

This Development Agreement is entered into this ____ day of March, 2013, between the City of Saint Paul, a municipal corporation (“City”) and Frogtown Gardens, a Minnesota non-profit corporation (“Frogtown Gardens”), 501-c-3 applied for.

WHEREAS, the City has entered into a purchase agreement with Trust for Public Land for the purchase of a 12.7 acre parcel of land owned by the Amherst Wilder Foundation;

WHEREAS, Frogtown Gardens= mission is to preserve and enhance green spaces, to demonstrate the value of farming for food, and to create a greener and healthier Frogtown;

WHEREAS, the City has identified in its Parks and Recreation System Plan the need to add greenspace in the Frogtown neighborhood (north of I-94 between Dale and Lexington);

WHEREAS, the City realizes the importance of establishing partnerships with community organizations to provide recreation opportunities and greenspace;

WHEREAS, Frogtown Gardens has worked with the community to develop a vision of a greener, healthier neighborhood, and in collaboration with community partners, it has proposed a plan to create Frogtown Farm, an urban farm, to be located on five of the acres of the property being purchased;

WHEREAS, the City and Frogtown Gardens wish to set forth the expectations of each party as to what is needed for the City to lease the five acre parcel to Frogtown Gardens;

NOW, THEREFORE, in consideration of the mutual promises and obligations of the parties, the City and Frogtown Gardens hereby agree as follows:

ARTICLE I DEFINITIONS

- 1.1 Purchase Agreement - The Purchase Agreement dated _____ between the City of Saint Paul and the Trust for Public Land.
- 1.2 Property - The entire 12.7 acre parcel to be purchased by the City from Trust for Public Land.
- 1.3 Farm - That portion of the Property which is intended to be leased to Frogtown Gardens for the Project
- 1.4 Recreation Area– The eastern 3.2 acres of the Property, which is intended to be used for open active recreation.
- 1.5 Nature Sanctuary – The northern 4.5 acres of the Property that preserves the existing open space and tree canopy for passive recreation.

- 1.6 Project – Establishment of Frogtown Farm, an urban farm, to be used for education, production of fresh local produce for sale to the neighborhood, and demonstration of growing and cultivating gardens, as well as such other activities as are normally considered complementary to and suitable for an urban farm and not inconsistent with the location adjacent to parkland.

ARTICLE II REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties of the City. The City makes the following representations and warranties:

- (1) The City is a municipal corporation organized and existing pursuant to Minnesota law and its City Charter, and has the power and authority to enter into this Agreement and carry out its obligation hereunder.
- (2) To its knowledge, neither the execution of this agreement, the transactions contemplated herein nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by, or conflicts with any provision of Minnesota law, the City=s charter, administrative code, or legislative code, or any contractual agreements of whatever nature to which the City is now a party.
- (3) The city is not presently aware of any condition or fact which would prevent it from carrying out and performing its obligations under this Agreement.
- (4) The City is not aware of any liens, leases or other agreements affecting the property other than the Purchase Agreement between the City and Trust for Public Land.
- (5) To the best of the City=s knowledge and belief, the property is free from any hazardous substances which would adversely affect its use as contemplated by Frogtown Gardens.

2.2 Representations and Warranties of the Frogtown Gardens. The Frogtown Gardens makes the following representations and warranties:

- (1) Frogtown Gardens is a non-profit corporation, duly formed and existing under Minnesota law.
- (2) Frogtown Gardens has the power to enter into this Agreement and to perform its obligations hereunder, and to its knowledge is not in violation of any provisions of the laws of the State of Minnesota.

- (3) To its knowledge, neither the execution of this agreement, the transactions contemplated herein nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by, or conflicts with any provisions of the articles of incorporation or by-laws of, or any contractual agreements of whatever nature to which the City is now a party.
- (4) Frogtown Gardens is not presently aware of any condition or fact which would prevent it from carrying out and performing its obligations under this Agreement.

ARTICLE III PROJECT DESCRIPTION

- 3.1 Scope of Project. Frogtown Gardens intends to create Frogtown Farm (AFarm®), an urban farm on five acres which will integrate farm production, urban agriculture education and demonstration gardens.
- 3.2 The Farm will be located on up to five acre portion of the 12.7 acre parcel of land being purchased by the City from Trust for Public Land. The Trust for Public Land has commissioned an Environmental Site Assessment which has been made available to Frogtown Gardens. The City does not warrant the condition of the Site and will not be responsible for any needed soil remediation.
- 3.3 As a material provision of the Purchase Agreement between the City and Trust for Public Land, the City is to be granted \$500,000 for the initial site improvements to the Property. The City, subject to the availability of funding from Trust for Public Land, shall be responsible for the following initial site improvements:
 - entrance road and parking lot
 - perimeter fencing
 - utility infrastructure
 - stormwater infrastructure
 - lighting
 - irrigation
 - basic park amenities (benches, picnic tables, trails, trash receptacles)

Frogtown Gardens shall be responsible for:

- soil remediation
- preparation and delineation of farm plots
- planting and maintenance of orchard
- construction or purchase ancillary farm building(s)

If the City does not obtain the full amount of funding for the initial site improvements, it shall make a determination of which improvements are to be financed with the available funding. Nothing herein obligates the City to make any improvements for which outside funds are not made available.

- 3.4 Future Development: Any proposals for additional improvements or expansion of the farm operations, shall be governed by the provisions of the Lease.
- 3.5 Consistent with its urban agriculture education mission, Frogtown Gardens will offer tours, workshops, and classes to the public.
- 3.6 The Farm shall be operated and maintained by Frogtown Gardens. If Frogtown Gardens has the capacity at a future date to maintain the Recreation Area or the Nature Sanctuary the City may consider a management agreement for those services.

ARTICLE IV
PROJECT FUNDING

- 4.1 The City has entered into a Purchase Agreement with the Trust for Public Land for purchase of the entire 12.7 acres of land (AProperty@). It is the City's intent that the portion of the land to be used as the Farm not be considered parkland subject to the charter provisions on diversion of parkland. The Purchase Agreement is contingent upon certain events, and the City will not own the property until December of 2013 if all contingencies are met.
- 4.2 Contained within the Purchase Agreement are contingencies for the City to make infrastructure improvements to the Property, including an access road, if Trust for Public Land raises sufficient funds. The City is not responsible for infrastructure improvements if these contingencies are not met; and as set forth in §3.3, above shall determine which of the infrastructure improvements, if any, can be made with the funds.
- 4.3 Frogtown Gardens has a AProjected Budget@ for the first year of operation of the Farm, showing estimated expenses of \$469,200.00 and estimated revenue of \$460,000.00. In order for the City to authorize Frogtown Garden to begin activity on site, Frogtown Gardens must have 100% of the estimated revenue for the first year available to it in the form of cash, or executed agreements with a guaranteed revenue stream, and the necessary improvements must have been made to the site or funding for such capital improvements must be available. Frogtown Gardens may propose an adjusted budget for the first year of operation prior to establishment of the Lease Agreement.
- 4.4 Any unanticipated expenses for soil remediation, or other problems related to the condition of the Farm related to its use for urban agriculture, shall be solely the responsibility of Frogtown Gardens.

ARTICLE V
LEASE REQUIREMENTS

- 5.1 Entry into a lease for the Farm between Frogtown Gardens and the City is contingent

upon the City owning the Property and Frogtown Gardens having a full year=s revenue on hand.

- 5.2 The City may reasonably restrict the activities undertaken as part of the Farm to agricultural and non-animal produce, consistent with its location adjacent to parkland.
- 5.3 Frogtown Gardens shall be exempt from rent payments for the first year of the lease while the Site is prepared for production. Rent in subsequent years shall be based upon percentages of revenues generated from the Farm through sales of produce, fees for classes, workshops and services, or other income derived from the property and its use as an urban farm.

ARTICLE VI DESIGN, COMMUNITY ENGAGEMENT, AND CONSTRUCTION

- 6.1 Under Chapter 7A of the City’s Administrative Code, the Department of Parks and Recreation is responsible for the design of all parks, parkways, trails and public grounds. The City shall be responsible for the project management of design and construction of the entire Property,
- 6.2 The City will be responsible for design of the Recreation Area and Nature Sanctuary. Frogtown Gardens will be primarily responsible for the design of the Farm and may hire a consultant at its own expense to provide a site plan to be submitted to the City for review. The City will maintain ultimate authority to approve final design of the Farm, which approval shall not be unreasonably withheld.
- 6.3 The design of the Property and its component parts will be informed by input from the community and interested stakeholders through a community engagement process, with a framework to be approved by the City. The community engagement process will be planned and executed by a task force with representatives from Frogtown Gardens, The Trust for Public Land and the City.
- 6.4 The City shall be compensated for design time actually spent on the Project. Design time shall include community engagement meetings necessary for City staff to attend. Payment will be out of the \$500,000 grant to the City from The Trust for Public Land unless an alternate source is identified. The amount of compensation for such design work will not exceed \$100,000 and will be supported by reasonable documentation.
- 6.5 The City reserves the right to hire an outside consultant, including designating Frogtown Gardens to manage individual projects, for any portion of the design and construction documents, but maintains control over final design decisions.
- 6.6 Construction on any portion of the property will be managed by the City. Bidding will be handled by the City’s Contract and Analysis services and meet all applicable bidding,

insurance, and HREEO requirements. The City will maintain oversight of the construction process.

ARTICLE VII EVENTS OF DEFAULT

- 7.1 The occurrence of any of the following shall constitute a **ADefault@** by the City under this Development Agreement and the City shall have thirty days following the receipt of written notice from Frogtown Gardens of the exact nature of the default to cure, or will be in breach of this Development Agreement.
- (a) Failure of the City to purchase the Property.
 - (b) Failure of the City to complete infrastructure if such infrastructure is funded by the Trust for Public Land.
- 7.2 The occurrence of any of the following shall constitute a **ADefault@** by Frogtown Gardens under this Development Agreement and they shall have thirty days following the receipt of written notice from the City of the exact nature of the default to cure, or will be in breach of this Development Agreement.
- (a) Failure to maintain non-profit status of Frogtown Gardens.
 - (b) Failure to raise 100% of the first year=s anticipated expenses by December of 2014.
 - (c) Failure to enter into a Lease Agreement with the City by December 31, 2013.
- 7.3 Remedies on Default. The sole remedy for default under this Agreement is termination of the Development Agreement and neither party will be entitled to claim damages or to sue for specific performance or exercise any other remedy it may have in law or in equity.

ARTICLE VIII MISCELLANEOUS

- 8.1 Conflicts of Interest. No member of the governing body of Frogtown Gardens shall have any financial interest, direct or indirect, in this Agreement, the Purchase Agreement between the City and Trust for Public Land, or any contract, agreement or other transaction contemplated to occur or be undertaken to effect the purpose of this Agreement.

8.2 Notices and Demands. Any notice under this Agreement by either party to the other shall be sufficiently given when it is sent by registered or certified mail, postage prepaid, return receipt requested, and addressed to:

FROGTOWN GARDENS

CITY OF SAINT PAUL
Parks and Recreation
25 W. Fourth Street
Saint Paul, MN 55102
Attn:

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

8.4 Independent Contractors. Nothing in this Agreement is intended to or shall be construed as creating a joint venture or partnership among or between the parties.

In Witness Whereof, parties have caused this Agreement to be duly executed on the date first written above.

City of Saint Paul

Frogtown Gardens

Mayor

Its

Director of Finance

Its

Director of Parks and Recreation

Approved as to form:
