

COUNTY COUNCIL OF ANNE ARUNDEL COUNTY, MARYLAND

Legislative Session 2023, Legislative Day No. 7

Resolution No. 9-23

Introduced by Mr. Smith, Chair
(by request of the County Executive)

By the County Council, April 3, 2023

1 RESOLUTION approving the terms and conditions of the acquisition of real property
2 in Lothian, Maryland, from Perdue AgriBusiness LLC, utilizing funds from the Advance
3 Land Acquisition Capital Project

4
5 WHEREAS, § 8-3-101(a) of the County Code empowers the County Executive to
6 purchase real property by agreement or eminent domain if an adequate
7 appropriation has been made by the County Council; and

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

13
14 WHEREAS, § 8-3-101(d)(2) further provides that, prior to approval of the purchase
15 by resolution, the County Council shall require an independent appraisal, an
16 environmental study, and a feasibility study for the property being purchased; and

17
18 WHEREAS, the County Executive is utilizing funds from the Advance Land
19 Acquisition Capital Project to purchase the real property known and designated as
20 6272 Southernmost Road, consisting of 15.745 +/- acres, as more particularly
21 described in a Deed recorded in the land records of Anne Arundel County (“Land
22 Records”) in Liber 39355, folio 233 (hereinafter referred to as the “Property”), from
23 Perdue AgriBusiness LLC (the “Seller”); and

24
25 WHEREAS, the County’s independent real estate appraisal estimates the “as-is”
26 market value of the Property to be One Million Two Hundred Seventy Thousand
27 Dollars (\$1,270,000); and

28
29 WHEREAS, in accordance with § 8-3-101(d)(2), the Department of Public Works
30 conducted an environmental assessment and a feasibility study for the Property;
31 and

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33 WHEREAS, the County Executive has determined that the Property is needed for
34 continued use as a grain elevator facility, as well as other possible public
35 educational, recreational, or civic uses, and that acquisition of the Property for the
36 sum of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000) to be paid
37 from the Advance Land Acquisition Capital Project, pursuant to the terms and

1 conditions of the Agreement of Sale (“Agreement of Sale”), attached hereto as
2 Exhibit A, would be in the best interests of the County; now, therefore, be it

3

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

7

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

READ AND PASSED this 1st day of May, 2023.

By Order:



Laura Corby
Administrative Officer

I HEREBY CERTIFY THAT RESOLUTION NO. 9-23 IS TRUE AND CORRECT AND DULY
ADOPTED BY THE COUNTY COUNCIL OF ANNE ARUNDEL COUNTY.



Peter I. Smith
Chair

Office of Central Services
Real Estate Division
2660 Riva Road, 3rd Floor
Annapolis, MD 21401

AGREEMENT OF SALE

THIS AGREEMENT OF SALE, made this 7th day of March, 2023, by and between **PERDUE AGRIBUSINESS LLC, a Maryland Limited Liability Company**, (hereinafter collectively "Seller") and **ANNE ARUNDEL COUNTY, MARYLAND**, a body corporate and politic of the State of Maryland (hereinafter called "Purchaser").

WHEREAS, the Seller is the owner of all that property known as 6272 Southernmost Road, Lothian, Maryland 20711, comprised of 15.745 acres, more or less, as described in a Deed recorded in the Land Records of Anne Arundel County in Liber 39355, folio 233, and more particularly described in Exhibit A, attached hereto and made a part hereof ("Property"); and

WHEREAS, the Seller wishes to sell the Property and Purchaser wishes to purchase the same, subject to the terms and conditions set forth herein.

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:

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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 of Sale.

2. The total purchase price for the Property shall be One Million, Two Hundred Fifty Thousand Dollars (\$1,250,000) with settlement on or before **June 27, 2023**, contingent on the following occurring no later than ninety (90) days from the execution of this contract:

a. Satisfactory results of the tests and studies, in Purchaser's sole determination, as outlined in paragraph 9 of this Agreement of Sale; and

b. Sufficient appropriation and authorization by Anne Arundel County, Maryland, including approval of the County Council (for funds from the Advance Land Capital Project No. 106720) as may be required.

3. Seller shall execute this Agreement of Sale on or before **March 7, 2023** 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 by both parties.

a. Settlement shall be held in escrow. 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.

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 and further assurances. Title to the Property shall be good and merchantable and 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 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 (a "Title Defect"), Seller, at Seller's sole expense, shall forthwith, but in no longer than 180-days after the settlement date and provided Purchaser agrees to a like extension of the settlement date, take such action as is required in order to cure the Title Defect. In the event Seller is unable to do so within the 180-day 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 the necessary time to complete the action undertaken to clear the title as required by this paragraph, or may declare this contract null, void, and of no effect, and upon such declaration, the parties shall have no further legal rights, responsibilities, obligations, or duties to each other hereunder.

5. Time is of the essence as to this Agreement of Sale.

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

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power to do so and to carry out each and every obligation of this Agreement of Sale, and that Seller is capable of transferring good, insurable, and merchantable title.

b. Seller further represents that there are no leases, licenses, agreements, covenants or restrictions, 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 or that will affect any right by Purchaser to use and possess the Property after settlement. Should a title examination or investigation reveal the existence of any such documentation or restriction on Purchaser's use of the Property, then Purchaser may, at Purchaser's sole option, declare this Agreement of Sale void and of no further effect.

7. Until execution and delivery of the deed by Seller to Purchaser, the risk of loss or damage to the Property or any portion thereof shall be assumed by Seller.

8. The Seller makes no representations or warranties as to the physical condition of the Property or any improvements, personalty or fixtures thereon, and the Purchaser will be receiving the Property, improvements, personalty and any fixtures "as-is," with all defects which may exist, except as otherwise may be provided in this Agreement of Sale.

9. During the term of this Agreement of Sale, Purchaser, at its own expense, shall have the right to cause surveys, title abstracts, boring tests, environmental studies or tests, feasibility studies, and such other studies with respect to the Property. In connection with the performance of its surveys, tests, abstracts, and studies conducted by the Purchaser, if the surveys, tests, abstracts, and studies conducted by Purchaser do not permit or warrant in the sole discretion of the Purchaser, or its engineers, attorneys,

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surveyors, architects or consultants, the acquisition and development of the Property for the Purchaser's purposes, the Purchaser shall have the right, exercisable by written notice given to Seller within sixty (60) days from the date of execution of this Agreement ("Study Termination Date") to terminate the Agreement. In that event, Purchaser shall be relieved from further liability hereunder for remainder of Property, at law or in equity, except that Purchaser's indemnification and restoration obligations set forth in this paragraph shall survive the termination. Notwithstanding anything contained above, if Purchaser determines that a Phase 2 Environmental Study is needed, the Study Period may be extended by a period of thirty (30) days solely for the purposes of conducting such Phase 2 and upon written notice by Purchaser to Seller. During the Study Period, Seller shall make available, at no cost to Purchaser, information related to the operation of the Property as a grain receiving and storage facility as needed to assist Purchaser with the transition or assumption of operations. 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 of Sale, 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 materially lowering its market value. If dumping or environmental conditions

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rendering the Property unusable or materially lowering its market value, are found by the tests and studies, Seller may, in its sole discretion, mitigate and perform the clean-up at their sole cost and expense, the Purchaser and Seller may amend the purchase price to reflect this diminution of value based on the cost to cure or clean-up costs, or the Purchaser may determine in its sole discretion that the site does not warrant use for its facility and this Agreement is null and void and of no effect.

10. Seller has engaged Douglas Commercial LLC ("**Seller's Broker**") and Purchaser has engaged MacKenzie Commercial Real Estate Services ("**Buyer's Broker**," collectively with Seller's Broker, the "**Brokers**"). Seller shall pay the Brokers a commission based upon terms and conditions in a separate agreement. Except for the foregoing Brokers and the fees payable thereto, Seller and Buyer each represents and warrants to the other that its sole contact with the other or with the Property has been made without the assistance of any broker or third party and that no fees are payable to any broker or third party in connection with the consummation of the transactions contemplated by this Agreement. It is understood and agreed that the Purchaser shall not have any obligation or liability for the payment of any real estate brokerage commission nor the Seller's brokerage or legal expenses. Should any claim for a commission be established by any broker, agent, consultant or attorney on behalf of Seller, Seller expressly agrees to hold Purchaser harmless with respect thereto.

11. All notices under this Agreement of Sale 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:

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IF TO SELLER: Perdue Agribusiness LLC
31149 Old Ocean City Road
Salisbury, Maryland 21804

IF TO PURCHASER: Real Estate Division
2662 Riva Road, 3rd Floor
Annapolis, MD 21401

Office of Law
2660 Riva Road
Annapolis, MD 21401

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

12. This Agreement of Sale 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 shall survive settlement and the execution and delivery of a deed from Seller to Purchaser shall not mere therein.

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

15. This Agreement of Sale shall be governed by Maryland law and be subject to the exclusive jurisdiction of the courts of 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.

[Signature Page to Follow]

Witness:

Seller:

Perdue Agribusiness LLC, A Maryland
Limited Liability Company

DocuSigned by:
Scott Fredericksen
By: _____ (Seal)
Name: Scott Fredericksen
Title: President

Attest:

Purchaser:
Anne Arundel County, Maryland
DocuSigned by:
Christine Anderson
_____ (Seal)
Christine Anderson
Chief Administrative Officer
for Steuart Pittman, County Executive

Approved for sufficiency and availability of funds:

DocuSigned by:
Billie Penley
_____ 001B74E9G597467...
Billie Penley
Acting Controller

3/7/2023 | 05:39 PST

Date

**APPROVED FOR FORM AND LEGAL SUFFICIENCY
GREGORY J. SWAIN, COUNTY ATTORNEY:**

DocuSigned by:
Christine Neiderer
_____ 1D8E737E6AE148D...
By: Christine B. Neiderer
Senior Assistant County Attorney

3/3/2023 | 07:46 PST

Date

EXHIBIT A
Legal Description of the Property

All of those lots or parcels of land located in Anne Arundel County, Maryland, and more particularly described as follows:

BEING A PARCEL OF LAND LYING ON THE WEST SIDE OF OLD MARYLAND ROUTE 416 IN THE EIGHTH DISTRICT OF ANNE ARUNDEL COUNTY, MARYLAND AND BEING PART OF THE LAND THAT ROSE E. WALTON, PERSONAL REPRESENTATIVE OF THE ESTATE OF ADAM M. NOLL, DECEASED, CONVEYED TO JOSEPH D. WALTON AND ROSE E. WALTON, HIS WIFE, BY DEED DATED MAY 23, 1974 AND RECORDED AMONG THE LAND RECORDS OF ANNE ARUNDEL COUNTY, MARYLAND IN LIBER 2676, FOLIO 858, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING FOR THE SAME AT A PIPE SET ON THE WESTERLY RIGHT-OF-WAY LINE OF OLD MARYLAND ROUTE 416 AT THE NORTHEAST CORNER OF A CONVEYANCE FROM ROSABELLE F. NOLL AND ADAM M. NOLL, HER HUSBAND, TO WILLIAM B. GREENWELL AND MARY E. GREENWELL, HIS WIFE, BY DEED DATED JUNE 12, 1962 AND RECORDED AMONG THE LAND RECORDS OF ANNE ARUNDEL COUNTY, MARYLAND IN LIBER 1570, FOLIO 474; THENCE RUNNING SAID CONVEYANCE THE FOLLOWING TWO COURSES AND DISTANCES, REVERSELY, AND CORRECTED FOR MAGNETIC VARIATION: S85°22'50"W 165.00' TO A PIPE SET; THENCE S57°50'58"W 214.70' TO A PIPE SET ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF THE OLD CHESAPEAKE BEACH RAILROAD; THENCE RUNNING WITH SAID RIGHT-OF-WAY LINE THE FOLLOWING SEVEN COURSES AND DISTANCES: N35°30'33"W 76.05' TO A POINT; THENCE N33°21'31"W 183.26' TO A POINT; THENCE N39°45'00"W 304.51' TO A POINT; THENCE N38°26'08"W 72.12' TO A POINT; THENCE N45°46'09"W 108.86' TO A POINT; THENCE N46°47'50"W 153.52' TO A POINT; THENCE N49°24'38"W 102.62' TO A PIPE SET ON THE S55°07'W 56 1/10 PERCH LINE OF THE AFORESAID CONVEYANCE TO JOSEPH D. WALTON, ET. UX. RECORDED IN LIBER 2676, FOLIO 858; THENCE RUNNING WITH PART OF SAID LINE REVERSELY AND AS CORRECTED FOR MAGNETIC VARIATION N60°41'32"E 408.30' TO A PIPE SET; THENCE RUNNING WITH THE S89°W 31 1/2 PERCH LINE OF SAID CONVEYANCE REVERSELY AND AS CORRECTED FOR MAGNETIC VARIATION S85°25'28"E 519.75' TO A PIPE SET; THENCE RUNNING WITH PART OF S78°W 26 1/4 PERCH LINE OF SAID CONVEYANCE REVERSELY AND AS CORRECTED FOR MAGNETIC VARIATION N83°34'32"E 378.76' TO A PIPE SET ON THE WESTERLY RIGHT-OF-WAY LINE OF OLD MARYLAND ROUTE 416 AS SHOWN ON STATE ROAD COMMISSION PLAT #19853; THENCE RUNNING WITH SAID RIGHT-OF-WAY LINE THE FOLLOWING THREE COURSES AND DISTANCES: S04°33'07"W 81.78' TO A POINT; THENCE S13°09'39"W 202.39' TO A POINT; THENCE S19°59'30"W 583.17' TO THE PLACE OF BEGINNING.

TOGETHER WITH AND SAVING AND EXCEPTING ANY LAND ACQUIRED OR LOST AS SET FORTH IN THAT CERTAIN BOUNDARY LINE DEED MADE BY AND

BETWEEN SOUTHERN STATES COOPERATIVE, INCORPORATED AND FRANK B. TALBOTT, JR. AND LILLIE J. TALBOTT, HIS WIFE, DATED JUNE 18, 1979 AND RECORDED AMONG THE LAND RECORDS OF ANNE ARUNDEL COUNTY, MARYLAND IN LIBER 3214, FOLIO 134.

SAVING AND EXCEPTING THEREFROM ALL THAT PROPERTY SET FORTH IN THAT CERTAIN DEED TO THE STATE OF MARYLAND TO THE USE OF THE STATE HIGHWAY ADMINISTRATION OF THE DEPARTMENT OF TRANSPORTATION MADE BY SOUTHERN STATES COOPERATIVE, INC., DATED SEPTEMBER 6, 2000 AND RECORDED AMONG THE LAND RECORDS OF ANNE ARUNDEL COUNTY, MARYLAND IN LIBER 9976, FOLIO 477.