

REAL ESTATE PURCHASE AND SALE CONTRACT

This real estate purchase and sale contract (the "Contract"), effective as of the date of the last signature hereto, is by and between the Board of Supervisors of Loudoun County, Virginia ("Seller" or "County") and the Town of Purcellville, Virginia ("Purchaser" or "Town") (collectively, the "parties").

RECITALS

R1. Seller is the fee simple owner of certain real property consisting of approximately 226.34 acres of land, of which 220.95 acres are in the Town of Purcellville (Loudoun County PIN 522-29-5928-002), together with all improvements thereon and all rights and appurtenances pertaining thereto, and generally known as Fields Farm Park (the "Park").

R2. Purchaser desires to purchase a portion of the Park described below and depicted on Exhibit A to construct a public safety center, water storage tank, or other public use thereon (the "Intended Use").

R3. The parties and the School Board of Loudoun County, Virginia ("School Board") entered into Settlement Agreement dated December 19, 2008 ("Settlement Agreement"), which terms included certain obligations to be met by the County, Town, and School Board.

R4. This parties now desire to acknowledge the complete satisfaction of the terms of the Settlement Agreement and forever release each other and the School Board from the terms of the Settlement Agreement in exchange for the conveyance by the County of the portion of the Park described herein to the Town of Purcellville.

R5. These recitals are incorporated by reference into this Contract.

NOW, THEREFORE, in consideration of a mutually agreed upon Satisfaction and Release of the Settlement Agreement to be executed at or before closing and the mutual promises contained in this Contract, the parties agree as follows:

1. Sale: Seller agrees to sell, and Purchaser agrees to purchase a portion of the Park, together with all improvements thereon and all easements, rights, and appurtenances thereto, in the approximate locations shown on Exhibit A and generally described as follows (collectively, the "Property"):

- a. Three (3) acre parcel in fee simple for the purpose of constructing a public safety center or other public use.
- b. Two (2) acre parcel in fee simple for the construction of a water tank or other public use.
- c. Permanent public access easements to both parcels described above; and
- d. Waterline and other utility easements in the general locations shown on Exhibit A.

Commented [FT1]: We are preparing a new Exhibit for this document that clearly shows and labels the parcels and various easement locations.

2. Intended Use. The parties agree that the Town's Intended Use of the Property shall not include potentially noxious public uses (e.g., sewer treatment facility, animal facility, or bulk refuse disposal center) inconsistent with the County's use of its surrounding property as a public park.

3. Purchase Price/Consideration: The consideration for the conveyance of the Property by the County to the Town shall be the execution of a mutually acceptable Satisfaction and Release of the Settlement Agreement.

4. Closing:

- a. Date: Closing shall occur within thirty (30) days after the date Purchaser notifies Seller that all contingencies identified in section 7 of this Contract have been satisfactorily completed.
- b. Seller's Obligations: On or before the date of Closing, Seller shall deliver to the Settlement Agent: (i) a special warranty deed conveying title to the Property; (ii) any affidavits as may be required by applicable local, state, or federal law, or the Settlement Agent including, but not limited to, a FIRPTA affidavit and owner's affidavit; (iii) other documents as reasonably requested by the Settlement Agent to facilitate Purchaser's acquisition of title insurance; and (iv) such other documents as may be reasonably requested by the Settlement Agent or otherwise necessary to facilitate consummation of the transaction contemplated herein.
- c. Purchaser's Obligations: Subject to the contingencies identified in section 7, at Closing Purchaser shall deliver to the Settlement Agent: (i) a Purcellville Town Council approved and executed Satisfaction and Release of the Settlement Agreement; and (ii) such other documents as may be reasonably requested by the Settlement Agent or otherwise necessary to facilitate consummation of the transaction contemplated herein.
- d. Expenses: Seller shall pay the cost of preparing the deed and required plat(s), the grantor's recordation tax, if applicable; all costs associated with the release of existing liens and encumbrances against the Property, if any; and any other applicable taxes, fees, or expenses customarily paid by grantors at settlement. Purchaser shall pay the cost of obtaining title insurance, including title examination costs; the Settlement Agent's fee; and any applicable taxes, fees, or expenses customarily paid by grantees at settlement. Each party shall be responsible for its own attorney's fees.
- e. Taxes and Other Charges: Real estate taxes, assessments, utility charges, and any other charges customarily apportioned between the parties at settlement, if any, shall be prorated between Seller and Purchaser as of the date of Closing.
- f. Possession: Seller shall deliver possession of the Property to the Purchaser at Closing, except that Purchaser will have access to the Property for purposes specified in section 5 prior to Closing.

5. Due Diligence & Right of Entry:

- a. Due Diligence Review: Purchaser, at its sole expense, shall have one hundred twenty (120) days after the Effective Date (the “Due Diligence Period”) to conduct, obtain, and review any surveys, appraisals, assessments, inspections, tests, or reports that Purchaser reasonably deems necessary to determine the suitability of the Property for the Intended Use and the feasibility of the transaction contemplated in this Contract (“Due Diligence Review”), including but not limited to obtaining a title report and ALTA survey.
- b. Right of Entry: During the Due Diligence Period, Purchaser and its designated agents and consultants may enter the Park (including the Property) during day light hours on business days upon providing the County’s designated representative a twenty-four hour advance notice for the purpose of conducting and completing the Due Diligence Review. Purchaser, its agents, and consultants shall exercise this right of entry without causing damage to the Park. The Seller may require one of its employees or representatives to accompany the Purchaser or its agents while in the Park. All entry to the Park is at the sole risk of the Town. The Town shall require its third-party agents and consultants to indemnify the County for all injuries to persons or property caused by their acts or omissions and provide the County an acceptable liability insurance policy naming the County, its employees, and elected officials as additional insureds.
- c. Documentation: Seller will cooperate with Purchaser by providing documents to the extent they are available related to title to the Property and investigations/inspections of the Property such as surveys, environmental studies, floodplain analysis, and similar studies.
- d. Right of Termination: At any time on or before the last day of the Due Diligence Period, Purchaser may terminate this Contract for any reason, in Purchaser’s sole discretion.

6. Title:

- a. At Closing, Seller shall convey to Purchaser good and marketable fee simple title to the Property, by special warranty deed, free and clear of all liens, tenancies, encumbrances, defects, and encroachments, except as otherwise may be provided in this Contract, and subject only to such restrictions and easements of record that do not affect the Intended Use of the Property or render title unmarketable.
- b. Title to the Property shall be insurable at regular rates by a title insurance company of Purchaser’s selection authorized to do business in the Commonwealth of Virginia. If title insurance is desired by Purchaser, Purchaser shall obtain a title insurance commitment (“Title Commitment”) during the Due Diligence Period. Purchaser shall notify Seller in writing, on or before the last day of the Due

Diligence Period, of any matters in the Title Commitment that are unacceptable to Purchaser ("Title Objections").

- c. Within thirty (30) days after receiving the Title Objections, Seller shall deliver to the Purchaser (with a copy to the Settlement Agent) evidence that all Title Objections have been removed or cured. If Seller fails to deliver such evidence, or if any Title Objection is not removed or cured in such a manner that would enable Purchaser to obtain title insurance as required by subsection (b) (as determined by the Settlement Agent), Purchaser may, at its option, either terminate this Contract or waive such Title Objections and proceed to Closing.

7. Contingencies: The parties' obligations under this Contract are expressly contingent upon the satisfaction of each of the following contingencies:

- a. The parties' formal approval of this Contract and appropriation of any funds required for Closing costs.
- b. Purchaser obtaining a satisfactory Due Diligence Review finding the Property suitable for its Intended Use.
- c. Seller's removal or cure of all liens and Title Objections in accordance with section 6.
- d. County's clearing and grading of public access easements to the two and three-acre parcels ("Parcels") suitable for vehicle travel as shown on Exhibit A. Such grading and clearing will occur during construction of the Fields Farm Park project or the adjacent Fields Farm Park Road/Mayfair Crown Drive improvements.
- e. Confirmation that the permanent waterline and utility easements to be conveyed are suitable to operate public facilities on the Parcels.
- f. Cooperation and non-monetary assistance from Seller to obtain off-site utility easements, if needed, to operate public facilities on either or both Parcels. Such assistance does not include the use of eminent domain.
- g. The Town's approval of a subdivision at the County's expense sufficient to allow conveyance of the Parcels by the County to the Town.
- h. The negotiation and approval of a mutually acceptable Satisfaction and Release of the Settlement Agreement to be executed at or prior to closing.
- i. Purchaser shall notify Seller in writing when Purchaser is satisfied that all contingencies have been met and the parties shall schedule Closing.

8. Risk of Loss: The risk of loss or damage to the Property by fire, flood, or other casualty is assumed by Seller until Closing. If substantial loss or damage to the Property occurs prior to Closing, Seller shall promptly notify Purchaser of such loss or damage, and Purchaser may, at its option, either (i) terminate this Contract; or (ii) affirm the Contract.

Commented [FT2]: Sally/David, this was in the LOI but I am not sure it was discussed at length with the County. This language may need tweaking.

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9. Termination by Purchaser: If Purchaser elects to terminate this Contract pursuant to sections 5, 6, 7, or 8, Purchaser shall deliver written notice of such termination to Seller with a copy to the Settlement Agent.

10. Parties Authorized Representatives: By the approval and execution of this Contract, the County and Town authorize their respective County Administrator and Town Manager, or their Administrator's or Manager's designee to take such actions and execute such documents on behalf of the parties as the County Administrator and Town Manager determine to be reasonable and necessary to exercise the rights of the parties under this Contract and/or to facilitate the consummation of the transaction contemplated herein.

11. Default: The parties' sole remedy for a default by the other party is to terminate the Contract.

12. Assignment: This Contract may not be assigned by either party without the express written consent of the other party.

13. Notices: Any notice that a party to this Contract is required or may desire to give the other party shall be in writing and addressed as provided below. Notices shall be deemed made and complete when personally delivered; mailed by United States registered or certified mail, return-receipt requested; or sent by a commercial overnight delivery service to:

SELLER: County of Loudoun, Virginia
Tim Hemstreet
County Administrator
1 Harrison Street, SE, 5th Floor
Leesburg, Virginia 20175
Tim.Hemstreet@loudoun.gov

with a copy to: Joe Kroboth, III, PE, Director
Department of Transportation and Capital Infrastructure
101 Blue Seal Drive, SE
Suite 102, MSC #64
P.O. Box 7500
Leesburg, Virginia 20177-7500
Joe.Kroboth@loudoun.gov

or to such other address or contact person as Seller may direct in writing.

PURCHASER: Town of Purcellville, Virginia
David A. Mekarski, AICP
Town Manager
221 South Nursery Avenue
Purcellville, Virginia 20132

with a copy to:

or to such other address or contact person as Purchaser may direct in writing.

14. Miscellaneous:

- a. Severability: The provisions of this Contract shall be deemed severable. If any provision of this Contract is held to be invalid, void, or unenforceable, in whole or in part, by a court of competent jurisdiction, the remaining provisions shall not be affected thereby and shall continue in full force and effect.
- b. Entire Agreement/No Oral Modification: This Contract constitutes the entire agreement among the parties and may not be modified except by written instrument executed by the parties.
- c. No Broker or Agent: The Seller and Purchaser hereby represent and warrant to each other that they have not used a real estate agent and/or broker and that no commissions or fees are due regarding this transaction.
- d. Survival: All provisions of this Contract shall survive Closing until satisfied.
- e. Counterparts: This Contract shall be executed in duplicate, and it may be executed in counterparts. Execution in counterparts shall not affect or alter the validity of this Contract or the rights and responsibilities of the parties hereto. Facsimile and electronic signatures shall be treated as originals for all purposes applicable hereto.

SELLER:

BOARD OF SUPERVISORS OF
LOUDOUN COUNTY, VIRGINIA

APPROVED AS TO FORM:

By: _____
Tim Hemstreet
Loudoun County Administrator

By: _____
Senior Assistant County Attorney

Date: _____

COMMONWEALTH OF VIRGINIA:
COUNTY OF LOUDOUN, to-wit:

The foregoing contract was acknowledged before me this _____ day _____ of _____, 2021, by Tim Hemstreet in his capacity as the County Administrator of the County of Loudoun, Virginia, on behalf of the Board of Supervisors of Loudoun County, Virginia.

Notary Public
Notary Registration No. _____
My commission expires: _____

PURCHASER:

TOWN OF PURCELLVILLE,
VIRGINIA

APPROVED AS TO FORM:

By: _____
David A. Mekarski
Town Manager

By: _____
Town Attorney

Date: _____

COMMONWEALTH OF VIRGINIA:
COUNTY OF LOUDOUN, to-wit:

The foregoing contract was acknowledged before me this _____ day _____ of _____, 2021, by David A. Mekarski in his capacity as the Town Manager of the Town of Purcellville, Virginia, on behalf of the Purcellville Town Council.

Notary Public
Notary Registration No. _____
My commission expires: _____

2 ACRE PARCEL FOR WATER TANK
OR OTHER PUBLIC USE

PERMANENT ACCESS EASEMENT
TO WATER TANK OR OTHER
PUBLIC USE SITE

Area of interest by Town Officials for future discussions

Not included in the conveyance under consideration at this time.

ALT WATERLINE ALIGNMENT

**REVISED WATER STORAGE
FACILITY SITE LOCATION**

— WATERLINE
EASEMENT

— **WATERLINE
EASEMENT**

**ALT WATERLINE
ALIGNMENT**

NOTE: FIELDS FARM PARK ROAD IS
INTENDED TO BE A PUBLIC ROADWAY

WATERLINE AND OTHER UTILITY
EASEMENTS (TYPICAL AS SHOWN)

3 ACRE PARCEL FOR PUBLIC SAFETY
CENTER OR OTHER PUBLIC USE

EXHIBIT A