

PURCHASE AGREEMENT

1. **PARTIES.** This Purchase Agreement is made on October ____, 2015, by and between Oneota Cemetery Association, a nonprofit corporation under the laws of the State of Minnesota ("Seller"), and the City of Duluth, a municipal corporation under the laws of the State of Minnesota ("Buyer").
2. **SALE OF PROPERTY.** Buyer offers to purchase and Seller agrees to sell real property located in the County of St. Louis, State of Minnesota, as legally described in Exhibit A attached hereto and incorporated herein, together with all rights, easements and appurtenances pertaining thereto and all improvements, landscaping and foliage thereon (hereinafter referred to as the "Property").
3. **PRICE AND TERMS.** The price for the Property included in this sale is Fifty-Four Thousand and no/100ths Dollars (\$54,000.00), which Buyer will pay at Closing.
4. **DEED/MARKETABLE TITLE.** Upon performance by Buyer, Seller shall execute and deliver a Quit Claim Deed conveying marketable title of record, subject to:
 - A. Reservations of minerals or mineral rights by the State of Minnesota, if any;
 - B. Building and zoning laws, ordinances, and state and federal regulations; and
 - C. Any other matters consented to by Buyer in writing or not timely objected to by Buyer ("Permitted Exceptions").
5. **REAL ESTATE TAXES AND SPECIAL ASSESSMENTS.**
 - A. Prior Years' Delinquent Real Estate Taxes and Delinquent Special Assessments. Delinquent real estate taxes payable in years prior to the year of Closing and delinquent installments of special assessments certified for collection with real estate taxes payable in years prior to the year of Closing, together with penalty, interest, and costs, shall be paid by Seller not later than the Date of Closing.
 - B. Real Estate Taxes Payable in the Year of Closing. Seller and Buyer shall prorate all general real estate taxes due and payable on or pertaining to the Property in the year in which the Date of Closing occurs on a per diem basis. Seller shall pay on or before the Date of Closing all levied and pending special assessments associated with the Property as of the date of this Agreement. Seller shall pay penalty, interest, and costs on any delinquent installment of taxes and special assessments payable in the year of Closing.
 - C. Certified Special Assessments. All installments of special assessments certified for payment with the real estate taxes payable on the Property in the year of Closing shall be paid by Seller at Closing.

D. All Other Levied Special Assessments. Seller shall pay on the Date of Closing all other special assessments levied against the Property as of the date of this Agreement.

6. SELLER'S BOUNDARY LINE, RESTRICTIONS AND LIEN WARRANTIES. Seller warrants that buildings on adjoining real property, if any, are entirely outside the boundary lines of the Property. Seller warrants that there has been no labor or material furnished to the Property for which payment has not been made. Seller warrants that there are no present violations of any restrictions relating to the use or improvement of the Property. These warranties shall survive the delivery of the Quit Claim Deed.

7. POSSESSION. Seller shall deliver possession of the Property not later than the actual Date of Closing.

8. TITLE EXAMINATION. Seller shall, within twenty-one (21) days of the date of this Agreement, furnish Buyer with a commitment for an Owner's Policy of Title Insurance ("Commitment"), accompanied by legible copies of all documents referenced in the Commitment, by a title insurance company licensed to do business in the State of Minnesota, by which said company commits to issue a policy of title insurance to Buyer insuring that upon conveyance from Seller to Buyer, Buyer will have good, marketable and insurable title to the Property, free and clear of all liens, encumbrances, leases, and claims, subject only to Permitted Exceptions.

Within thirty (30) days after receiving the Commitment, Buyer will examine title to the Property and make written objections to the form or contents of the Commitment and to any matters referenced therein ("Title Objections"). If Buyer fails to give any notice to Seller by such date, Buyer will be deemed to have waived its right to object to any title exceptions or defects shown by the Commitment.

9. BUYER'S TITLE OBJECTIONS. If Buyer gives Seller timely notice of Title Objections, Seller will use commercially reasonable efforts to cure or satisfy the Title Objections within a reasonable time, not to exceed sixty (60) days after Seller's receipt of the Title Objections, during which period the Closing will be postponed if necessary until five days after Seller cures or satisfies the Title Objections. To the extent any Title Objection can be satisfied by the payment of money, Buyer has the right to apply a portion of the cash payable to Seller at the Closing to the satisfaction of the Title Objections, and the amount so applied will reduce the amount of cash payable to Seller at the Closing. If the Title Objections are not cured within the sixty (60) day period, Buyer will have the option to do any of the following:

A. Terminate this Agreement by written notice to Seller, in which event neither party shall have any rights or responsibilities with regard to the other under this Agreement;

B. Waive the Title Objections and proceed to Closing.

10. NOTICES. Any notice, demand, or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid to:

Buyer: City of Duluth
Property and Facilities Management
1532 W. Michigan Street
Duluth, MN 55806

With a copy to:

City of Duluth
Office of the City Attorney
411 W. First Street, Room 410
Duluth, MN 55802

Seller: Oneota Cemetery Association

11. DISCLOSURE OF INDIVIDUAL ON-SITE SEWAGE TREATMENT SYSTEM. Seller certifies that Seller does not know of any individual on-site sewage treatment systems on the Property.
12. WELL DISCLOSURE. Seller certifies that Seller does not know of any wells on the Property.
13. SELLER'S REPRESENTATIONS AND WARRANTIES. Seller makes the following representations and warranties to Buyer and further agrees that these representation and warranties shall survive Closing and delivery of the Warranty Deed.

contaminant, or toxic or hazardous substance, material or waste, or any mixture thereof, which otherwise causes injury or death to persons or damage to property.

- B. Seller is the fee owner of the Property and has the present full authority and power to execute this Agreement and, on or prior to the Closing, Seller shall have the full authority and power to close the sale of the Property.
- C. There is no action, litigation, investigation, condemnation or proceedings of any kind pending, or to the best knowledge of Seller, threatened against Seller with regard to the Property.
- D. Seller has good, marketable, insurable title to the Property, free and clear of all liens, encumbrances, claims and charges.
- E. Seller is not a foreign person, foreign partnership, foreign trust or foreign estate as defined in §1445 of the Internal Revenue Code or regulations issued thereunder.
- F. Seller has not received notice of, and does not know of any possible, assessments to be levied against the Property.
- G. Seller discloses and certifies that, to its knowledge, methamphetamine production has not occurred on the Property.
- H. Seller discloses that the Property is not affected by airport zoning regulations.
- I. The Property (a) is not located in or is not a contributing building to a municipally-recognized district for historic preservation; (b) is not eligible for listing on the National Register of Historic Places, or on any municipal or local list identifying eligible historic buildings; (c) is not subject to any impediments under any municipal ordinances or federal or state laws relating to the demolition of the improvements on the Property; and (d) does not contain Indian burial grounds as defined in Minnesota Statutes Chapter 307.
- J. No "aboveground storage tanks" or "underground tanks" within the meaning of Minnesota Statutes Section 116.46 are located in or about the Property, or have been located under, in or about the Property and have been subsequently removed or filled.

It is a condition of Closing that the representations and warranties contained in this Section are true and correct at Closing. In the event that Seller or Buyer learns that any of said representations or warranties becomes inaccurate prior to the Closing, Seller or Buyer will immediately notify the other party in writing of such change. If such change is adverse to Buyer, Seller will then use its good faith efforts to cure such change after giving or receiving notice thereof as required herein and the Closing will automatically be postponed for up to sixty (60) days in order to allow Seller to cure such change. If Seller is unable to cure such change within such sixty (60) day period, Buyer may either

(a) terminate this Agreement by written notice to Seller, in which case the parties will have no further rights or obligations hereunder, except for those which expressly survive such termination, or (b) waive such right to terminate and proceed with the transaction pursuant to the remaining terms and conditions of this Agreement.

Seller will indemnify Buyer, its successors and assigns, against, and will hold Buyer, its successors and assigns, harmless from, any expenses or damages, including reasonable attorneys' fees and remediation costs, that Buyer incurs because of the breach of any of the above representations and warranties, whether such breach is discovered before or after Closing. Consummation of this Agreement by Buyer with knowledge of any such breach by Seller will not constitute a waiver or release by Buyer of any claims due to such breach.

14. **PHYSICAL INSPECTION AND CONTINGENCY.** Upon reasonable notice to the Seller, Buyer and Buyer's authorized agents shall have the right during the period from the date of this Agreement to the Date of Closing to enter upon the Property to examine the same and the condition thereof and to conduct such surveys and to make such engineering and other inspections, tests and studies as Buyer determines to be reasonably necessary, all at Buyer's sole cost and expense. Buyer will conduct all examinations and surveys of the Property in a manner that will not harm or damage the Property or cause any claim adverse to Seller, and will restore the Property to its condition prior to any such examinations or surveys immediately after conducting the same. Buyer's obligations under this Agreement are expressly contingent upon Buyer determining that it is satisfied, in its sole discretion, with the results of matters disclosed by any survey or by any environmental/engineering investigation or testing of the Property performed by Buyer or Buyer's agent. If this contingency has not been satisfied in Buyer's sole discretion on or before the Closing, then this Agreement may be terminated, at Buyer's option, by written notice from Buyer to Seller.
15. **CLOSING.** The "Closing" shall mean that transaction whereby Seller's deed to the Property and other Seller's Closing Documents are physically delivered to the Buyer and the Purchase Price and other Buyer's Closing Documents are physically delivered to the Seller. The Closing Date of this transaction shall be January 15, 2016, or before by mutual agreement of the parties. The Closing will take place at a title company


- ii. A pro forma Title Policy, or a suitably marked up Title Commitment initialed by the Title Company, obligating the Title Company to issue a Title Policy to Buyer, in the form required by this Agreement and approved by Buyer.
 - iii. A bring-down certificate, stating that Seller's representations and warranties are true and correct as of the Closing Date.
 - iv. A Seller's Affidavit indicating that on the Closing Date there are no outstanding, unsatisfied judgments, tax liens, or bankruptcies against or involving Seller or the Property; that there has been no skill, labor, or material furnished to the Property for which payment has not been made or for which mechanics' liens could be filed; and that there are no other unrecorded interests in the Property, together with any standard owner's affidavit and/or indemnity which may be required by the Title Company to issue the Title Policy.
 - v. A non-foreign certificate, properly executed, containing such information as is required by Internal Revenue Code Section 1445 and its regulations.
 - vi. If required, an affidavit with respect to storage tanks pursuant to Minn. Stat. § 116.48.
 - vii. All other documents reasonably determined by either party or the title insurance company to be necessary to transfer and provide title insurance for the Property.
- B. At the Closing, Buyer shall execute and deliver to Seller the following (collectively, "Buyer's Closing Documents"):
- i. Payment of the Purchase Price; and
 - ii. Such affidavits of purchaser, certificates of real estate value, or other documents as may be reasonably determined by either party or the title insurance company to be necessary to transfer and provide title insurance for the Property.
17. CLOSING COSTS. The following costs relating to the closing of this transaction shall be paid as follows:
- A. Buyer shall pay at Closing:
- i. Recording fee for the Quit Claim Deed;
 - ii. The premium for owner's title insurance; and

- iii. One-half of the closing fee charged by the Title Company.
- B. Seller shall pay at Closing:
- i. State Deed Tax;
 - ii. Recording fees for all documents determined to be necessary to transfer marketable title to the Buyer;
 - iii. All costs of obtaining a title insurance commitment; and
 - iv. One half of the closing fee charged by the Title Company.
18. **BROKER'S COMMISSION.** Seller and Buyer represent and warrant to each other that they have dealt with no brokers, finders or the like in connection with this transaction, and agree to indemnify each other and to hold each other harmless against all other claim, damages, costs or expenses of or for any fees and commissions resulting from their separate actions or agreements regarding the execution or performance of this Agreement, and will pay all costs of defending any action or lawsuit brought to recover any such fees or commissions incurred by the other party, including reasonable attorneys' fees.
19. **TIME IS OF THE ESSENCE.** Time is of the essence for all provisions of this Agreement.
20. **ASSIGNMENT.** Neither party may assign its rights under this Agreement before the Closing.
21. **MINNESOTA LAW.** This contract shall be governed by the laws of the State of Minnesota.
22. **DATA PRACTICES.** All data collected, created, received, maintained or disseminated for any purpose by the parties because of this Agreement is governed by the Minnesota Data Practices Act.
23. **CAPTIONS.** The paragraph headings or captions appearing in this Agreement are for convenience only, are not part of this Agreement and are not to be considered in interpreting this Agreement.
24. **ENTIRE AGREEMENT.** It is understood and agreed that the entire agreement of the parties including all exhibits is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

I agree to sell the property for the price and terms and conditions set forth above.

SELLER:

ONEOTA CEMETERY ASSOCIATION

By: 
Its: President

By: D. Scott Howard
Its: V.P.

I agree to purchase the property for the price and terms and conditions set forth above.

BUYER:

CITY OF DULUTH

By: _____
Its Mayor

Attest: _____
Its City Clerk

Date Attested: _____, 2015

Countersigned:

By: _____
Its Auditor

Approved as to form:

By: _____
Its City Attorney

This Purchase Agreement was prepared by:
Catherine E. Baker (#0353875)
Assistant City Attorney
410 City Hall
411 W. 1st Street
Duluth, MN 55802

EXHIBIT A

All that part of Block Two (2), BELLEVUE PARK ADDITION, City of Duluth, St. Louis County, Minnesota Lying easterly of the northerly extension of a line common to Lots Twelve (12) and Thirteen (13), Block Nineteen (19), said BELLEVUE PARK ADDITION EXCEPT that part of said Block 2 lying northwesterly of the flowing described line:

Beginning at the intersection of the west line of the plat of BELLEVUE PARK ADDITION and the south line of Park Avenue extended; thence northeasterly to a point on the southeast line of Lot Fourteen (14), Block Two (2), said BELLEVUE PARK ADDITION equidistant from the northeast and southwest lines of said Lot 14; thence along the south line of Park Avenue extended to the northerly line of said BELLEVUE PARK ADDITION.

AND

All those parts of Blocks Three (3), Six (6), Eighteen (18) and Nineteen (19); BELLEVUE PARK ADDITION, City of Duluth, St. Louis County, Minnesota lying easterly of a line common to Lots Twelve (12) and Thirteen (13), Block Nineteen (19) and the northerly extension thereof.

AND

All that part of Block Twelve (12), BELLEVUE PARK ADDITION, City of Duluth, St. Louis County, Minnesota lying westerly of the centerline extended northerly of that part of 59th Avenue West, which lies southerly of said Block 12 including vacated streets adjoining