

ORDINANCE NO. 18-020

**AN ORDINANCE TO AUTHORIZE THE MAYOR CONVEY A TRACT OF LAND CONSISTING OF 1.253 ACRES ON RUTHERFORD DRIVE TO THE CANAL WINCHESTER INDUSTRY AND COMMERCE CORPORATION TO PROVIDE FOR ITS SUBSEQUENT CONVEYANCE TO COLUMBIA GAS OF OHIO, INC., PURSUANT TO A PURCHASE AND SALE AGREEMENT, AND TO DECLARE AN EMERGENCY**

WHEREAS, Columbia Gas of Ohio, Inc. desires to acquire 1.253 acres of land owned by the City of Canal Winchester for construction of new facilities; and

WHEREAS, the City hereby finds and determines that the 1.253 acres of land on Rutherford Drive is not required by the City for its purposes, and the conveyance of such land to the Canal Winchester Industry and Commerce Corporation will promote the welfare of the residents of the City, stabilize the economy, and assist in the development of industrial, commercial, distribution and research activities to the benefit of the residents of the City; and

WHEREAS, such transfer is authorized and permitted by the Carter and Ordinances of the City of Canal Winchester and pursuant to Chapters 1724 and 1761 of the Ohio Revised Code; and

WHEREAS, this conveyance is hereby authorized without advertisement and receipt of bids;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CANAL WINCHESTER, OHIO:

Section 1. That the Mayor be and hereby is authorized and directed to by suitable deed of conveyance to the Canal Winchester Industry and Commerce Corporation the 1.253 acres of land, so as to provide for the performance of the Real Estate Purchase Agreement by and among the Canal Winchester Industry and Commerce Corporation, the City of Canal Winchester and Columbia Gas of Ohio, Inc.

Section 2. That this Ordinance is hereby declared to be an emergency measure necessary for the public health, safety and welfare, such emergency arising from the exigencies of the real estate purchase agreement and the need to immediately begin preparations for the transfer of the land WHEREFORE, this Ordinance shall take effect and be in force from and after its passage.

DATE PASSED 6/4/18

ATTEST Amanda M Jackson  
CLERK OF COUNCIL

[Signature]  
PRESIDENT OF COUNCIL

[Signature]  
MAYOR

DATE APPROVED 6-19-18

APPROVED AS TO FORM:  
[Signature]  
LEGAL COUNSEL

I hereby certify that the ordinance as set forth above was published for a period of not less than fifteen days after passage by the Council, by posting a copy thereof in not less than three (3) public places in the municipal corporation, as determined by Council and as set forth in the Canal Winchester Charter.

Amanda M Jackson  
Finance Director/Clerk of Council

## PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this "Agreement") is made and entered into as of this 30<sup>th</sup> day of May, 2018 (the "Effective Date") by and between City of Canal Winchester, an Ohio municipal corporation (the "City"), Canal Winchester Industry and Commerce Corporation, an Ohio community improvement corporation ("Seller"), and Columbia Gas of Ohio, Inc., an Ohio corporation, (the "Buyer"). The City, Seller and Buyer are sometimes referred to individually as a "Party" or collectively as the "Parties."

### **BACKGROUND**

- A. City holds title to certain real property consisting of 1.253 acres located in Violet Township, Fairfield County, Ohio, further identified as Fairfield County Parcel Number: 0420376300, which is more legally described and defined in Exhibit A, attached hereto and made a part hereof (the "Land"); and
- B. City, through Seller, desires to sell and Buyer desires to purchase the Property (as defined below), pursuant to the terms and conditions of this Agreement.

In consideration of the mutual covenants and conditions set forth below and for other good and valuable consideration, the receipt and sufficiently of which are acknowledged by the Parties, the Parties covenant and agree as follows:

### **AGREEMENT**

1. **Purchase and Sale of Property.** On or before the Closing Date (as such term is defined in Section 3 below), City will convey the Property to Seller in a manner that will allow Seller to timely fulfill all of its obligations under this Agreement (including, without limitation, the obligation to sell and convey the Property to Buyer in accordance with this Agreement). Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, pursuant to the terms and conditions set forth in this Agreement, the Land, any improvements and personal property located thereon and the following (collectively, the "Property"):
  - a. **Contracts; Warranties; Intangibles.** Seller's interest under and to: (i) all assignable warranties and guaranties issued to or inuring to the benefit of Seller, (ii) all assignable licenses and permits held by Seller at the time of Closing, as that term is more specifically defined below, relating to the operation of the Property (the "Licenses"), and (iii) all environmental studies and reports, surveys, building plans, title insurance policies, and other documents and materials pertaining to the Property in Seller's possession.
2. **Purchase Price.** The Buyer shall pay to Seller a purchase price for the Property in the amount of One Hundred Forty-Two Thousand Dollars (\$142,000.00) (the "Purchase Price") which shall be paid as follows:
  - a. Five Thousand Dollars (\$5,000.00) ("Earnest Money") shall be deposited with the Seller pursuant to the Right to Acquire Letter from Buyer to City, dated May 10, 2018, and

- f. Closing Costs. Seller shall pay: (i) the fees of any counsel representing Seller in connection with this transaction; (ii) one-half (1/2) of any escrow fee charged by Escrow Agent; and (iii) all transfer taxes imposed upon transfer of title to the Property. Buyer shall pay: (i) the fees of any counsel representing Buyer in connection with this transaction; (ii) one-half (1/2) of any escrow fees charged by the Escrow Agent; (iii) recording fees; (iv) the cost of Buyer's inspections of the Property; (v) any costs associated with updating any survey delivered to Buyer by Seller; and (vi) the premium for the owner's policy of title insurance ("Title Policy"), costs for any endorsements and/or other coverage under the Title Policy, costs for any lender's title coverage and Title Commitment costs. Except as otherwise provided in this Agreement, all other costs and expenses incident to this transaction and the Closing will be paid by the Party incurring such costs.
- g. Additional Items. Any other operating expenses or other items pertaining to the Property which are customarily prorated between a purchaser and a seller in comparable commercial transactions in the area in which the Property is located shall be prorated according to local custom.
- h. Conditions to Closing. Each Party's obligations to consummate the transactions contemplated by this Agreement are conditioned upon fulfillment of the following conditions, each of which may be waived by the Party whose obligation to close is conditioned on the fulfillment of such condition:
  - i. All of the representations and warranties of the other Party shall be true and correct in all material respects, subject to permitted changes in facts or circumstances pursuant to this Agreement, both as of the date of this Agreement and as of the Closing Date; and
  - ii. All other conditions precedent to each Party's obligation to consummate the transactions contemplated by this Agreement shall have been satisfied on or before the Closing Date.

Should a Party fail to satisfy any of the foregoing conditions by the Closing Date and so long as the other Party to be benefitted by said conditions is not in default under this Agreement, the non-defaulting Party may either: (i) terminate this Agreement by written notice to the other party; or (ii) extend the Closing Date by up to ten (10) business days to allow the other Party an opportunity to satisfy the unsatisfied condition. To the extent the non-defaulting Party elects to terminate this Agreement, the Parties shall have no further rights, duties or obligations under this Agreement, other than those which are expressly provided in this Agreement to survive the termination of this Agreement; provided, however, that if any of the foregoing conditions have not been satisfied due to a default by Buyer or Seller, then Buyer's and Seller's respective rights, remedies, and obligation shall be determined in accordance with this Agreement.

- i. Further Assurances. For no further consideration, Seller and Buyer shall execute, acknowledge and deliver or cause to be executed, acknowledged, and delivered, such instruments and take such other action as may be necessary or advisable to carry out their respective obligations under this Agreement.

#### 4. Environmental Matters

6. **Due Diligence Review.**

- a. **Right to Review.** From and after the Effective Date and continuing for a period of fifteen (15) days, ("Due Diligence Review Period"), Seller shall afford to Buyer and its representatives, access to the Property and any business records, files, studies, maps, plans, surveys in Seller's possession, and all other records of Seller reasonably requested by Buyer to conduct its due diligence review.
- b. **Right of Entry and Access.** During the Due Diligence Review Period, Buyer, its representatives, designees, agents, and assigns shall have the right to enter the Property to make such inspections, tests, surveys, field work, environmental assessments, and wetlands delineations of and on the Property as are reasonably necessary for the Buyer to assess the Property for Buyer's intended use. In addition, Seller agrees to cooperate with the Buyer prior to Closing as reasonably requested by Buyer, including, but not limited to, obtaining all necessary permits for the Buyer's intended use on the Property, including, upon the request of Buyer, signing, as the owner of the Property prior to Closing, any permit applications that may be required by any regulatory agency or other entity for Buyer's proposed use of the Property. If Buyer desires to undertake any invasive testing of the Property, it shall provide a scope of work and obtain Seller's and City's prior approval, which approval shall not be unreasonably withheld, delayed or conditioned. If Buyer undertakes any invasive testing after the scope of work has been approved by Seller and City, Buyer shall restore the Property to substantially the same as its original condition after any such testing. Prior to Buyer's entry on the Property, Buyer shall provide Seller and City with evidence of commercial general liability insurance naming Seller and City as additional insureds with coverage in the amount equal to \$1,000,000 combined single limits under an insurance accord that cannot be cancelled without ten (10) days' prior notice to Seller and City. Buyer shall indemnify and hold Seller and City harmless from all claims, costs, and fees, including, without limitation, mechanics' or material supplier's liens, which may be asserted against or incurred as a result of the acts of Buyer or its agents, affiliates, employees or contractors in connection with Buyer's inspections of the Property, which indemnification shall survive the termination or Closing of this Agreement for a period of one (1) year.
- c. **Notice of Defects.** Buyer shall notify Seller in writing of any defects ("Due Diligence Defect(s)") which, in Buyer's reasonable determination, substantially and adversely affect the value or use of the Property on or before the end of the Due Diligence Review Period. Upon receipt of such notice from Buyer, Seller shall have the right to cure any Due Diligence Defect(s) to Buyer's reasonable satisfaction at least five (5) days prior to Closing. In the event Seller is unwilling or unable to correct all Due Diligence Defect(s) to Buyer's reasonable satisfaction, Seller shall so notify Buyer in writing within five (5) days of receipt of notice from Buyer of such Due Diligence Defect(s).
- d. **Failure to Correct Defects.** In the event Seller declines to correct any Due Diligence Defect(s) identified by Buyer or Seller fails to cure any Due Diligence Defect(s) to the reasonable satisfaction of Buyer, Buyer, at its sole option, shall elect to either (i) declare this Agreement null and void, and in such event, the Escrow Agent shall return to the Buyer the full amount of the Earnest Money, and thereafter neither of the Parties hereto shall have any further obligation to the other Party pursuant to the terms of this Agreement; or (ii) continue to Closing. If Buyer does not terminate this Agreement

Seller or City or relating to the Property, which challenges or impairs Seller's or City's ability to execute or perform its obligations under this Agreement;

vii. Neither Seller nor City is a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986; and

viii. There are no attachments, executions, assignments for the benefits of creditors, or voluntary or involuntary proceedings in bankruptcy or under any other debtor relief laws contemplated by or pending or threatened against Seller, City or the Property.

b. **Representations and Warranties of Buyer.** Buyer represents and warrants to Buyer that the following statements are true as of the Effective Date and shall be true and correct on the Closing Date:

i. Buyer has the right and authority to enter into this Agreement. The individual signing this Agreement on behalf of Buyer is authorized to do so. This Agreement has been duly authorized, executed, and delivered by Buyer, is a valid and binding obligation of Buyer, and is enforceable against Buyer in accordance with its terms.

c. **Survival of Representations and Warranties.** Unless otherwise provided herein, all representations, warranties, covenants, and agreements of the Parties in this Agreement shall survive the Closing for a period of one (1) year and shall not merge with or be extinguished by delivery of Deed contemplated by this Agreement.

8. **Default.**

a. **Default by Buyer.** If the sale of the Property under this Agreement does not occur because of Buyer's default under this Agreement, Seller may terminate this Agreement and retain the Earnest Money.

b. **Default by Seller.** If the sale of the Property under this Agreement does not occur because of Seller's default under this Agreement, then Buyer shall have the right to elect one of the following: (i) to terminate this Agreement, in which event the Escrow Agent will return the Earnest Money to Buyer, or (ii) to bring a suit for specific performance.

9. **Title Report.** Buyer at Buyer's expense, shall, obtain an Owner's Title Insurance Commitment (the "Title Commitment") in the name of the Buyer, in an amount equal to the Purchase Price, pursuant to which the Escrow Agent shall commit to issue to Buyer an ALTA Owner's Policy of Title Insurance for the purpose of insuring title to the Property. Upon receipt of the Title Commitment, Buyer shall have five (5) days thereafter to advise Seller of any defects or objections or issues that would make the Property unsuitable for Buyer's intended use, as determined in Buyer's sole discretion, disclosed by the Title Commitment (other than monetary liens or charges which Seller agrees shall be paid at closing by Seller) (collectively, "Title Defects"). Seller shall then have five (5) days after receipt of such notice in which to cure such Title Defects (the "Title Defect Cure Date"). In the event Seller is unwilling or unable to clear the Title Defects on or before the Title Defect Cure Date, Buyer shall have the option, in its sole discretion, to (i) proceed with the purchase and acquire the Property subject to the Title Defects, in which case the Title Defects are deemed approved; or (ii) terminate this Agreement, in which case the Earnest Money will be refunded to Buyer.

further rights and obligations hereunder except those which expressly survive termination of this Agreement.

- d. Binding Effect. This Agreement shall bind and inure to the benefit of the Parties and their permitted successors and assigns.
- e. Headings. The headings contained in this Agreement are for convenience only and shall not in any way affect the meaning of this Agreement.
- f. Governing Law. This Agreement shall be interpreted and construed under the laws of the state in which the Real Property is located. All actions or claims arising out of or in connection with this Agreement or any other actions or claims between the parties hereto shall be brought only in state court in the county in which the Real Property is located.
- g. Time is of the Essence. Time is of the essence for all provisions of this Agreement.
- h. Waiver. Any term or condition of this Agreement may be waived at any time and from time to time by the Party entitled to the benefit of that term or condition. A Party's failure or delay in exercising its rights under this Agreement shall not waive those rights, nor shall any single or partial exercise of any right preclude any other or further exercise of that right or the exercise of any other right under this Agreement. No waiver or release of any of the terms, conditions, or provisions of this Agreement shall be valid unless in writing and signed by the Party entitled to the benefit of such term or condition.
- i. Brokers. Each Party represents to the other that the representing Party has incurred no liability for any finder's fee or a brokerage commission arising from or relating to the transactions contemplated by this Agreement.
- j. Counterparts. This Agreement may be (but shall not be required to be) executed in counterparts. This Agreement shall be deemed effective when each Party has executed a counterpart copy of this Agreement even if not all of the Parties have executed the same counterpart. Copies containing the signature of all Parties, whether or not in counterparts, shall be delivered to all Parties.
- k. Severability. If any provision of this Agreement is held to be unenforceable for any reason, it shall be adjusted rather than voided, if possible, in order to achieve the intent of the Parties to this Agreement to the extent possible. In any event, all other provisions of this Agreement shall be deemed valid and enforceable to the full extent possible.
- l. Third Parties. Nothing in this Agreement is intended or shall be construed to confer upon or give to any person other than the Parties to this Agreement any rights or remedies under or by reason of this Agreement or to limit any third party from exercising any rights or remedies available to them independent of this Agreement.
- m. No Recording. Neither this Agreement nor any document referring to this Agreement shall be recorded by any party (or anyone acting on behalf of a party) to this Agreement in any public office without the prior written consent of all Parties to this Agreement.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Effective Date.

**Seller**

Canal Winchester Industry and Commerce Corporation, an Ohio community improvement corporation

By: \_\_\_\_\_

Name: James Sotlar

Title: President

**City**

City of Canal Winchester, Ohio, an Ohio municipal corporation

By: \_\_\_\_\_

Name: Michael Ebert

Title: Mayor

[Buyer signature on next page]