

Amendment 1 to Council Bill No. 53-2020

**BY: The Chairperson at the request
of the County Executive**

**Legislative Day 15
Date: November 2, 2020**

Amendment No. 1

(This Amendment substitutes a new agreement in order to specify:

- 1. That the first payment may be subject to reduction for amounts received by the Seller;*
- 2. That the Seller shall have the right to take action under the Sale Agreement; and*
- 3. Language that directs which agreement shall control if there is a conflict between the Sale Agreement and the Installment Purchase Agreement.)*

1 On page 2, in line 17, strike “annually commencing on the first”.

2

3 On page 2, in line 18, strike “anniversary” and substitute “commencing after the”.

4

5 Remove the Installment Purchase Agreement, attached as exhibit A and substitute a revised
6 agreement as attached to this amendment.

HOWARD COUNTY, MARYLAND,
the County

and

M-10 RESIDENTIAL LAND DEVELOPMENT, INC.,
the Seller

INSTALLMENT PURCHASE AGREEMENT

Installment Purchase Agreement No. 2020-1

Dated as of _____, 2020

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INSTALLMENT PURCHASE AGREEMENT

THIS INSTALLMENT PURCHASE AGREEMENT (this “Purchase Agreement”) is made as of the ____ day of _____, 2020, by and between **HOWARD COUNTY, MARYLAND**, a body politic and corporate and political subdivision of the State of Maryland (the “County”), and **M-10 RESIDENTIAL LAND DEVELOPMENT, INC.**, a Maryland corporation (the “Seller,” as defined herein).

RECITALS

The Seller is the owner of certain unimproved real property located in Howard County, Maryland and more particularly described in Exhibit A hereto (the “Land”). The County desires to acquire the Land for purposes of construction of one or more public schools and uses related thereto. The County has the legal right and authority to acquire property by condemnation. The County has advised the Seller that the County prefers to acquire the Land for construction of one or more public schools by consensual sale in lieu of condemnation. In lieu of a condemnation of the Land, the Seller and the County executed that certain Letter of Intent dated March 27, 2018, received March 30, 2018 regarding the potential sale by the Seller and purchase by the County of the Land.

The Seller desires to sell the Land to the County, and the County has agreed to purchase such Land, under threat of and in lieu of condemnation, in accordance with the provisions of the Purchase and Sale Agreement dated _____, 2020 (the “Sale Agreement”), by and between the County and the Seller for an aggregate purchase price of \$5,750,000. The County and the Seller have agreed that such purchase price payable to the Seller will be paid in installments by the County to the Seller.

Pursuant to Section 4.201A of the Howard County Code, the County may purchase land in fee simple through an installment purchase agreement upon the conditions and in compliance with the procedures set forth in such code section. Bill No. _____, passed by the County Council of the County on _____, 2020, approved by the County Executive of the County on _____, 2020 and effective on _____, 2020 authorizes, among other things, the County to execute and deliver this Purchase Agreement and to pay the purchase price of the Land in installment payments.

Board of Education of Howard County has approved the Land for use as an elementary school in accordance with Howard County Public School System’s Policy 6000.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the County and the Seller hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1. Definitions. The terms defined in the recitals shall have the meaning therein provided. As used in this Purchase Agreement, the following terms have the following meanings, unless the context clearly indicates a different meaning:

“Business Day” or “business day” means a day on which (a) banks located in Maryland are not required or authorized by law or executive order to close for business, and (b) The New York Stock Exchange is not closed.

“County Council” means the County Council of the County.

“County Executive” means the County Executive of the County.

“Date of Settlement” means _____, 2020.

“First Payment” means \$3,900,000, the amount payable by the County to the Seller in immediately available funds on the Date of Settlement in accordance with this Purchase Agreement.

“Installment Purchase Price” means \$1,850,000, the installment purchase price to be paid by the County to the Seller in accordance with this Purchase Agreement.

“Installment Purchase Price Payment Date” means _____ 1, 2021.

“Person” or “person” means any natural person, firm, association, corporation, company, trust, partnership, public body or other entity.

“Purchase Price” means \$5,750,000, which amount consists of the Installment Purchase Price plus the First Payment.

“Seller” means M-10 Residential Land Development, Inc., a Maryland corporation, including its successors and permitted assigns.

Section 1.2. Rules of Construction. The words “hereof,” “herein,” “hereunder,” “hereto,” and other words of similar import refer to this Purchase Agreement in its entirety.

The terms “agree” and “agreements” contained herein are intended to include and mean “covenant” and “covenants”.

References to Articles, Sections, and other subdivisions of this Purchase Agreement are to the designated Articles, Sections, and other subdivisions of this Purchase Agreement.

The headings of this Purchase Agreement are for convenience only and shall not define or limit the provisions hereof.

All references made (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, and (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well.

The parties hereto acknowledge and agree that the recitals to this Purchase Agreement are true and correct, and such recitals are incorporated herein by this reference.

Time is of the essence in this Purchase Agreement.

ARTICLE II

PAYMENT OF PURCHASE PRICE

Section 2.1. Payment of Purchase Price.

(a) The County shall pay the First Payment in immediately available funds to the Seller on the Date of Settlement as part of the Purchase Price for the Land (subject to reduction in the amount of any prior deposits made by or on behalf of the County and received by the Seller for the acquisition of the Land). On the Installment Purchase Price Payment Date, the County shall pay in immediately available funds to the Seller \$1,868,500, which amount consists of the Installment Purchase Price plus accrued interest thereon calculated as set forth in Section 2.1(b) hereof.

(b) Interest on the unpaid balance of the Installment Purchase Price shall accrue from the Date of Settlement and shall be payable to the Seller on the Installment Purchase Price Payment Date at the rate of 1.00% per annum. Interest shall be calculated on the basis of a 360-day year of twelve 30-day months.

(c) Both the Installment Purchase Price and the interest on the unpaid balance thereof are payable in lawful money of the United States of America, at the time of payment.

(d) Payment of interest on the unpaid balance of the Installment Purchase Price and payment of the Installment Purchase Price shall be made by the County to the Seller on the Installment Purchase Price Payment Date by wire transfer to the Seller. The County shall use the bank account number provided by the Seller on file with the County on the 15th day before the Installment Purchase Price Payment Date, or if such 15th day is not a Business Day, the Business Day immediately preceding such day, for such payment. Promptly following the County's payment to the Seller of the Installment Purchase Price, and the interest thereon, the Seller shall present and surrender this Purchase Agreement at the office of the County.

(e) The obligation of the County to pay the Installment Purchase Price and accrued interest thereon is subject to the appropriation of money legally available for such purpose by the County Council. The County Executive will include in the budget request for the budget year the annual installment of the Installment Purchase Price and interest thereon to become due during such budget year. In the event sufficient funds shall not be appropriated by the County Council for the payment of the Installment Purchase Price and accrued interest thereon required to be paid under this Purchase Agreement, the County may terminate this Purchase Agreement at the end of the last fiscal year or earlier date for which an appropriation is available, without penalty, and the County shall not be obligated to make payment of the Installment Purchase Price and accrued interest thereon provided for herein beyond the last date for which an appropriation is available. The County shall deliver written notice to the Seller of such termination no later than seven business days after the County has knowledge that an appropriation will not be available. The County shall have no liability for the failure to give such notice. Upon termination of this Purchase Agreement for non-appropriation, the obligations of the County hereunder will cease. The County hereby represents and warrants that the amounts payable by the County under this Purchase Agreement are included in the County's Fiscal Year 2021 Capital Budget, a copy of the excerpt of which is attached hereto as Exhibit B.

(f) Notwithstanding anything in this Purchase Agreement to the contrary, in the event the County fails to pay to the Seller the Installment Purchase Price and interest due under this Purchase Agreement, the Seller shall have the right to take any action at law or in equity or under the Sale Agreement to enforce the performance and observance of any obligation, agreement or covenant of the County under this Purchase Agreement and under the Sale Agreement. The provisions of this Section 2.1(f) shall survive the termination of this Purchase Agreement.

Section 2.2. Registration and Transfer of this Purchase Agreement. Until the Installment Purchase Price and all interest thereon have been paid in full, the County shall maintain and keep at its offices registration books for the registration and transfer of this Purchase Agreement. The Seller shall not transfer or assign this Purchase Agreement or the Seller's right to receive payment pursuant to this Purchase Agreement except with the prior written consent of the County (which shall not be unreasonably withheld). For every registration of transfer of this Purchase Agreement, the County may make a charge sufficient to reimburse itself for any tax or other governmental charge required to be paid with respect to such transfer, which sum or sums shall be paid by the person requesting such transfer as a condition precedent to the exercise of the privilege of registering such transfer.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Section 3.1. Representations and Warranties of the County. The County makes the following representations to the Seller:

(a) The County is a body politic and corporate and a political subdivision of the State of Maryland.

(b) The County has the necessary power and authority to enter into this Purchase Agreement, to perform and observe the covenants and agreements on its part contained in this Purchase Agreement and to carry out and consummate all transactions contemplated hereby. By proper action, the County has duly authorized the execution and delivery of this Purchase Agreement.

(c) This Purchase Agreement has been duly and properly authorized, executed, sealed and delivered by the County, and, assuming the due authorization, execution and delivery of this Purchase Agreement by the Seller, constitutes the valid and legally binding obligation of the County, and is enforceable against the County in accordance with its terms.

(d) There are no proceedings pending or, to the knowledge of the County, threatened before any court or administrative agency that may affect the authority of the County to enter into this Purchase Agreement.

(e) The County's use of the Land is essential for the County to perform its governmental functions.

Section 3.2. Representations and Warranties of the Seller. The Seller makes the following representations and warranties to the County with respect to itself.

(a) The Seller has full power and authority to execute and deliver this Purchase Agreement and to incur and perform the obligations provided for herein. No consent or approval of any person or public authority or regulatory body is required as a condition to the validity or enforceability of this Purchase Agreement, or, if required, the same has been duly obtained.

(b) This Purchase Agreement has been duly and properly executed by the Seller, and assuming the due authorization, execution and delivery of this Purchase Agreement by the County, constitutes a valid and legally binding obligation of the Seller, and is fully enforceable in accordance with its terms.

(c) There is no litigation or proceeding pending or, so far as the Seller knows, threatened before any court or administrative agency that, in the opinion of the Seller, will materially adversely affect the authority of the Seller to enter into, or the validity or enforceability of, this Purchase Agreement.

ARTICLE IV

MISCELLANEOUS

Section 4.1. Parties in Interest. Except as herein otherwise specifically provided, nothing in this Purchase Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation, other than the County and the Seller, any right, remedy or claim under or by reason of this Purchase Agreement, this Purchase Agreement being intended to be for the sole and exclusive benefit of the County and the Seller.

Section 4.2. Binding Effect. This Purchase Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

Section 4.3. Severability. In case any one or more of the provisions of this Purchase Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Purchase Agreement and this Purchase Agreement shall be construed and enforced as if such illegal or invalid provisions had not been contained herein or therein.

Section 4.4. Prior Agreements Cancelled; No Merger. Except regarding the Sale Agreement, this Purchase Agreement shall completely and fully supersede all other prior agreements, both written and oral, between the County and the Seller relating to the payment of the Purchase Price. Except regarding the Sale Agreement, neither the County nor the Seller shall hereafter have any rights under such prior agreements but shall look solely to this Purchase Agreement and the Sale Agreement for definitions and determination of all of their respective rights, liabilities and responsibilities relating to the Land and the payment of the Purchase Price. To the extent any provision in the Sale Agreement irreconcilably conflicts with any provision herein, the provision of this Purchase Agreement shall control.

Section 4.5. Amendments, Changes and Modifications. This Purchase Agreement may not be amended, changed, modified, altered or terminated except by an agreement in writing between the County and the Seller.

Section 4.6. No Personal Liability of County Officials. No covenant or agreement contained in this Purchase Agreement shall be deemed to be the covenant or agreement of any official, officer, agent or employee of the County in his or her individual capacity, and neither the officers or employees of the County nor any official executing this Purchase Agreement shall be liable personally on this Purchase Agreement or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 4.7. Governing Law. The laws of the State of Maryland shall govern the construction and enforcement of this Purchase Agreement.

Section 4.8. Notices. Except as otherwise provided in this Purchase Agreement, all notices, demands, requests, consents, approvals, certificates or other communications required under this Purchase Agreement to be in writing shall be sufficiently given and shall be deemed to have been properly given three Business Days after the same is mailed by certified mail, postage prepaid, return receipt requested, addressed to the person to whom any such notice, demand, request, approval, certificate or other communication is to be given, at the address for such person designated below:

If to the County: Rafiu Ighile
Director of Finance
George Howard Building
3430 Courthouse Drive
Ellicott City, Maryland 21043

With copy to: Gary W. Kuc
County Solicitor
3450 Courthouse Drive
Ellicott City, Maryland 21043

If to the Seller: M-10 Residential Land Development, Inc.
1205 York Road
Lutherville, Maryland 21093
Attn: Louis Mangione

With copy to: Talkin & Oh, LLP
5100 Dorsey Hall Drive
Ellicott City, Maryland 21042
Attn: Sang W. Oh and Dylan Springmann

Any of the foregoing may, by notice given hereunder to each of the others, designate any further or different addresses to which subsequent notices, demands, requests, consents, approvals, certificates or other communications shall be sent hereunder.

Section 4.9. Holidays. If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Purchase Agreement, shall not be a Business Day, such payment may, unless otherwise provided in this Purchase Agreement, be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Purchase Agreement, and in the case of payment no interest shall accrue for the period after such nominal date.

WITNESS the signatures and seals of the parties hereto as of the date first above written.

WITNESS/ATTEST:

HOWARD COUNTY, MARYLAND

Lonnie R. Robbins
Chief Administrative Officer

By: _____ (SEAL)
Calvin Ball
County Executive

[COUNTY'S SEAL]

APPROVED:

Thomas Meunier, P.E., Director
Department of Public Works

APPROVED FOR SUFFICIENCY OF FUNDS:

Rafiu Ighile, Director
Department of Finance

APPROVED FOR FORM AND LEGAL SUFFICIENCY
this _____ day of _____, 2020.

Gary W. Kuc
County Solicitor

Morenike Euba Oyenusi, Reviewing Attorney
Senior Assistant County Solicitor

SELLER:

WITNESS:

M-10 RESIDENTIAL LAND DEVELOPMENT,
INC., a Maryland corporation

By: _____
Louis Mangione
President

DESCRIPTION OF LAND

Non-Buildable Bulk Parcel 'CC-2', containing approximately 10.18 acres, as identified on the Plat entitled "Villages at Turf Valley, Phase 1, Section 3", recorded as Plat #23330-23333 among the Land Records of Howard County, Maryland.

EXCERPT OF CAPITAL BUDGET

(see attached)

Project: C0359-FY2019 TURF VALLEY SCHOOL SITE ACQUISITION

Description

A project to purchase land for a new elementary school in the Turf Valley neighborhood of Ellicott City. It will include all costs associated with the land acquisition.

Justification

The school system anticipates that growth will exceed 110% of utilization and will not be able to serve the anticipated growth of students at existing facilities. Enrollment projections show that the area will increase by 700 students over the next ten years. This growth will require new capacity.

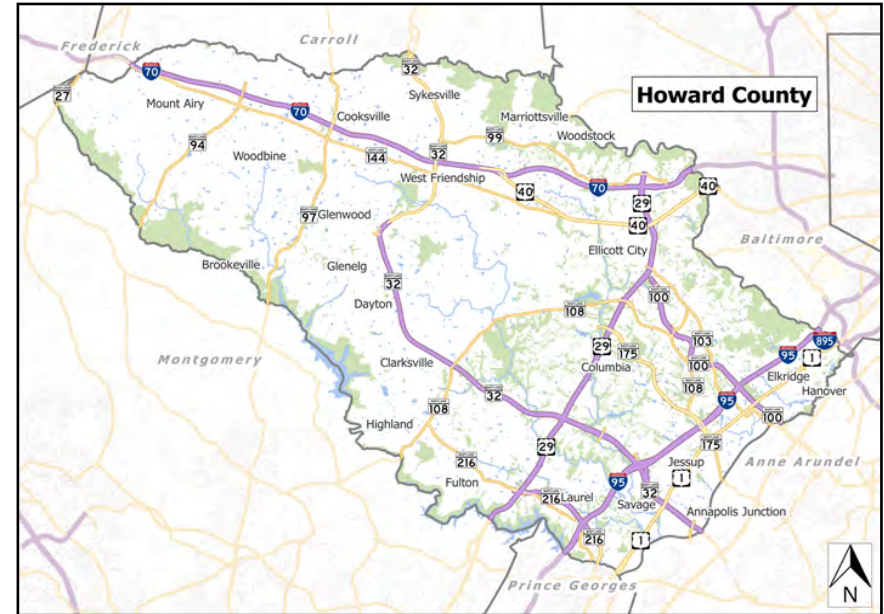
Remarks

County will purchase land for the school system. All other costs of development will be included in a separate capital project managed by the Board of Education.

Project Schedule

FY21|22- Negotiate agreement
FY22 - Purchase land.

Operating Budget Impact



Fiscal 2021 Capital Budget

GENERAL COUNTY PROJECTS

Project: C0359-FY2019 TURF VALLEY SCHOOL SITE ACQUISITION

(In Thousands)	Five Year Capital Program										Master Plan			
	Prior Appr.	FY2021 Budget	Appr. Total	Fiscal 2022	Fiscal 2023	Fiscal 2024	Fiscal 2025	Fiscal 2026	Sub Total	Fiscal 2027	Fiscal 2028	Fiscal 2029	Fiscal 2030	Total Project
LAND ACQUISITION	4,000	0	4,000	2,000	0	0	0	0	2,000	0	0	0	0	6,000
Total Expenditures	4,000	0	4,000	2,000	0	0	0	0	2,000	0	0	0	0	6,000
BONDS	4,000	0	4,000	2,000	0	0	0	0	2,000	0	0	0	0	6,000
Total Funding	4,000	0	4,000	2,000	0	0	0	0	2,000	0	0	0	0	6,000

\$17,820 spent and encumbered through February 2020

\$16,430 spent and encumbered through February 2019

Project Status Appraisal of 12.25 acres of land in the Turf Valley area completed in 2017.

FY 2020 Budget	4,000	2,000	6,000	0	0	0	0	0	0	0	0	0	6,000
Difference 2020 / 2021	0	(2,000)	(2,000)	2,000	0	0	0	0	2,000	0	0	0	0