

COUNTY COUNCIL OF ANNE ARUNDEL COUNTY, MARYLAND

Legislative Session 2020, Legislative Day No. 3

Resolution No. 3-20

Introduced by Ms. Pickard, Chairman
(by request of the County Executive)

and by Mr. Pruski

By the County Council, February 3, 2020

1 RESOLUTION approving the terms and conditions of the acquisition of real property
2 consisting of approximately 37.50 +/- acres, more or less, known as 1127 Bragers Road in
3 Odenton, Maryland 21113, from Stachitas Investments, LLC, utilizing funds from the
4 Advance Land Acquisition Capital Project

5
6 WHEREAS, § 8-3-101 of the County Code empowers the County Executive to
7 accept a dedication of real property on behalf of and in the name of Anne Arundel
8 County, Maryland (the "County") for the purposes set forth in Articles 16 and 17
9 of the County Code or to purchase real property by agreement or eminent domain
10 if an adequate appropriation has been made by the County Council; and

11
12 WHEREAS, § 8-3-101(d)(2) requires that each agreement for the purchase of real
13 property utilizing funds from the Advance Land Acquisition Capital Project,
14 Project No. C106700 ("Advance Land Acquisition Capital Project"), shall be
15 contingent upon approval of the purchase by resolution of the County Council; and

16
17 WHEREAS, § 8-3-101(d)(2) further provides that, prior to approval of the purchase
18 by resolution, the County Council shall require an independent appraisal, an
19 environmental study, and a feasibility study for the property being purchased; and

20
21 WHEREAS, the County Executive is utilizing funds from the Advance Land
22 Acquisition Capital Project to purchase real property consisting of approximately
23 37.50 +/- acres, more or less, known as 1127 Bragers Road in Odenton, Maryland
24 21113, and more particularly described as County Tax Map 36, Parcel 29 (the
25 "Property") from Stachitas Investments, LLC (the "Seller"); and

26
27 WHEREAS, the County's independent real estate appraisal estimates the fair
28 market value of the Property to be Nine Hundred Fifty Thousand Dollars
29 (\$950,000); and

30
31 WHEREAS, the Seller's independent real estate appraisal estimates the fee simple
32 market value of the Property to be Four Million Three Hundred Sixty Thousand
33 Dollars (\$4,360,000); and

34
35 WHEREAS, in accordance with § 8-3-101(d)(2), the Department of Public Works
36 conducted an environmental assessment and a feasibility study for the Property;

1 and

2
3 WHEREAS, the County Executive has determined that the Property is needed for
4 public use in that it has been identified as a potential site for a school, as well as
5 other possible public educational, recreational, or civic uses, and that acquisition of
6 the Property for the sum of One Million Ninety-Two Thousand Five Hundred
7 Dollars (\$1,092,500) to be paid from the Advance Land Acquisition Capital Project
8 pursuant to the terms and conditions of the Agreement of Sale ("Agreement of
9 Sale"), which is attached to this Resolution as Exhibit A, would be in the best
10 interests of the County; now, therefore, be it

11
12 *Resolved by the County Council of Anne Arundel County, Maryland, That, in*
13 accordance with § 8-3-101(d)(2), it approves the acquisition of the Property pursuant to the
14 terms and conditions as set forth in Exhibit A; and be it further

15
16 *Resolved, That a copy of this Resolution be sent to County Executive Steuart Pittman.*

Department of Public Works
Right of Way Division
2662 Riva Road
Annapolis, MD 21401

C1067.10

AGREEMENT OF SALE

THIS AGREEMENT OF SALE (hereinafter called the "Agreement") made this 23rd day of December, 2019, by and between **STACHITAS INVESTMENTS, LLC**, a Maryland limited liability company (hereinafter "Seller"), and **ANNE ARUNDEL COUNTY, MARYLAND**, a body corporate and politic of the State of Maryland (hereinafter "Purchaser" or "County").

WHEREAS, the Seller is the owner of all that property located at 1127 Bragers Road Odenton, MD 21113 located in the Fourth Assessment District of Anne Arundel County identified on tax map 36 as parcel 29 and further described in a Deed recorded in the land records of Anne Arundel County in Liber 32729, folio 414 (hereinafter "Property"); and,

WHEREAS, the Purchaser has identified the Property as a potential school site, as well as other possible public educational, recreational, or civic uses.

NOW THEREFORE WITNESSETH: That for and in consideration of mutual covenants and promises herein made by the parties, the above recitals which are incorporated herein by reference and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. Seller agrees to sell and convey to Purchaser and Purchaser agrees to buy and accept from Seller, the Property, under the terms and conditions set forth in this Agreement.

2. The total purchase price for the Property shall be One Million Ninety Two Thousand Five Hundred Dollars (\$1,092,500) with settlement on or before April 1, 2020, contingent on the following occurring no later than one hundred twenty (120) days from the date hereof:

(a) Completion of tests and studies as outlined in paragraph 9 of this Agreement;

(b) Sufficient appropriation and authorization by Anne Arundel County, Maryland for the purchase price of the Property, including approval of the County Council (for funds from the Advanced Land Capital Acquisition Project) as may be required.

3. Seller shall execute this Agreement on or before December 31, 2019; after which time execution does not occur, this offer to purchase made by Purchaser to Seller shall be null, void, and of no effect; however, this Agreement may be extended by mutual agreement of both parties.

(a) Settlement shall be held at a location in Maryland designated by Purchaser. Purchaser shall give Seller at least fourteen (14) days written notice of the date and location of the settlement.

(b) Real estate taxes, general special taxes and rents, annual front foot benefit charges, special assessment tax or other annualized charges of a like

nature are to be adjusted to the date of settlement and thereafter assumed by Purchaser.

(c) Settlement costs including any title examination, title insurance, tax certificates, recordation and transfer taxes, if any, are to be paid by Purchaser.

(d) The Purchaser's financial obligations under this Agreement are contingent upon sufficient appropriations and authorization being made by the Anne Arundel County Council for the performance of this Agreement.

4. At the time of settlement, the Seller shall convey a 100% interest in the Property to Purchaser by a fee simple deed with a special warranty. Title of the Property shall be good and merchantable, insurable at regular market rates with only such exceptions as expressly agreed to by Purchaser, and free and clear of all liens and encumbrances, except for recorded easements, use and occupancy restrictions and encumbrances of public record, use and occupancy restrictions which are generally applicable to properties in the immediate neighborhood or the subdivision in which the property is located, and publicly recorded easements for public utilities and any other easements which may be observed by an inspection of the property.

In the event that Seller is unable to convey such title to Purchaser at settlement as required herein (hereinafter called a "Title Defect"), Seller, at Seller's sole expense and election, shall forthwith, but in no longer than 120-days after the settlement date and provided Purchaser agrees to a like extension of the settlement date, (the "Title Extension Period") take such action as is required in order to cure Title Defect. Notwithstanding the foregoing, Seller shall have no obligation to take any action in order to cure the Title

Defect. In the event Seller elects not to take such actions, or is unable to do so within the Title Extension Period, Purchaser at Purchaser's sole option may purchase the Property at the consideration stated in paragraph 2 with the Title Defect, may extend for a reasonable period of time necessary to complete the action undertaken to clear the Title Defect, or may declare this Agreement null, void and of no effect and upon such declaration, the parties shall have no further rights, responsibilities, obligations, or duties to each other hereunder. In the event the Title Defect remains uncured as of August 31, 2020, this Agreement shall automatically terminate, unless the parties mutually agree to extend such dates, and upon such termination, the parties shall not have any further rights, responsibilities, obligations or duties to each other hereunder.

5. Time is of the essence as to the requirements of paragraphs 2, 3 and 4 of this Agreement.

6. (a) Seller and Purchaser represent and warrant to each other that the person or persons executing this Agreement on behalf of each of them possess full legal power to do so and to carry out each and every obligation of this Agreement, and that Seller is capable of transferring good and merchantable title, subject to paragraph 4 above.

(b) Seller further represents that there are no leases, licenses, agreements, tenants or occupants that may or will impair or affect Seller's title to this Property or in any way affect or impair Seller's ability to convey this Property as set forth herein. Seller makes no representations or warranty, express or implied, as to the fitness of this Property for any particular use or purpose now and hereafter.

7. Until execution and delivery of the deed by Seller to Purchaser, Purchaser shall not assume any risk of loss or damage to the Property.

8. The undersigned owner of the real property described above makes no representations or warranties as to the condition of the real property or any improvements thereon, and the Purchaser will be receiving the real property "as-is," with all defects which may exist, except as otherwise may be provided in this Agreement.

9. During the term of this Agreement, Purchaser, at its own expense, shall have the right to cause surveys, title abstracts, boring tests, environmental and feasibility studies to be made with respect to the Property to determine the feasibility of the acquisition of the Property; provided, however, Seller shall have twenty-four (24) hours advance notice of and the opportunity to be present during the performance of any invasive tests. In connection with the performance of its surveys, tests, abstracts and studies, if the surveys, abstracts, tests and studies conducted by Purchaser do not permit or warrant in the sole discretion of the Purchaser, or its engineers, architects or consultants, the acquisition and development of the Property, the Purchaser shall have the right, exercisable by written notice given to Seller within ninety (90) days from the date of this Agreement ("Study Termination Date"), to terminate this Agreement. In that event, Purchaser shall be relieved from further liability hereunder, at law or in equity, except that Purchaser's indemnification and restoration obligations set forth in this Paragraph shall survive the termination. To the extent permitted by law, and subject to appropriation and availability of funds, the Purchaser shall indemnify and hold Seller harmless against any damages, liabilities and claims incurred by Seller as a result of Purchaser's activities upon

or with respect to the Property. If the Purchaser terminates this Agreement pursuant to the provisions of this paragraph or any other provision of this Agreement, Purchaser, at its own expense, shall restore any damage to the Property caused by Purchaser making boring tests and other tests and studies, and immediately thereafter vacate. Nevertheless and notwithstanding the foregoing, Seller represents that it has no actual knowledge of any environmental physical condition or dumping on or in the Property rendering the Property un-useable or lowering its market value. If dumping or environmental conditions are found by the tests and studies, Seller may, in its sole and absolute discretion and election, mitigate and perform the clean-up at its sole cost and expense, Purchaser and Seller may mutually agree to amend the purchase price to reflect this diminution of value based on the cost to cure or clean-up costs, or Purchaser may determine in its sole discretion that the site does not warrant use for its intended purpose and elect to terminate this contract thereby rendering it null and void and of no effect.

10. It is understood and agreed that the Purchaser shall not have any obligation or liability for the payment of any real estate brokerage commission, and neither party shall be obligated for the other party's legal expenses. Should any claim for a commission be established by any broker, agent, consultant or attorney of the Seller, Seller expressly agrees to hold Purchaser harmless with respect thereto.

11. All notices under this Agreement shall be in writing and shall be deemed to be duly given if hand delivered or mailed by registered or certified mail, return receipt requested, as follows:

IF TO SELLER: Stachitas Investments, LLC
2661 Riva Road
Annapolis, MD 21401

IF TO PURCHASER: Chief, Right of Way Division
2662 Riva Road
Annapolis, MD 21401

Office of Law
2660 Riva Road
Annapolis, MD 21401

WITH COPIES TO: Director of Public Works
2662 Riva Road
Annapolis, MD 21401

The parties shall be responsible for notifying each other of any change of address.

12. This Agreement contains the complete and entire agreement between the parties relating to the Property and no agreement or understanding whether written or oral, not herein contained shall be considered part of this Agreement unless set forth in writing between the parties.

13. The terms and provisions of this Agreement of Sale shall survive settlement and the execution and delivery of a deed from Seller to Purchaser and shall not merge therein.

14. If any term, condition or covenant of this Agreement shall be declared invalid or unenforceable the remainder of the Agreement shall not be affected.

15. This Agreement shall be governed by Maryland law, and any action arising out of or related thereto shall be brought exclusively in a court of competent jurisdiction located in Anne Arundel County, Maryland.

16. This Agreement shall inure to the benefit of the parties hereto, their heirs, personal representatives, legal representatives, successors and assigns as appropriate.

17. Seller may elect to participate in a tax-deferred exchange or an allowable charitable deduction in connection with this transaction. The County agrees to reasonably cooperate with Seller by providing relevant documentation of such exchange or substantiation of value for purposes of Seller's charitable deduction if there is no cost, expense or liability to the County.

18. Seller Re-Purchase Option. In the event the County (a) on or before the date that is twenty-five (25) years after the settlement date of this Agreement fails to commence construction of a school or commence another public educational, recreational, or civic use ("Capital Improvement Project") on the Property and/or (b) on or before the date that is fifty (50) years after the settlement date of this Agreement attempts to convey the Property, or convey or establish any interest in or to the Property, to any person, or non-public entity, then in either of those events, Seller shall have the right to re-purchase the Property, subject to any necessary approval by the Anne Arundel County Council for a "private disposition" sale, by delivering written notice of such intent to Purchaser (or the then-current property owner). Seller shall be required to settle on the re-purchase within one hundred twenty (120) days after such notice, unless Purchaser and Seller agree to a longer settlement.

If Seller exercises its re-purchase right as set forth herein, the price for such re-purchase (the "Re-Purchase Price") shall be as follows:

- (a) For a period of five years following the completion or abandonment of the Capital Project on the Property, and on a determination that all or part of the

Property acquired for the Capital Project is no longer needed for public use, the County may convey the Property to the Seller for the purchase price set forth in Paragraph 2 above; or

(b). Thereafter, the average of two appraisals obtained by the County at the time of re-purchase of the Property by the Seller.

The Re-Purchase Price shall be payable in cash or other immediately available funds. Title to the Property shall be conveyed to Seller or its designee by general warranty deed. Any liens, including potential mechanics liens or other liens outstanding on the Property, shall be discharged by Purchaser at the re-purchase settlement. The costs of closing and title on the re-purchase shall be paid by Seller. All of the foregoing in this paragraph shall be collectively referred to as the "Re-Purchase Option". The Re-Purchase Option shall be (i) deemed a covenant running with the land binding upon all successors and assigns, (ii) included in the deed to the Property delivered to Purchaser at settlement of this Agreement (which provision in the deed shall be prepared by Seller prior to settlement of this Agreement and subject to Purchaser's reasonable review and approval), and (iii) enforceable by Seller. For purposes of the Re-Purchase Option and this paragraph, the term Seller shall include Seller's successors, assigns and affiliates, and the term "affiliate" shall mean any entity owned, controlled, or under common control with the managing principal of Seller, or his direct descendants or assigns.

[Signature Page to Follow]

Witness:



Seller:

STACHITAS INVESTMENTS, LLC

By:  (Seal)

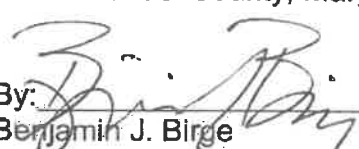
Name: Gary W. Koch

Title: Manager

Attest:

Purchaser:

Anne Arundel County, Maryland

By:  (Seal)

Benjamin J. Birge

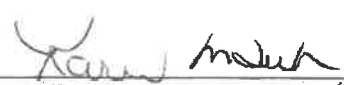
Chief Administrative Officer for
Anne Arundel County, Maryland

APPROVED AS TO FORM AND LEGAL SUFFICIENCY


Christine Neiderer,
Assistant County Attorney

12/23/19
Date

APPROVED FOR SUFFICIENCY AND AVAILABILITY OF FUNDS:


Controller CM/12/24/19

12/24/19
Date

I HEREBY CERTIFY that instrument was prepared by Anne Arundel County, Maryland,
one of the parties named herein.


Thomas E. Burke
Chief, Right of Way Division