

REAL ESTATE PURCHASE CONTRACT

DATE: May _____, 2023

1. **PROPERTY DESCRIPTION:** The City of Sunbury, an Ohio municipal corporation (hereinafter "Buyer"), offers to purchase from the Board of Education of the Big Walnut Local School District (hereinafter "Seller") the following described real estate located in the City of Sunbury, County of Delaware, and the State of Ohio known as: 5 +/- acres vacant land located east of S. Old 3C Highway, just north of the terminus of Middleview Drive adjacent to the location of the Sunbury Sewage Plant, Sunbury 43074, Parent Parcel #417-411-17-016-000, the exact legal description of which shall be determined by a survey but generally located as depicted on Exhibit "A" attached hereto (hereinafter referred to as "Property").

2. **PRICE AND TERMS:**

The purchase price is: The purchase price ("Purchase Price") for the Property shall equal Fifty Three Thousand Dollars (\$53,000.00) per surveyed acre.

Payable as follows: Cash at Closing

3. **ADDITIONAL TERMS:** NA

4. **DEED:**

4.1 The Seller shall convey to the Buyer marketable title in fee simple by transferable and recordable general warranty deed, free and clear of all liens and encumbrances not excepted by this contract, and except the following:

- (a) those created by or assumed by the Buyer;
- (b) those specifically set forth in this contract;
- (c) zoning ordinances;
- (d) legal highways;
- (e) covenants, restrictions, conditions and easements of record that do not unreasonably interfere with Buyer's intended use; and
- (f) all coal, oil, gas and other mineral rights and interests previously transferred or reserved of record.

4.2 Seller has not transferred, conveyed, or reserved, nor does Seller have any knowledge of any prior transfers, conveyances or reservations of any coal, oil, gas, or other mineral rights or interests in the premises, except for the following (none if nothing inserted): _____

5. **CONTINGENCIES:**

(a) Each contingency below shall be deemed to have been waived unless Buyer gives written notice to Seller or Seller's agent that Buyer wishes to terminate this transaction within the time frame set forth below for each contingency.

(b) Within 10 business days after the full execution of this real estate purchase contract, Seller shall provide the following for the buyer's inspection any of the following that may apply: (i.e., leases, service contracts, summaries of unwritten contracts, etc.). Buyer shall have 10 business days upon receipt of above documentation to disapprove.

(c) Environmental Inspection: Within 60 days after the acceptance hereof, Seller agrees to permit Buyer, Buyers' lender, and the qualified professional environmental consultant or any of them to enter the Property to conduct, at the expense of Buyer, an environmental site assessment. Buyer agrees to indemnify the Seller from and against any physical damage to the Property arising out of any inspection performed on Buyer's behalf.

If such assessment is obtained and the consultant recommends further inspection to determine the extent of suspected contamination or recommends remedial action, Buyer, at Buyer's option, may notify Seller in writing, within the above-specified period, that the contract is terminated, but Buyer's obligations under this paragraph 5c shall survive.

(d) Property Inspection: Buyer, at Buyer's expense, shall have 60 days after the acceptance hereof to have the Property inspected. Seller shall cooperate in making the Property reasonably available for such inspections.

Buyer shall be responsible for the repair of any damages caused by the Buyer's inspections and tests; repairs shall be completed in a timely and workmanlike manner at Buyer's expense. Buyer agrees to pay any litigation expenses, including reasonable attorney fees incurred by Seller as a result of any claims resulting from such inspection and to indemnify Seller for any resulting damages.

If Buyer is not satisfied with the condition of the Property as disclosed by such inspection(s), Buyer may terminate this contract by delivering written notice of such termination to Seller within the above specified period that the contract is null and void.

(e) Utilities: NA

(f) Feasibility: NA

(g) Zoning & Permits: NA

(h) Other Contingencies:

This contract is expressly contingent upon legislative ratification by Sunbury City Council within 14 days of execution by both parties. All inspection periods set forth in paragraph 5 shall not commence until the date of council ratification.

(i) If this Contract is terminated pursuant to Paragraph 5, then, with the exception of Buyer's indemnification and hold harmless obligations arising under Paragraph 5, Buyer and Seller shall be released from all obligations arising under this Contract.

6. RENTS, INTEREST, CONDOMINIUM CHARGES, INSURANCE, UTILITIES AND SECURITY DEPOSITS: NA

7. DAMAGE OR DESTRUCTION OF PROPERTY: Risk of loss to the Property and appurtenances shall be borne by Seller until closing. If any part of the Property covered by this contract is substantially damaged or destroyed before this transaction is closed, Seller shall give written notice to Buyer and/or Buyer's Broker that the damage or destruction has occurred. Such notice must include all pertinent information regarding insurance policies and claims covering the Property that has been damaged or destroyed. The written notice shall be delivered within forty-eight (48) hours from discovery of the event causing the damage or destruction. Buyer may (a) proceed with the transaction and be entitled to all insurance proceeds, if any, payable to Seller under all policies covering the Property, or (b) rescind the contract, by giving written notice to Seller and/or Seller's Broker within ten (10) calendar days after Broker has received written notice of such damage or destruction. If Buyer elects to rescind, then all parties are released from liability and the earnest money deposit shall be disbursed to Buyer pursuant to paragraph 16. Failure by Buyer to so notify Seller or Broker shall constitute an election to proceed with the transaction.

8. EMINENT DOMAIN: If, prior to the date of closing, eminent domain proceedings shall be threatened or commenced against all or any part of the Property, Seller shall give a written notice to Buyer and/or Buyer's Broker within forty-eight (48) hours of Seller's receipt of notice of the threatened or commenced eminent domain action setting forth the pertinent terms of the threatened or commenced eminent domain action. Buyer may: (a) elect to proceed to close the purchase of the Property in accordance with the terms of this contract, in which event the Buyer shall be entitled to all payments payable to Seller on account of such taking as is applicable to the portion of the Property being purchased; or (b) elect to terminate this contract. If Buyer elects to terminate this contract, it shall so notify Seller in writing within 15 days after Buyer has received written notice from Seller of such taking. Failure by Buyer to so notify Seller shall constitute an election to proceed to close on the purchase of the Property, and Buyer shall be entitled to all payments on account of such taking. Seller represents and warrants that it has no knowledge of any threatened taking which would affect, involve, or be adverse to the Property.

9. CONDITION OF IMPROVEMENTS: NA

10. EVIDENCE OF TITLE: Buyer shall furnish and pay for an owner's title insurance commitment and ALTA policy in the amount of the purchase price. Within 15 days after acceptance (if left blank, the number of days will be 15), Buyer shall cause to be delivered to Buyer or Buyer's Broker a copy of the commitment. At closing, title evidence shall be certified to within thirty (30) days prior to closing with endorsement not before 8:00 a.m. on the business day prior to the date of closing, all in accordance with the standards of the Columbus Bar Association. The title evidence shall show in Seller marketable title in fee simple free and clear of all liens and encumbrances except: (a) those created by or assumed by Buyer; (b) those specifically set forth in this contract; (c) zoning ordinances; (d) legal highways; (e) covenants, restrictions, conditions and easements of record that do not unreasonably interfere with present lawful use (or Buyer's intended use which is Municipal Uses); and (f) all coal, oil, gas, and other mineral rights and interests previously transferred or reserved of record.

If title to all or part of real estate is unmarketable, as determined by Ohio law with reference to the Ohio State Bar Association's Standards of Title Examination, or is subject to liens, encumbrances, easements, conditions, restrictions, or encroachments other than those excepted in this contract, Seller shall, within thirty (30) days after a written notice thereof, remedy or remove any such lien, etc. or obtain title insurance without exception therefore.

In the event Seller is unable to remedy to insure against the defect within the thirty (30) day period, Buyer may terminate this contract.

11. SELLER'S REPRESENTATIONS AND WARRANTIES. Seller's representations and warranties contained elsewhere in this Agreement and the following representations and warranties shall survive the closing and passing of title to Buyer whether made in this section or elsewhere herein:

(a) There are no actions, suits or proceedings, pending or, to the best of Seller's knowledge, threatened against Seller with respect to the Premises or affecting any of its rights with relation to the Premises, at law or in equity, or before any federal, state, municipal or other governmental agency or instrumentality, nor is Seller aware of any facts which to its knowledge might result in any such action, suit or proceeding, nor is Seller in default with respect to any order or decree of any court or of any governmental agency or instrumentality.

(b) There are no rights of possession to the Premises outstanding in anyone except Seller. No part of the Premises is subject to a lease agreement, either oral or written. No part of the Premises is subject to a right of first refusal or other right which Seller or, to the best of Seller's knowledge, any predecessor in title, may have granted to other persons or parties as to the Premises, or any part thereof, whether written or verbal.

(c) No notice, either oral or written, has been received by Seller that any governmental or quasi-governmental agency or authority intends to commence construction of any special or off-site improvements or impose any special or other assessment against the Premises or any part thereof.

(d) Seller has full authority and capacity to enter into this Agreement and to execute all documents contemplated hereby. Seller's execution, delivery and performance of this Agreement will not violate the provisions of any agreement to which Seller is a party or by which it is bound.

(e) Seller shall transfer the Premises to Buyer in its condition on the Effective Date, excepting normal wear between the date hereof and the closing.

(f) There are no agreements, commitments or representations between Seller or, to the best of Seller's knowledge, any of Seller's predecessors, in title and any governmental, public or quasi-public agency which would impose any obligation on Buyer or require Buyer to pay any sums to any other party.

(g) Seller has not used the Premises for the disposal of any hazardous or toxic waste materials, nor to the best of Seller's knowledge and belief has the Premises ever contained nor do they currently contain any hazardous or toxic waste materials, in violation of any environmental laws, nor has any "clean-up" of the Premises occurred pursuant to any environmental laws which

could give rise to: (i) liability on the part of Buyer to reimburse any governmental authority for the costs of such clean-up, or (ii) a lien or encumbrance on the Premises. Seller has received no notice from any governmental authority with respect to any violation(s) of any environmental law or clean-up on the Premises, nor is Seller aware of any such contemplated notices, nor is Seller aware of any environmental studies or reports conducted regarding the Premises which have not been delivered to Buyer.

(h) Neither the Premises nor any part thereof is within a special assessment district, nor has any application been made or submitted for the creation thereof or annexation thereby.

(i) To the best of Seller's knowledge, no portion of the Premises constitutes wetlands or a final delineation of any wetland areas, under any applicable environmental laws or regulations including, but not limited to, the federal Clean Water Act.

(j) Seller has not filed for relief as a debtor under any state receivership laws or federal bankruptcy laws.

All representations and warranties of Seller contained in this Agreement, whether under this section or elsewhere, shall be true as at the date of the closing as if those representations and warranties were made at such time, and shall survive the closing hereunder. If requested, Seller agrees to execute and deliver to Buyer an affidavit at closing certifying that all of the representations and warranties made in this Agreement are true and accurate as of that date.

12. **SURVEY:** Buyer and Seller agree that Buyer shall, at Buyer's cost, obtain a metes and bounds survey of the property to be conveyed as reflected on Exhibit "A" within 60 days of the execution of this contract.

13. **TAXES AND ASSESSMENTS:** At closing, Seller shall pay or credit on purchase price all delinquent taxes, including penalty and interest, all assessments that are a lien on the date of contract and all agricultural use tax recoupments for years prior to the year of closing. At closing, Seller shall also pay or credit on purchase price all other unpaid real estate taxes that are a lien for years prior to closing and a portion of such taxes and agricultural use tax recoupments for year of closing, prorated through date of closing and based on a 365-day year and, if undetermined, on most recent available tax rate and valuation, giving effect to applicable exemptions, recently voted millage, change in valuation, etc., whether or not certified. Should an appeal be filed with the Delaware County Auditor to the tax valuation for tax year 2022 resulting in an increase in taxes payable by Buyer, Seller agrees to pay to Buyer Seller's respective share of any tax increase prorated through the date of closing within 14 days of written request. Seller has received no written notification from public authority or owners' association of future improvements that would result in costs being assessed against the real estate.

14. **BUYER'S EXAMINATION:** This property sells "as-is". Buyer is relying solely upon Buyer's own examination of the Property and inspections herein required, if any, concerning physical condition, character, size and suitability of Buyer's intended use.

This contract constitutes the entire agreement and there are no representations, oral or written, which have not been incorporated herein. Time is of the essence for all provisions of this contract. All provisions of this contract shall survive the closing. Buyer is not relying upon any representations by the Broker(s).

15. **BROKER:** Buyer and Seller represent and warrant that they have not dealt with any person, firm, real estate broker, or realtor in connection with the sale of the Property and no realtor's or finder's fees, brokerage commissions, or other forms of compensation are due to any other realtor or broker in connection with the sale of the Property. The parties hereby agree to indemnify and hold each other harmless for any breach of this representation and warranty and this obligation shall survive the Closing for a period of one (1) year.

16. **EARNEST MONEY DEPOSIT:** NA

17. **CLOSING AND POSSESSION:** This contract shall be performed and this transaction closed on or before September 1, 2023 or within 30 days after all contingencies are removed if sooner unless the parties agree in writing to an extension. Buyer is entitled to possession at closing. At the time Seller delivers possession, the Property will be in the same condition as the date of acceptance of this contract, except as provided in the Damage or Destruction of Property paragraph 7, normal wear and tear excepted. Seller shall pay transfer taxes and deed preparation and shall convey to Buyer marketable title to the real estate by deed in fee simple by transferable and recordable general warranty deed.

18. **DISCLOSURES:** This contract constitutes the entire agreement and no oral or implied agreement exists. Any amendments to this contract shall be in writing, signed by Buyer(s) and Seller(s) and copies provided to them. This contract shall be binding upon the parties, their heirs, administrators, executors, successors and assigns. If this contract involves Seller financing, it may not be assigned. Time is of the essence of all provisions of this contract. All provisions of this contract shall survive the closing.

19. The Buyer, during the period of this contract, will be given the opportunity to examine the Property and upon closing shall rely solely upon the Buyer's inspections and/or tests with reference to the condition, character, and size of the Property.

20. It is illegal, pursuant to the Ohio Fair Housing Law, Division (H) of Section 4112.02 of the Revised Code, and the Federal Fair Housing Law, 42 U.S.C.A. 3601, as amended, to refuse to sell, transfer, assign, rent, lease, sublease, or finance housing accommodations; refuse to negotiate for the sale or rental of housing accommodations; or otherwise deny or make unavailable housing accommodations because of race, color, religion, sex, familial status as defined in Section 4112.01 of the Revised Code, ancestry, military status as defined in that section, disability as defined in that section, or national origin or to so discriminate in advertising the sale or rental of housing, in the financing of housing, or in the provision of real estate brokerage services.

It is also illegal, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry into the neighborhood of a person or persons belonging to one of the protected classes.

21. **PROFESSIONAL ADVICE AND ASSISTANCE:** The parties acknowledge that the purchase of real estate encompasses many professional disciplines. The parties are encouraged to seek professional advice.

22. **HOLIDAYS AND WEEKENDS:** Should any date of a period of time or deadline set forth in the contract expire upon a weekend or government observed holiday, that date shall automatically be extended to the next business day, unless otherwise noted in the contract.

23. **SIGNATURES:** Only manual or electronic signatures on contract documents, transmitted in original or facsimile (which includes photocopies, faxes, PDF, and scanned documents sent by any method) shall be valid for purposes of this contract and any amendments or any notices to be delivered in connection with this contract. Only original, manual signed documents shall be valid for deeds or other documents to be delivered at closing. For the purposes of this provision, "contract documents" do not include voice mail, email messages or text messages.

24. **DURATION OF OFFER AND ACCEPTANCE:** This offer shall be open for acceptance through 6:00 pm, May _____, 2023, Sunbury, Ohio Time.

SIGNATURE PAGE FOLLOWS

Buyer makes this offer on this _____ day of _____, 2023

City of Sunbury, an Ohio Municipal Corporation

By: _____

Print Name: _____

Email: _____

Phone: _____

Seller accepts this offer on this _____ day of _____, 2023

Board of Education of the Big Walnut Local School District

By: _____

Email: _____

Phone: _____



