxes and installments of special assessments due and payable in the year of Closing will be prorated between the Seller and Buyer as of the date of Closing based on a calendar year and the latest available tax bill; provided, however, if the latest available tax bill does not reflect the applicable tax rates for the year in which the Closing occurs, real property taxes shall be prorated as of the date of Closing based upon the most recent ascertainable tax bill. The parties hereto agree to make any adjustment that may be required when the applicable tax rates for the year in which the Closing occurs are determined. Special assessments, levied, pending or constituting a lien against the Subject Property, if any, will be assumed by Buyer. The escrow and closing fee(s) charged by Escrow Holder shall be shared equally by Seller and Buyer. Buyer shall pay the premium for any title insurance policy or

endorsements required by Buyer. Other fees and charges not otherwise allocated in this Agreement, shall be allocated in accordance with the customary practice of Ramsey County, Minnesota.

11. **Notices.** All notices pertaining to this Agreement shall be in writing delivered to the parties hereto personally by hand, electronically (via .email or facsimile), courier service or Express Mail, or by first class mail, postage prepaid, at the addresses set forth in Recital A. All notices shall be deemed given when deposited in the mail, first class postage prepaid, addressed to the party to be notified; or if delivered by hand, electronically, courier service or Express Mail, shall be deemed given when delivered. The parties may, by notice as provided above, designate a different address to which notice shall be given.

12. **Attorneys' Fees.** If any legal action is brought by either party to enforce any provision of this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and court costs in such amounts as shall be allowed by the court.

13. **Remedies Upon Default.** In the event Buyer defaults in the performance of any of Buyer's obligations under this Agreement, Seller shall, in addition to any and all other remedies provided in this Agreement, including the right to retain Deposit, or at law or in equity, have the right of specific performance against Buyer. In the event Seller defaults in the performance of any of Seller's obligations under this Agreement, Buyer shall, in addition to any and all other remedies provided in this Agreement, or at law or in equity, have the right of specific performance against Seller.

14. **No Broker's Commission.** Each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. In the event any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, the party on account of whose conduct the claim is asserted will hold the other party harmless from said claim.

15. **Time of the Essence.** Time is of the essence of this Agreement.

16. **Binding on Successors.** This Agreement shall be binding not only upon the parties hereto, but also upon their heirs, personal representatives, assigns, and other successors in interest.

17. **Additional Documents.** Seller and Buyer agree to execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.

18. **Assignment.** Buyer may not assign its interests under this Agreement without the written consent of Seller.

19. **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire

agreement between Buyer and Seller pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

20. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement.

21. **Severability.** Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

22. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

23. **Acceptance of Deed.** Other than as expressly set forth in Section 2(a)(ii) the acceptance by Buyer of the deed shall be deemed to be full performance by Seller of, and shall discharge Seller from, all obligations hereunder and Seller shall have no further liability hereunder.

24. **Risk of Loss.** All risk of loss shall be with Seller until Closing. In the event the Subject Property is destroyed or damaged in a manner that results in a material loss of value of the Property prior to Closing, Buyer shall have the right at its option to terminate this Agreement by written notice to Seller, in which case this Agreement shall terminate, and the parties shall have no further obligation to each other hereunder.

25. **Condemnation.** In the event of a taking of all or any part of the Subject Property under the power of eminent domain prior to the Closing, Buyer shall proceed to Closing with an assignment by Seller of all Seller's right, title and interest in and to any and all such awards and proceeds.

26. **Possession.** Seller shall deliver possession of the Subject Property concurrently with Closing in accordance with Section 4(d) and Section 6.

27. **Buyer's Representation.** Buyer represents that it has full power and authority to enter into this Agreement and the person signing this Agreement for Buyer has full power and authority to sign for Buyer and to bind it to this Agreement.

28. **Miscellaneous.** In the event that any of the deadlines set forth herein end on a Saturday, Sunday or legal holiday, such deadline shall automatically be extended to the next business day which is not a Saturday, Sunday or legal holiday. The term "business days" as may be used

herein shall mean all days which are not on a Saturday, Sunday or legal holiday.

29. **Signage.** The parties agree that signage on the Property shall provide for recognition of the role of Seller in this acquisition, said signage shall be provided by Seller and the location and design shall be approved by both Seller and Buyer. This section shall survive the delivery of the deed.

30. **Construction Access Easement.** At Closing, Current Owner will grant to Seller a non-exclusive temporary easement for ingress and egress for the purposes of construction, on the Property over and across the former Milton Street (vacated) as generally depicted on **Exhibit C** (the "Construction Easement"). The Construction Easement is located on a parcel south of the Property ("South Parcel"). The South Parcel is currently owned by the Current Owner. The Construction Easement shall expire one (1) year following the date of Closing hereunder. The Construction Easement must include terms and conditions reasonably acceptable to Current Owner, Buyer and Seller, including methods of minimizing the impact of the Construction Easement on Current Owner's current use of the South Parcel. The Construction Easement will be recorded in the appropriate Land Records as a burden on the South Parcel and benefitting the Property with language indicating that the Construction Easement automatically terminates one (1) year after the date of the Closing.

31. **Possible Future Access Easement.** As more details concerning Buyer's planned use of the Property become available, Current Owner may, in Current Owner's sole discretion, grant Seller, and Seller's successors and assigns a non-exclusive easement for pedestrian and/or vehicular access over and across the former Milton Street (vacated) in the same general area of the Construction Easement described in Section 30 above ("Future Easement") on such terms and conditions as are acceptable to Current Owner, Buyer and Seller. Buyer acknowledges that Current Owner's use of the South Parcel will impact any decision Current Owner makes about whether to grant the Future Easement and the terms and conditions of any agreement relating to the Future Easement.

32. **Frogtown Gardens.** It is the parties' intention that the nonprofit organization Frogtown Gardens will operate an urban agriculture farm on a portion of the property after closing. Buyer agrees to allow such activity if Frogtown Gardens supplies Buyer with sufficient cost and planning information (such as a business plan and cost estimates) and enters into a development agreement (or similar lease or operational agreement) that is acceptable to Buyer. If Frogtown Gardens fail to advance a Development Agreement or sufficient cost and planning information (such as a business plan) or is in breach of said Development Agreement, Buyer is under no obligation to Seller as to what the land may be used for and specifically under no obligation to operate an urban agriculture farm or contract an organization to do so.

33. **Acknowledgement of Wilder.** Buyer acknowledges the Current Owner is selling the Property to Seller at a price that is substantially less than the value of the Property reflected in the

appraisal dated August 24, 2011 or its assessed value, and accordingly, Buyer agrees through the use of signing and/or formally naming a portion of the Property, to memorialize the name of the Current Owner, Amherst H. Wilder Foundation, as the prior owner of the Property and a longtime community partner. The provisions of this Section 33 shall survive delivery of the deed.

**SEPARATE SIGNATURE PAGE
OF SELLER
AGREEMENT OF PURCHASE AND SALE**

IN WITNESS of the foregoing provisions Buyer has executed and delivered this Agreement as of the date set forth below. The effective date (the “Effective Date”) of this Agreement shall be the last date of execution by either of the Parties to this Agreement.

SELLER (The Trust for Public Land)

By: _____

Name: _____

Its: _____

Date: _____

STATE OF MINNESOTA)
) ss
COUNTY OF Ramsey)

The instrument was acknowledged before me this _____ day of _____, 2012, by _____, its _____, on behalf of the Trust for Public Land, a nonprofit California public benefit corporation authorized to conduct business in Minnesota as The Trust For Public Land, Inc.

Notary Public

**SEPARATE SIGNATURE PAGE
OF BUYER
AGREEMENT OF PURCHASE AND SALE**

IN WITNESS of the foregoing provisions Buyer has executed and delivered this Agreement as of the date set forth below. The effective date (the “Effective Date”) of this Agreement shall be the last date of execution by either of the Parties to this Agreement.

BUYER (City of Saint Paul, Minnesota)

By: _____
Name: _____
Its Mayor or Deputy
Date: _____

By: _____
Name: _____
Its Director of Financial Services
Date: _____

By: _____
Name: _____
Its City Clerk
Date: _____

Approved as to form:

Assistant City Attorney

STATE OF MINNESOTA)
) ss.
COUNTY OF Ramsey)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, Mayor or Deputy, _____, Director, Office of Financial Services, and _____, City Clerk of the City of Saint Paul, a municipal corporation under the laws of the State of Minnesota.

Notary Public

EXHIBIT A
(Legal Description)

The following real property located in the County of Ramsey, State of Minnesota, legally described as follows:

DRAFT

EXHIBIT B
(Matters of Record)

DRAFT

EXHIBIT C
(Depiction of Easements)

DRAFT