EXHIBIT LIST

EXHIBIT A

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT

DON'T DRILL THE HILLS, INC,
Plaintiff,

v.

Case No. 14-140827-CH
Hon. James M. Alexander

CITY OF ROCHESTER HILLS, ET AL,
Defendants.
_____/

OPINION AND ORDER RE: MOTION FOR SUMMARY DISPOSITION

This matter is before the Court on motions for summary disposition filed by each Defendant. Plaintiff is a non-profit corporation organization that opposes oil and gas drilling and leasing in or by Defendant City of Rochester Hills. Plaintiff was formed on April 24, 2014 in Port Huron.

Defendant Jordan Development Company is a Traverse City-based oil and gas exploration company that operates over 450 oil and gas wells in Michigan. In January 2013, Rochester Hills and Jordan entered into a subsurface oil and gas lease. The lease with the city accounts for 15% of the subsurface acreage that Jordan has leased in Rochester Hills – and includes two city parks and a cemetery. The other 85% is comprised of private-property leases.

Under its lease with the City, Jordan may not enter, operate, or otherwise erect structures such as tanks on the surface. Jordan also may not affect the use of the surface estate for parks and public recreation, and it has not yet started any extraction or other operations. And if Jordan does drill, it may only do so on private land. Jordan seeks the subsurface oil and gas rights to

ground underneath the parks and cemetery solely because any oil or gas found thereunder may flow toward their offsite well location.

Defendant Sunoco Pipeline is the owner of an underground pipeline that traverses Rochester Hills-owned Bloomer Park. In 1950, Sunoco's predecessor obtained the original permit from the State of Michigan – which previously owned the park. In 2013, the City and Sunoco entered into a Right of Entry Agreement so that Sunoco could replace the pipeline.

The Agreement contemplated that Sunoco would use a horizontal-boring construction method that would allow the pipeline to be inserted into a horizontal tunnel located beneath the surface. This method eliminated the need for heavy construction equipment digging a trench from the surface. The pipeline was put into use in October 2013.

On April 8, 2014, the City executed a Pipeline Right-of-Way Agreement that included a legal description of the actual location of Sunoco's replacement pipe. This was necessary and contemplated under the Right of Entry Agreement because the horizontal-boring method could not make the same sharp turn that the original pipe took. As a result, the new pipe had to make a more gradual curve.

Plaintiff's Amended Complaint alleges that the City of Rochester Hills executed the agreements with Jordan and Sunoco without voter approval – as required by City Charter Section 11.8 and MCL 117.5(1)(e). As a result, Plaintiff seeks a declaratory ruling that the Jordan and Sunoco agreements are void because the City illegally executed the same.

Each Defendant now moves for summary disposition of Plaintiff's Complaint under MCR 2.116(C)(5) and (C)(8). A (C)(5) motion challenges whether a plaintiff lacks the legal capacity to sue. McHone v Sosnowski, 239 Mich App 674, 676; 609 NW2d 844 (2000). And a (C)(8) motion tests the legal sufficiency of the complaint. Maiden v Rozwood, 461 Mich 109,

120; 597 NW2d 817 (1999). In Response to these motions, Plaintiff seeks summary disposition under MCR 2.116(I)(1) and (I)(2).

All Defendants first argue that Plaintiff lacks standing to challenge the validity of the Agreements. Our Supreme Court has held that a litigant has standing when (1) the litigant meets MCR 2.605 requirements for declaratory judgment, or (2) if the court, in its discretion, determines that "the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large." *Lansing Sch Educ Ass'n* v Lansing Bd of Educ, 487 Mich 349, 372; 792 NW2d 686 (2010).

MCR 2.605(A)(1) provides: "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted."

Plaintiff argues that it has standing to enforce its members' right to vote. Plaintiff claims that this is a voters' rights case, and it represents persons that are "concerned about the transfer of some of the City's interests in the Parks and Cemetery for oil and gas exploration and extraction or pipeline purposes without voter approval."

To support this argument, Plaintiff attaches the Affidavit of its Vice President, Pablo Fraccarolli, who claims that Plaintiff's members include: 87 Rochester Hills residents; 52 of which have been "denied their right to vote"; 43 are concerned about their property values; 33 live near proposed well-head sites or within a proposed drilling unit; 6 have family buried in or own a plot in Stoney Creek Cemetery; and 59 are concerned about health risks.

Initially, the Court notes that Plaintiff's characterization of this case as a voters' rights case misses the mark. Plaintiff filed this case as a declaratory action – and not one seeking mandamus. Further, all cases cited by Plaintiff in support of its claim that this is a voters' rights

case are readily distinguishable. Each of the cited cases involves elections, the right to vote for government officials or ballot initiatives, or a challenge to government expenditures.[1] In this case, however, Plaintiff isn't arguing that its members weren't allowed to participate in an election or the City is illegally expending taxpayer funds.

Instead, Plaintiff is arguing that the City entered into agreements with Sunoco and Jordan Development without voter approval. As a result, Plaintiff claims that its members' standing hinges on whether they had the right to vote on approval of the cited agreements.

A. Right to vote.

Plaintiff claims that the right to vote comes from City Charter Section 11.8 and MCL 117.5(1)(e). The cited section of the City Charter provides:

> **Section 11.8 - Parks and open spaces**
>
> City-owned parks and open spaces shall be used only for park and open space purposes and shall not be sold, leased, transferred, exchanged or converted to another use unless approved by a majority of votes cast by the electors at an election.
>
> 1. "Converted to another use" means changing the use of a park or open space, or significant part thereof, from a recreation or conservation use to another use not directly related or incidental to public recreation or conservation.
>
> 2. This section shall apply to all present and future City-owned property designated as park or open space in the City's Parks and Recreation Master Plan. The designation of parks or open space shall not be removed or changed without voter approval. The existing use of a park or open space on the effective date of this section shall be considered to be a lawful use for the particular property.

[1] Helmkamp v Livonia City Council, 160 Mich App 442; 408 NW2d 470 (1987) involved Livonia citizens' right to participate in a special election to elect a new mayor after their mayor resigned. Salzer v East Lansing, 263 Mich 626; 249 NW 16 (1933) isn't a voters' rights case. Rather, it considered taxpayer standing to challenge a city land purchase that was contrary to law. The illegal purchase damaged the taxpayer through misappropriation of tax funds. In Protect MI Constitution v Secretary of State, 297 Mich App 553; 824 NW2d 299 (2012), a ballot-action committee challenged the Secretary of State's inclusion of a constitutional amendment proposal on the upcoming general election ballot. The Court of Appeals held that the petition failed to comply with the prerequisites of Const 1963, art 4, § 25.

3. All land acquired by the City with proceeds from the 2005 Millage Proposal to Provide Funding to Permanently Preserve Green Spaces and Natural Features within the City of Rochester Hills shall remain permanently preserved.

Under the Home City Rule Act, MCL 117.5(1)(e), "A city does not have power . . . to sell a park, cemetery, or any part of a park or cemetery . . . unless approved by a majority of the electors voting on the question at a general or special election."

The Michigan Supreme Court has held that, when analyzing the meaning of a statute:

> [A] Court must interpret the language of a statute in a manner that is consistent with the legislative intent. In determining the legislative intent, the actual language of the statute must first be examined. As far as possible, effect should be given to every phrase, clause, and word in the statute. When considering the correct interpretation, a statute must be read as a whole. Individual words and phrases, while important, should be read in the context of the entire legislative scheme. In defining particular words within a statute, a court must consider both the plain meaning of the critical word or phrase as well as its placement and purpose in the statutory scheme. When a statute explicitly defines a term, the statutory definition controls. Mich Educ Ass'n v Sec'y of State, 488 Mich 18, 26-27; 793 NW2d 568 (2010) (internal citations omitted).

Initially, the Court rejects Plaintiff's reliance on MCL 117.5. This section only limits a city's ability to "sell" a park, cemetery, or any part of a park or cemetery." The City's Agreements with both Jordan and Sunoco do not purport to "sell" any part of a park or cemetery to these entities. Jordan's Agreement is a non-development oil and gas lease. Sunoco's Agreement simply provides for an easement that has existed in similar form since 1950.

1. Sunoco

With respect to Sunoco's Easement, the Court finds that the City Charter also fails to support Plaintiff's claim. Section 11.8, subsection 2 of the City Charter provides that "[t]he existing use of a park or open space on the effective date of this section shall be considered to be

a lawful use for the particular property." Because Sunoco's pipeline easement has existed since 1950, the Court finds that Sunoco's replacement (and slight realignment) of the existing pipeline easement does not require voter approval.

Contrary to Plaintiff's allegations that the City essentially forgot its residents, the City and Sunoco took great care to not disturb the park by using the horizontal drilling method.

Because neither the City Charter nor the Home City Rule Act provide Plaintiff's members with the right to vote for approval of the slight shift in Sunoco's decades-old pipeline easement, and Plaintiff bases its standing on said right, the Court finds that Plaintiff does not have standing to challenge Sunoco's easement.

For the foregoing reasons, Sunoco's Motion for Summary Disposition is GRANTED. Plaintiff's claims against Sunoco and relating to its easement are DISMISSED in their entirety.

2. Jordan Development

With respect to the Jordan's oil and gas lease and as stated, the Court rejects Plaintiff's reliance on MCL 117.5 because the same only prohibits the sale of a park or open space. Had the legislature intended to prohibit the **leasing** of any such space, it could have easily provided, but it did not.

The Court also finds that Plaintiff's reliance on the City Charter with respect to the cemetery portion of the lease is misplaced. The cited provision of the City Charter only applies to "parks and open spaces." As a result, the Court finds that the City Charter does not provide Plaintiff's members with the right to vote on a subsurface oil-and-gas lease with respect to any cemetery.

This leaves the two city parks (Tienken Park and Nowicki Park) and only the effect of the City Charter. As stated, said Charter provides that "City-owned parks . . . shall be used only for park and open space purposes" and they "shall not be sold, leased, transferred, exchanged or converted to another use unless approved by a majority of votes cast by the electors at an election." Under the Charter, "'Converted to another use' means changing the use of a park or open space, or significant part thereof, from a recreation or conservation use to another use not directly related or incidental to public recreation or conservation."[2]

Plaintiff argues that the City has leased or converted the parks to another use through the subsurface oil-and-gas lease with Jordan. The City and Jordan respond that no part of the park was included in the lease. Instead, Defendants argue, only the subsurface oil and gas rights were leased to Jordan. And our appellate courts recognize that the land surface is severable from the subsurface oil and gas interests. See Stevens Mineral Co v Michigan, 164 Mich App 692, 696; 418 NW2d 130 (1987).

The Merriam-Webster Dictionary defines "park" as "a piece of public land in or near a city that is kept free of houses and other buildings and can be used for pleasure and exercise" or "a large area of public land kept in its natural state to protect plants and animals."

Inherent in these definitions is that a park consists of only reasonably visible portions of the land. In other words, only the surface of the land may constitute a park.[3]

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[2] The term "open space" as used in the Charter appears not to apply to the subsurface oil-and-gas lease because there is nothing "open" about the subsurface below the park.

[3] Ironically, Plaintiff claims that city-owned Bloomer Park is a park. Yet when the State of Michigan gifted the park to the city, the State retained "all mineral, coal, oil, and gas" rights. As a result, Plaintiff's own argument relative to Sunoco's easement in Bloomer Park supports the notion that a park exists separate from its subsurface oil and gas rights. Otherwise, Bloomer Park could not be a park, and Plaintiff could have no objection to Sunoco's pipeline.

Indeed, when residents visit each of these parks, they do not do so to tunnel hundreds or thousands of feet below the surface of the parks. Instead, they do so to enjoy recreation activities or relaxation or simply to sit and enjoy the natural setting.

Jordan's lease prohibits its entry onto the parks or construction of any equipment on park land. The lease is specifically tailored to prevent any disruption or interference with park features or the use of the park as a park. These lease restrictions ensure compliance with the City Charter. Further, any subsurface drilling would occur away from public lands, and Jordan only sought the subsurface oil and gas rights to protect itself in the event that any oil or gas flowed from directly beneath the parks to its offsite well.

The Mich Educ Ass'n Court reasoned that "a statute must be read as a whole" in order to "to discern and give effect to the intent of the Legislature." Mich Educ Ass'n, supra at 26-27.

In this case, when read in whole, the Court finds that the intent of the City Charter is to ensure that City-owned parks and open spaces are preserved unless otherwise approved by the voters. The Jordan subsurface oil-and-gas lease does not disrupt, interfere, or otherwise affect the public's ability to use these parks as intended.

This finding is consistent with our Supreme Court's reasoning in Central Land Co v Grand Rapids, 302 Mich 105; 4 NW2d 485 (1942). Although Central Land considered a use restriction in a deed (rather than a use restriction in a city charter) that limited the land to park-use only, the Court reasoned that operation of oil wells did not "substantial[ly] . . . interfere[] with the uses for which the property was conveyed to the city." Central Land, 302 Mich at 113.[4]

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[4] The Central Land Court reasoned:

> Defendants have taken rather extraordinary care in so operating the oil wells on the park property that this activity does not materially impair the use of the land for the purposes for which it was conveyed to the city. No storage tanks are maintained on the property, but instead they are somewhat distantly located on other property. The pipelines leading from the wells to the storage tanks are for the most part, if not wholly, laid underground in the park area, excepting where such

Other jurisdictions have similarly reasoned. In a case also involving a subsurface oil-and-gas lease below a public park, the California Court of Appeals noted:

> a conveyance for park use not only carries all oil and minerals, but also the right to develop same in any manner **not inconsistent with use of the surface of the land for park purposes**. See cases collected in 144 American Law Reports at 507. The attorney general of this state had ruled that: "A county may enter into an operating agreement with the owner or possessor of land adjoining a county park for the development and production of oil by whipstocking or slant drilling from adjoining land into the subsurface of the county park provided that such drilling and operations incident thereto do not interfere with the **surface use** of the park by the public." (19 Ops. Cal. Atty. Gen. 157, 158.) This was done in the light of section 7051, Public Resources Code, providing for oil leases of county lands with this exception: "No land used, owned, dedicated, or acquired by purchase, condemnation, gift or otherwise, as a public park, highway, street, walk, or public playground shall be so leased;" **It was held that this prohibited surface leasing, not slant drilling**. A similar ruling was made in 21 Ops. Cal. Atty. Gen. 26. Taylor v Continental Southern Corp, 280 P2d 514, 518-519; 131 Cal App 2d 267 (Cal App 2d Dist 1955) (emphasis added).

The Court agrees with such reasoning. And for all of the foregoing reasons, Jordan's subsurface oil-and-gas lease does not amount to a sale, lease, transfer or conversion of the park to another use. As a result, Plaintiff's members did not have the right to vote on approval of said lease, and therefore, the Court rejects Plaintiff's claim that its members have standing based on a denial of a right to vote.

B. Actual Controversy.

The City and Jordan also argue that Plaintiff has failed to present a case of "actual controversy." To establish MCR 2.605 standing, a plaintiff must establish the existence of an "actual controversy."

> pipes extend along or across the highway passing through the park. Only a small, and not particularly unsightly or objectionable, structure is maintained at the location of each well. These buildings are not of a different character than an ordinary tool house or comfort station, such as are commonly maintained in park areas. Id. at 110-111.

These actions are similar to those ensured under Jordan's lease with the City. Jordan is not permitted to enter onto the park property, nor erect any structures thereon. Further, if Jordan chose to drill, it must obtain approval from the City and the State of Michigan.

> An "actual controversy" under MCR 2.605(A)(1) exists when a declaratory judgment is necessary to guide a plaintiff's future conduct in order to preserve legal rights. The requirement prevents a court from deciding hypothetical issues. However, by granting declaratory relief in order to guide or direct future conduct, courts are not precluded from reaching issues before actual injuries or losses have occurred. The essential requirement of an "actual controversy" under the rule is that the plaintiff pleads and proves facts that demonstrate an adverse interest necessitating the sharpening of the issues raised. *Int'l Un*ion UAW v Cent Mich Univ Trs, 295 Mich App 486, 495; 815 NW2d 132 (2012) (internal quotations and citations omitted).

MCR 2.605(A)(1) provides: "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted."

The actual controversy requirement is essential to ensure that the judicial branch refrains from "'becoming intertwined in every matter of public debate.'" *Michigan Ed Ass'n v* Superintendent of Pub Instruction, 272 Mich App 1, 8; 724 NW2d 478 (2006); quoting *Nat'l* Wildlife Federation v Cleveland Cliffs Iron Co, 471 Mich 608, 615; 684 NW2d 800 (2004). Further, it is "inappropriate[] [to] involve the judiciary in 'deciding public policy, not in response to a real dispute in which a plaintiff had suffered a distinct and personal harm, but in response to a lawsuit from a citizen who had simply not prevailed in the representative processes of government.'" *Michigan Ed Ass'n*, 272 Mich App at 8; quoting *Nat'l Wildlife*, 471 Mich at 615.

This is the case here. None of Plaintiff's members is a party, obligor or beneficiary of the lease. As a result, they cannot point to any future conduct necessary for guidance. Rather, Plaintiff's members are citizens that are unhappy with their elected officials' decisions to approve the lease and easement. The courtroom, however, is not the proper forum for resolution of such issues; the voting booth is.

For the foregoing reasons, the Court finds that Plaintiff has failed to establish the existence of an actual controversy necessary for the Court to establish MCR 2.605 standing.

Conclusion

For all of the above reasons, the Court finds that: (1) Plaintiff's members did not have a right to vote for approval of the Sunoco easement or the Jordan lease, and therefore, do not have standing based on a denial of such right; (2) Plaintiff's members have failed to establish MCR 2.605 standing; and (3) neither Sunoco's easement nor Jordan's lease violates the City Charter or the Home City Rules Act.

As a result, Defendants Sunoco, Jordan Development, and Rochester Hills' motions for summary disposition are GRANTED under (C)(5) and (C)(8), and Plaintiff's Complaint is DISMISSED in its entirety.

For the same reasons, Plaintiff motion for summary disposition under MCR 2.116(I)(1) and (I)(2) is DENIED.

This Order is a Final Order that resolves the last pending claim and closes the case.

IT IS SO ORDERED.

November 4, 2014
Date

/s/ James M. Alexander
Hon. James M. Alexander, Circuit Court Judge

EXHIBIT B

STATE OF MICHIGAN

IN THE OAKLAND COUNTY CIRCUIT COURT
6TH CIRCUIT OF MICHIGAN

DON'T DRILL THE HILLS, INC.,
a Michigan nonprofit corporation,

Plaintiff,

v.

CITY OF ROCHESTER HILLS,
a Michigan municipal corporation;
JORDAN DEVELOPMENT COMPANY, LLC,
a Michigan limited liability company; and
SUNOCO PIPELINE, L.P., a Texas limited
partnership,

Defendants.

Case No. 14-140827-CH

Hon. James M. Alexander

/

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/

AFFIDAVIT OF PABLO FRACCAROLLI

STATE OF MICHIGAN)
) ss
COUNTY OF OAKLAND)

I, PABLO FRACCAROLLI, whose current address is 1263 Cobridge Drive, Rochester Hills, MI, 48306, being first duly sworn, depose and state as follows:

1. I am the Vice- President of Don't Drill the Hills, Inc. ("DDH").

2. DDH has formed for purposes including opposing and attempting to minimize adverse effects from oil and gas exploration and drilling in and around the City of Rochester Hills, and one of its goals is to prevent the use of City-owned parks and cemeteries for oil and gas exploration, drilling, production, pipelines, etc. unless such activities are approved by City voters.

3. The current officers and Directors of DDH, listed below, are residents of and registered voters in Rochester Hills, Michigan (the "City").

   Christopher Morris, President;
   Pablo Fraccarolli, Vice President;
   Denise Doyle, Treasurer;
   Nancy Lewis, Secretary.

4. Attached as Exhibit 1 is the Membership Application for becoming a member of DDH.

5. As of September 22, 2014 DDH has 103 members, 87of which live in Rochester Hills.

6. Attached as Exhibit 2 is a copy of the form for DDH members to use to provide information to support claims in DDH's current litigation, and authorizes DDH to make legal claims on their behalf.

7. DDH also maintains a website, www.dontdrillthehills.org, and people can submit membership information and suit support forms online.

8. As of September 22, 2014, 61 (sixty-one) members have specifically authorized DDH to make claims on their behalf and have signed and submitted the information and support forms informing DDH of their claims. Of the forms received:

   - 52 members are registered voters of Rochester Hills denied their right to vote per the Charter;
   - 43 are concerned about impacts on their property values;
   - 33 live near proposed well head sites or within a proposed drilling unit;
   - 6 have family buried in or own a burial plot in the Stoney Creek Cemetery;
   - 59 are concerned about health risks;
   - 61 want City Parks to be used only for recreation and conservation spaces; and
   - 61 support the claims of DDH in DDH's suit against the City and Jordan.

Deponent further sayeth not.

[Signature and Notary on next page]

Pablo Fraccarolli, Vice-President
Don't Drill the Hills, Inc.

Subscribed and sworn to before me
this 22nd day of September, 2014.

Megan E. Barnes
Notary Public, Oakland County, MI
My commission expires:November 16, 2014
"Acting in Oakland County, MI"

MEGAN E. BARNES
NOTARY PUBLIC, STATE OF MI
COUNTY OF OAKLAND
MY COMMISSION EXPIRES Nov 16, 2014
ACTING IN COUNTY OF
Oakland

EXHIBIT 1

DONTDRILLTHEHILLS.ORG

Membership Application

Don't Drill the Hills, Inc. (DDHI)
Membership Application

I _____ hereby submit my application for membership to Don't Drill the Hills, Inc., a Michigan nonprofit corporation. I would like to be kept apprised of oil & gas exploration issues that may affect me. While membership is voluntary, in furtherance of the DDHI mission and goals, I acknowledge that the Board may at its discretion ask me to participate in DDHI activities, communications, and/or solicit me for financial support.

Name: _____

Address: _____

_____

Email: _____

Phone Number(s): _____

My membership shall remain active until I notify the Board, in writing, that I wish to be removed.

_____ _____

Signature Date

EXHIBIT 2

DONTDRILLTHEHILLS.ORG

Participating Membership Application

I am a Member of Don't Drill the Hills, Inc. (DDHI). I am familiar and agree with the allegations in the lawsuit filed by DDHI against the City of Rochester Hills (City) and Jordan Development Company currently pending in Oakland Circuit Court. I give permission to DDHI to make the below allegations on my behalf.

I live at _____.

I am a member of (list HOA/Condo Association/Neighborhood _____.

The lease the City entered into for Oil & Gas exploration affects my rights in the following ways: (Check all that apply)

___ I am a registered voter residing in Rochester Hills when the lease was signed, and continue to be resident now. I was denied a vote under the Charter.

___ I am concerned about the impact the lease has on my property values.

___ I live near the proposed well head site.

___ I live within the proposed drilling unit.

___ I am concerned about potential environmental impacts. (Air quality, noise, dust, spills, contamination.

___ I have family buried in Stoney Creek Cemetery, or own a plot there.

___ I am concerned about potential health risks.

___ I want City parks to be used only for recreation and conservation spaces.

___ My HOA/Condo Assoc./neighborhood leased the mineral rights for its common space in which I have an ownership interest.

___ My children attend school(s) near the properties in the lawsuit.

___ Other: _____

_____

___ I am willing to be contacted by DDHI's attorney, and am willing to sign an affidavit swearing to the above assertions.

___ I am willing to be contacted by DDHI's attorney I am willing to provide sworn testimony or serve as a potential witness in this case.

I authorize DDHI to use this information to support their allegations in the lawsuit against the City. My representations are truthful and accurate. The DDHI attorney, or his agent, may contact me to verify.

Printed Name: _____ Signature: _____

Date: _____

EXHIBIT C

STATE OF MICHIGAN

IN THE OAKLAND COUNTY CIRCUIT COURT
6TH CIRCUIT OF MICHIGAN

DON'T DRILL THE HILLS, INC.,
a Michigan nonprofit corporation,

Plaintiff,

v.

CITY OF ROCHESTER HILLS,
a Michigan municipal corporation;
JORDAN DEVELOPMENT COMPANY, LLC,
a Michigan limited liability company; and
SUNOCO PIPELINE, L.P., a Texas limited
partnership,

Defendants.

Case No. 14-140827-CH

Hon. James M. Alexander

/

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/

AFFIDAVIT OF ERIN E. HOWLETT

STATE OF MICHIGAN)
) ss
COUNTY OF OAKLAND

I, Erin E. Howlett, reside at 3597 Aynsley Drive, Rochester Hills 48306being first duly sworn, depose and state as follows:

1. I was an active participant of the Rochester Hills, Michigan citizen organization known as SPACE which initiated and promoted a charter amendment referendum to add what is now Charter Section 11.8 to the Rochester Hills City Charter.

2. I was involved in promoting and conveying the intent of the proposed language of the Charter Amendment provisions by engaging fellow citizens and the press, supporting SPACE with having the proposed amendment put on the ballot, and in campaigning for passage of the proposed Charter Amendment.

3. I support DDH's efforts to apply the voter approval requirements granted in Charter Section 11.8 to oil and gas leasing of City Parks which we believe are consistent with the intent of the language in the Charter Amendment.

Deponent further sayeth not.

Erin E. Howlett

Erin Howlett

Subscribed and sworn to before me
this 22nd day of September, 2014.

Megan E. Barnes

Megan E. Barnes
Notary Public Oakland County, MI
My commission expires: 11-16-2014
"Acting in Oakland County, MI"

MEGAN E. BARNES
NOTARY PUBLIC, STATE OF MI
COUNTY OF OAKLAND
MY COMMISSION EXPIRES Nov 16, 2014
ACTING IN COUNTY OF Oakland

EXHIBIT D

Whereas, based on its findings, GSAB recommends the City pursue the acquisition of 950 Adams Road N, parcel #15-08-100-004, with primary interest in the natural features area of the parcel, and only if 884 Adams Road N is also acquired;

Now Therefore Be It Resolved, that the Rochester Hills City Council adopts the GSAB recommendation to pursue the acquisition of 950 Adams Road N, parcel #15-08-100-004, with primary interest in the natural features area of the parcel, and only if 884 Adams Road N is also acquired;

Be It Further Resolved, that the City Council authorizes the City Administration to create an acquisition team and begin the acquisition process with the property owner.

2012-0383 Request for Consideration and Approval of an Oil and Gas Lease with Jordan Management Company, L.L.C.

Attachments: Agenda Summary.pdf
Staran Legal Opinion 112012.pdf
Lease 112812.pdf
102212 Agenda Summary.pdf
Mayor Summary Report 092112.pdf
Brower Letter and Lease 092112.pdf
Suppl Presentation.pdf
050505 Agenda Summary and Attach.pdf
062605 Agenda Summary and Attach.pdf
Minutes CDV Joint Mtg 042805.pdf
Minutes CC 060105.pdf
Minutes CC 072005.pdf
102212 Resolution.pdf
Resolution.pdf

***Ed Anzek**, Director of Planning and Economic Development, stated that at a previous meeting, Council had directed City Attorney John Staran to address the City Charter's effect on surface rights of parkland, concerns regarding the proposed lease language and to provide adequate definitions and descriptions for the three City properties proposed.*

***President Hooper** noted that City Attorney Staran provided an opinion noting that the proposed lease complies with the recently passed City Charter initiative.*

***City Attorney John Staran** stated that his written opinion is consistent with the verbal opinion he provided to Council at the prior meeting.*

Council Discussion:

***Mr. Tisdel** requested Mr. Staran confirm that land use rights and mineral use rights are separable legal assets.*

***Mr. Staran** responded that they are. He noted that the proposed lease only deals with oil and gas rights, which are subsurface rights. He stated that there is no impact or affect to the surface estate, use, development, occupancy, possession or ownership of the surface.*

__Mr. Tisdel__ stated that the proposed lease grants no surface rights and only grants the use available to the mineral rights owner.

__Mr. Staran__ confirmed that this was correct and noted that it is expressly provided in the Lease Exhibit. He stated that it is crystal clear that it is simply for subsurface oil and gas rights, and provides for no right of access or surface use, drilling on the surface, well sites, or anything that would disrupt or interfere with the use of property for parks and recreation.

__Mr. Tisdel__ mentioned Section 11.8.1 of the City Charter addressing changing the use and 11.8.2 addressing the existing use of park properties and questioned whether this would have any bearing on the proposed lease.

__Mr. Staran__ responded that the existing use of park properties is for parks and recreation and stated that the use would remain one hundred percent intact and not be interfered with or disrupted in any way.

__Mr. Tisdel__ questioned whether the ideal tract size is 640 acres.

__Ben Brower__, Jordan Management, responded that 640 acres is at the large end and the ideal tract size is in the range of 160 acres.

__Mr. Tisdel__ requested an explanation of how royalties are computed for the tract, whether it is necessary to have drilling occur underneath a particular owner's parcel to receive royalties, and if a pipeline would be required.

__Mr. Brower__ responded that royalties are computed in proportion to the number of acres owned within the tract. He noted that drilling can occur anywhere within the tract.

__Mr. Anzek__ displayed a map showing that there are already various transmission and distribution pipelines in place throughout the city. He mentioned Sunoco's and Consumer's Energy's gas transmission and distribution lines.

__Mr. Brower__ responded that the company has no plans to request a pipeline. He noted that the company would have to come back and ask for an easement if it found that it had to bore underground.

__President Hooper__ requested confirmation that there would be no wellhead or surface features installed on City properties whatsoever. He questioned the depth of any proposed horizontal drilling.

__Mr. Brower__ responded that there would not be any surface features and stated that the target depth is 6,500 feet deep. He noted that horizontal drilling could be done from a mile away.

__Mr. Rosen__ stated that it is sensible to drill and produce oil and gas in Rochester Hills. He commented that State Law considers property ownership to include the surface, and to some degree the air above and the earth below it; and the

law provides that an owner can separate the use of the earth below to allow extraction of minerals, oil or gas within that earth. He noted that the law appears to allow the separation of the ownership of the surface land from the ownership of the right to extract materials from the earth below; and an owner can sell the rights or allow a temporary use of the rights using a lease. The law does not appear to separate the surface ownership from the underground ownership. He stated that the City would be granting a lease of the right to use the underground separately from the surface, and commented that this is still changing the use of a part of the land. He mentioned that under the City Charter Section 11.8, this would be changing the use of a significant part of the park and would not be permitted without a favorable vote of the electorate. He commented that he did not believe that the City Council has the authority to enter into a gas and oil lease without such a vote. He stated that it is his opinion that if it were presented to the voters at the next regular or at a special election, it would be supported strongly. He pointed out that the Cemetery is not considered parkland.

***Mr. Staran** stated that he would respectfully disagree, and commented that it is a major stretch to say that this is a use of any land, surface or subsurface. He stated that there is nothing whatsoever that affects, changes or converts use of the park. He mentioned that if horizontal drilling occurred a mile deep from a mile away, no one would even know that it was occurring. He stated that this goes well beyond anything that was anticipated, articulated or intended at the time that the citizen-led petition drive was ongoing. He noted that what was intended to be addressed was the change in use of park land. He commented that too much is being read into the Charter Amendment language.*

***Mr. Yalamanchi** questioned how oil and gas would be extracted if drilling is not allowed.*

***Mr. Brower** responded that no surface operations would occur on City property and drilling could occur a half mile away with any oil found flowing to the well bore.*

***Mr. Yalamanchi** questioned whether any drilling sites have been identified and inquired what happens if not everyone in the tract signs.*

***Mr. Brower** responded that drilling can occur anywhere within the tract. In the event that owners do not sign, the company could go to the Michigan Department of Environmental Quality and the Supervisor of Wells would issue a Compulsory Pooling Order.*

***Mr. Yalamanchi** questioned whether the company can provide examples of exploration in dense development areas such as this and requested confirmation that the City was not granting any drilling rights.*

***Mr. Brower** responded by listing explorations at the corner of Square Lake and Crooks Road behind the Michigan State University Extension in Troy; a well in Livonia just behind Schoolcraft College, and in General Motors' Parking Lot. He stated that drilling has occurred in between two homes. He commented that the company must obtain permission from a surface owner to drill. He noted that any parcel within the tract, such as that owned by the school district or Oakland University, could grant permission to drill.*

Mr. Yalamanchi *questioned how many leases have been signed to date.*

Mr. Brower *responded that the company has 15 full-time employees obtaining signed leases in Oakland County.*

Mr. Yalamanchi *stated that while he recognizes Mr. Staran's expertise in providing an opinion, he has concerns regarding safety due to the density of development in the area. He commented that he questions whether this proposal should go to the voters.*

President Hooper *commented that the company will never be able to obtain 100 percent of the owners' signatures on leases in an area with such density and multiple owners. He questioned whether the 160 acre tract must be in the shape of a square.*

Mr. Brower *stated that the tract must be in increments of governmental quarter-quarters. He commented that those signing leases actually become a partner to the operation. He noted that those who are compulsory-pooled will receive a one-eighth royalty while those who sign leases will receive a one-sixth royalty.*

Mr. Webber *recapped Council's discussion from its October meeting and stated that he would not wish to see anything circumvent the process of the Charter Amendment. He commented that it is his opinion that in this case a vote by the electorate is not needed.*

Mr. Kochenderfer *stated that City Council cannot prevent this company from undertaking drilling activities in Rochester Hills. He pointed out that Council must consider the lease from both a policy and a legal aspect. He mentioned that policy dictates that the service and use of the parks should not change and Council must respect and uphold the Charter Amendment. He pointed out that no fracking activities will be undertaken. He stated that the City is not forcing private property owners to do something they are not comfortable with. He commented that from a legal standpoint, Council must consider whether this lease would conflict with the Charter Amendment and the intent of the voters. He stated that the question to consider is whether the right to extract minerals is included in the definition of a City-owned park. He commented that as long as drilling is not undertaken on park land, the process meets all standards.*

Mr. Klomp *stated that it is his opinion that Council has acted within, and will not be infringing upon, the Charter Amendment. He questioned the importance of Council's approval in the overall process.*

Mr. Brower *explained that if the average person owns a one-third acre subdivision lot, and the City's parcels comprise 35 acres, the City's properties represent a portion larger than 100 lot owners. He commented that it also helps the company to know that the City is on board.*

Mr. Klomp *questioned whether individual property owners could have any*

financial responsibility toward any damages that may occur and questioned whether compulsory leases are given for surface drilling.

***Mr. Brower** commented that while they might be responsible for the cost, they would most likely not pay. He explained how the company must net a minimum amount of money before the owner receives their share, and noted that compulsory leases are not granted for surface drilling sites.*

***Mr. Yalamanchi** questioned whether the company can still drill if the State orders the leases.*

***Mr. Brower** stated that the company will have to find a surface location for drilling.*

***Mr. Yalamanchi** questioned whether there could ever be a situation where a lien can be placed on any of the properties for any owner.*

***Mr. Brower** responded that there would not.*

A motion was made by Tisdel, seconded by Webber, that this matter be Adopted by Resolution. The motion carried by the following vote:

Aye 5 - Hooper, Klomp, Kochenderfer, Tisdel and Webber

Nay 2 - Rosen and Yalamanchi

Enactment No: RES0252-2012

Whereas, Jordan Management Company, a Michigan company, and/or its subsidiaries has requested to enter into a lease agreement ("the Lease") with the City of Rochester Hills for the right to explore for oil and gas reserves under City-owned land; and

Whereas, City property covered under terms of the Lease, including optional lands, are held under clear title by the City of Rochester Hills, and

Whereas, the Lease identifies various terms and conditions, including lease rates, royalty shares and primary terms, and

Whereas, the location of oil and gas facilities on the City Parks property is prohibited, subject to the terms of the Lease, and

Whereas, the City retains ownership of all mineral rights on the property, subject to the terms of the Lease.

Whereas, the form of the agreement has been further reviewed by the City Attorney and Mayor; and

Whereas, exhibits have been clarified and attached to the Lease, including property descriptions and supplemental conditions; and

Whereas, the City Attorney has provided his written legal opinion which concurs with his verbal opinion that the proposed oil and gas lease is for subterranean exploration and extraction, does not affect the surface use, and is therefore permitted under the City Charter parkland and open space amendment.

Resolved, that the Rochester Hills City Council hereby approves the proposed Oil and Gas Lease with Jordan Management Company, LLC.

Be It Further Resolved, that any proposed changes in the future language must be brought back before the City Council for review and approval.

2010-0420 Request for Purchase Authorization - DPS/ENG: Increase the contract for engineering and environmental services for the Avon Creek Restoration Projects (Phase I, II and III) in the amount of $11,700.00 for a total not-to-exceed of $98,255.00; Hubbell, Roth and Clark, Inc., Bloomfield Hills, MI

Attachments: Agenda Summary.pdf
HRC Proposal Ph III incl pond bypass channel.pdf
060611 Agenda Summary.pdf
Proposed Grant Budget.pdf
HRC Amended Prop.pdf
012411 Agenda Summary.pdf
HRC Proposal Ltr 010511.pdf
HRC Proposal Ltr 091010.pdf
HRC Consulting Cost 111610.pdf
HRC Proj Update Ltr 100209.pdf
101810 Agenda Summary.pdf
GIS Map.pdf
Agreement.pdf
Agreement Attachments.pdf
BidTabs.pdf
101810 Resolution.pdf
012411 Resolution.pdf
060611 Resolution.pdf
Resolution.pdf

Allan Schneck, *Director of DPS/Engineering, and* ***Roger Moore,*** *Professional Surveyor, were in attendance.*

Mr. Schneck *stated that if approved, this request will increase the contract for engineering and environmental services for the Avon Creek Restoration Project. He noted that a $90,000 grant was received from the U.S. Fish and Wildlife Service for Phase 3 of the project. He recognized Mr. Moore for his due diligence on the project, commenting that these awards and grants do not happen by accident. He explained that funding was originally anticipated at $65,000 when the project was under consideration in June of 2011; and through the persistence of Mr. Moore and Tara Presta, Chief Assistant, the U.S. Fish and Wildlife Service increased funding by an additional $25,000.*

A motion was made by Webber, seconded by Yalamanchi, that this matter be Adopted by Resolution. The motion carried by the following vote:

Aye 7 - Hooper, Klomp, Kochenderfer, Rosen, Tisdel, Webber and Yalamanchi

Enactment No: RES0253-2012

Resolved, that the Rochester Hills City Council hereby authorizes the increase to the contract for engineering and environmental services for the Avon Creek Restoration Projects (Phase I, II and III) to Hubbell, Roth and Clark, Inc., Bloomfield Hills, Michigan in the amount of $11,700.00 for a total not-to-exceed of $98,255.00.

EXHIBIT E

OIL AND GAS LEASE
(PAID UP)

Lease No. _____

THIS AGREEMENT is made as of the 15th day of JANUARY, 2015, by and between City of Rochester Hills of 1000 Rochester Hills Drive, Rochester Hills, MI 48309 hereinafter called Lessor (whether one or more), and Jordan Development Company, L.L.C. of 1503 Garfield Road North Traverse City, MI 49696 hereinafter called Lessee.

1. Lessor, for and in consideration of $10.00 and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, and the covenants and agreements of the Lessee hereinafter contained, does hereby grant, lease and let unto Lessee the land described below, including all interests therein Lessor may acquire by operation of law, reversion or otherwise, (herein called "said land"), exclusively, for the purposes of exploring by geophysical and other methods, drilling, mining, operating for and producing oil and/or gas, together with all rights, privileges and easements useful or convenient in connection with the foregoing and in connection with treating, storing, caring for, transporting and removing oil and/or gas of whatsoever nature or kind, including coal seam methane gas, produced from said land or any other land adjacent thereto, including but not limited to rights to lay pipelines, build roads, drill, establish and utilize wells and facilities for disposition of water, brine or other fluids, and for enhanced production and recovery operations, and for purposes of conducting gas storage operations, and construct tanks, power and communication lines, pump and power stations, and other structures and facilities. Said land is located in the County of Oakland State of Michigan, and is described as follows:

- See Exhibit "1" attached hereto and made a part hereof for legal description.

- See Exhibit "A" attached hereto and made a part hereof for additional conditions.

containing 61.32 gross acres, more or less, ~~and all lands and interests therein, contiguous or appurtenant to the land specifically described above that are owned or claimed by Lessor, or to which Lessor has a preference right of acquisition,~~ including but not limited to all lands underlying all alleys, streets, roads or highways and all riparian or submerged lands along and/or underlying any rivers, lakes or other bodies of water. The term "oil" when used in this lease shall mean crude oil and other hydrocarbons, regardless of gravity, produced at the well in liquid form by ordinary production methods, including condensate separated from gas at the well. The term "gas" when used in this lease shall mean hydrocarbons produced in a gaseous state at the well (not including condensate separated from gas at the well), helium, nitrogen, carbon dioxide and other commercial gases.

2. It is agreed that this lease shall remain in force for a primary term of five (5) years from the date of this lease, and as long thereafter as operations are conducted upon said land or on lands pooled or unitized therewith with no cessation for more than 120 consecutive days; provided, however, that in no event shall this lease terminate unless production of oil and/or gas from all wells located on said land, or on lands pooled or unitized therewith, has permanently ceased. If operations commenced during the primary term are discontinued less than 120 days before the end of the term, this lease shall not terminate at the end of the primary term if operations are again conducted within 120 days after the discontinuance. Whenever used in this lease the word "operations" shall refer to any of the following and any activities related thereto: preparing location for drilling, drilling, testing, completing, equipping, reworking, recompleting, deepening, plugging back or repairing of a well in search for or in an endeavor to obtain production of oil and/or gas, and production of oil and/or gas whether or not in paying quantities.

3. Lessee covenants and agrees to pay the following royalties: (a) To deliver to the credit of the Lessor into tank reservoirs or into the pipeline to which Lessee may connect its wells, one-eighth (1/8) of the oil produced and saved from said land, Lessor's interest to bear one-eighth (1/8) of the cost of treating oil to render it marketable pipeline oil, or from time to time, at the option of Lessee, Lessee may sell the oil produced and saved from said land and pay Lessor one-eighth (1/8) of the net amount realized by Lessee, computed at the wellhead, whether the point of sale is on or off said land. (b) To pay Lessor on gas produced from said land (1) when sold by Lessee, whether the point of sale is on or off said land, one-eighth (1/8) of the net amount realized by Lessee computed at the wellhead, or (2) when used by Lessee, for purposes other than those specified in Paragraph numbered 7 of this lease, the net market value, at the wellhead, of one-eighth (1/8) of the gas so used. As used in this Lease, the term net amount realized by Lessee computed at the wellhead shall mean the gross proceeds received by Lessee from the sale of oil and gas minus post-production costs incurred by Lessee between the wellhead and the point of sale, and the term net market value at the wellhead shall mean the current market value (at the time of production) of the gas at the market point where gas produced in the general area is commonly purchased and sold, minus the post-production costs that would be incurred by Lessee between the wellhead and such market point in order to realize that market value. As used in this lease, the term "post-production costs" shall mean all costs and expense of ~~(a) treating and processing oil and/or gas to separate and remove non-hydrocarbons including but not~~

~~limited to water, carbon dioxide, hydrogen sulfide and nitrogen, and (b) separating liquid hydrocarbons from gas, other than condensate separated at the well,~~ and (c) transporting oil and/or gas, including but not limited to transportation between the wellhead and any production or treating facilities, and transportation to the point of sale, ~~and (d) compressing gas for transportation and delivery purposes, and (e) metering oil and/or gas to determine the amount sold and/or the amount used by Lessee for purposes other than those specified in Paragraph numbered 7 of this lease, and (f) sales charges, commissions and fees paid to third parties (whether or not affiliated) in connection with the sale of the gas, and (g) any and all other costs and expenses of any kind or nature incurred in regard to the gas, or the handling thereof, between the wellhead and the point of sale. Lessee may use its own pipelines and equipment to provide such treating, processing, separating, transportation, compression and metering services, or it may engage others to provide such services, and if Lessee uses its own pipelines and/or equipment, post production costs shall include reasonable depreciation and amortization expenses relating to such facilities, together with Lessee's costs of capital and reasonable return on its investment in such facilities.~~ Prior to payment of royalty, Lessor shall execute a Division Order setting forth his interest in production. Lessee may pay all taxes and fees levied upon the oil and gas produced, including, without limitation, severance taxes and privilege and surveillance fees, and deduct a proportionate share of the amount so paid from any monies payable to Lessor hereunder.

4. If any well, capable of producing oil and/or gas, whether or not in paying quantities, located on said land or on lands pooled or unitized with all or part of said land, is at any time shut-in and production therefrom is not sold or used off the premises, nevertheless such shut-in well shall be considered a well producing oil and/or gas and this lease will continue in force while such well is shut-in, notwithstanding expiration of the primary term. In lieu of any implied covenant to market, Lessee expressly agrees to market oil and/or gas produced from Lessee's wells located on said land or on land pooled or unitized therewith, but Lessee does not covenant or agree to reinject or recycle gas, to market such oil and/or gas under terms, conditions or circumstances which in Lessee's judgment are uneconomic or otherwise unsatisfactory or to bear more than Lessee's revenue interest share of the cost and expense incurred to make the production marketable. If all wells on said land, or on lands pooled or unitized with all or part of said land, are shut-in, then within 60 days after expiration of each period of one year in length (annual period) during which all such wells are shut-in, Lessee shall be obligated to pay or tender, as royalty, to Lessor, the sum of ~~$1.00~~ 25.00 multiplied by the number of acres subject to this lease, provided, however that if production from a well or wells located on said land or on lands pooled or unitized therewith is sold or used off the premises before the end of any such annual period or if at the end of any such annual period this lease is being maintained in force and effect other than solely by reason of the shut-in well(s), Lessee shall not be obligated to pay or tender said sum of money for that annual period. This shut-in royalty payment may be made in currency, draft or check, at the option of Lessee, and the depositing of such payment in any post office, with sufficient postage and properly addressed to Lessor, within 60 days expiration of the annual period shall be deemed sufficient payment as herein provided.

5. If Lessor considers that Lessee has not complied with all its obligations hereunder, both express and implied, Lessor shall give written notice to Lessee specifically describing Lessee's non-compliance. Lessee shall have 120 days from receipt of such notice to commence, and shall thereafter pursue with reasonable diligence, such action as may be necessary or proper to satisfy such obligation of Lessee, if any, with respect to Lessor's notice. Neither the service of said notice nor the doing of any acts by Lessee in response thereto shall be deemed an admission or create a presumption that Lessee has failed to perform all its obligations hereunder. No judicial action may be commenced by Lessor for forfeiture of this lease or for damages until after said 120 day period. Lessee shall be given a reasonable opportunity after a final court determination to prevent forfeiture by discharging its express or implied obligation as established by the court. If this lease is canceled for any cause, it shall, nevertheless remain in force and effect as to (a) sufficient acreage around each well as to which there are operations, so as to constitute a drilling or maximum allowable unit under applicable governmental regulations, such acreage to be designated by Lessee in such shape as then existing spacing rules permit and (b) any part of said land included in a pooled or unitized unit on which there are operations. Lessee shall also have such easements on said land as are necessary or convenient for operations on the acreage so retained.

6 If this lease covers less than the entire undivided interest in the oil and gas in said land (whether Lessor's interest is herein specified or not), then the royalties, shut-in royalties and any extension payment pursuant to Paragraph numbered 19 below shall be paid to Lessor only in the proportion which the interest in oil and gas covered by this lease bears to the entire undivided interest therein.

7. Lessee shall have the right to use, free of cost, gas, oil and water produced on said land for Lessee's operations hereunder, except water from the wells of Lessor. When requested by Lessor, Lessee shall bury Lessee's pipelines below plow depth. No well shall be drilled nearer than 200 feet from the house or barn now on said land without written consent of Lessor. Lessee shall pay for damages caused by Lessee's operations to growing crops on said land. Lessee shall have the right at any time to remove all machinery and fixtures placed on said land, including the right to draw and remove casing and any other downhole equipment and fixtures.

8. Lessee is hereby granted the rights to pool or unitize said land or any part of said land, either before or after production is established, with other lands, as to any or all minerals or horizons, to establish units containing not more than approximately 320 acres; provided, however, such units may be established so as to contain not more than approximately 640 acres as to any or all of the following: (a) gas, (b) oil produced from formations located below the top of the Ordovician period, and (c) oil produced from wells classified as gas wells by the regulatory agency having jurisdiction. If units larger than those permitted above, either at the time established or thereafter, are required or permitted under any governmental rule or order to drill or operate a well at a regular location, to obtain the maximum allowable from any well or for any other reason, then the maximum unit size authorized hereby shall conform to the size required or permitted by such governmental rule or order. Lessee may enlarge the unit to the maximum area permitted herein and may reform said unit to include after-acquired leases within the unit area. Lessee may create, modify, enlarge or reform the unit or units as above provided at any time, and from time to time during the continuance of this lease, either before or after production is obtained. A unit established hereunder shall be effective for all purposes of this lease, whether or not all interests in the lands in the units are effectively pooled or unitized. Lessee may, but shall not be required to, drill more than one well in each unit. Lessee may reduce or terminate such unit or units at any time prior to the discovery of oil or gas on the pooled or unitized lands, or at any time after discovery subsequent to the cessation of production. Lessee may create, modify, enlarge, reform, reduce, or terminate each unit by recording a written declaration to that effect in the Register of Deeds or recorder's office in the county or counties in which such unit is located. Any operations conducted on any part of the lands pooled or unitized shall be deemed to be on the lands leased herein within the meaning of all provisions of this lease. Production of oil and/or gas from the unit shall be allocated to the lands described herein which are included in the unit in the same proportion as the number of surface acres in the lands described herein which are included in the unit bears to the total number of surface acres in the unit.

9. In addition to the rights to pool or unitize granted to the Lessee in Paragraph numbered 8 above, for the purpose of promoting the development of hydrocarbon production from shallow formations, as hereinafter defined, Lessee is granted the right to pool or unitize the shallow formations in said land, or any part of said land with other lands, to establish a unit or units of any size and shape for the drilling and operation of multiple wells. The right to pool or unitize is a recurring right exercisable either before or after production is established and is irrespective of whether authority similar to this exists with respect to such other land, lease or leases. The unit may consist of any number of tracts or parcels of land. The exercise of this right shall be effective only if the required well density (at least one straight hole well drilled into the pooled or unitized shallow formation for each 320 acres of the unit or one lateral well drilled in the pooled or unitized shallow formation for each 640 acres of the unit) is attained no later than five (5) years after recording of the written declaration of the unit. In the event lateral wells are drilled, the effective well density requirement shall be one well per 640 acres. As used herein, the term "shallow formations" shall mean formations between the surface of the earth and a depth of 2,500 feet. All provisions of Paragraph numbered 8, including those regarding Lessee's identification of a unit, the effect of operations conducted thereon and the allocation of production from wells thereon, shall apply in the same manner to a unit formed pursuant to this paragraph for production from shallow formations, except to the extent inconsistent with this paragraph. Lessee may amend, expand, reduce, reform or otherwise modify the unit by filing of record a written declaration to that effect, provided that the required well density is maintained, or is attained by the drilling of an additional well or wells within three (3) years after each such expansion. Lessor specifically acknowledges and agrees that the formation of units under this paragraph is intended to allow development of hydrocarbons in shallow formations which might otherwise not be economic, that units may be created, modified, enlarged, reformed, reduced or terminated to permit such economic development, that the validity of Lessee's actions in creating, modifying, enlarging, reforming, reducing or terminating such units shall not be dependent upon the existence of any geological justification, and that Lessee's right to create, maintain, modify, enlarge, reform, reduce or terminate any such units shall only be limited by the required well density provisions set forth above.

10. This lease is subject to laws and to rules, regulations and orders of any governmental agency having jurisdiction, from time to time in effect, pertaining to well spacing, pooling, unitization, drilling or production units, or use of material and equipment.

11. If, after the date hereof, the leased premises shall be conveyed in severalty or in separate tracts, the premises shall, nevertheless, be developed and operated as one lease, except that royalties as to any producing well shall be payable to the owner or owners of only those tracts located within the drilling unit designated by the state regulatory agency for such well and apportioned among said tracts on a surface acreage basis; provided, however, if a portion of the leased premises is pooled or unitized with other lands for the purpose of operating the pooled unit as one lease, this paragraph shall be inoperative as to the portion so pooled or unitized.

12. If Lessee is prevented from, or delayed in commencing, continuing, or resuming operations, or complying with its express or implied obligations hereunder by circumstances not reasonably within Lessee's control, this lease shall not terminate and Lessee shall not be liable for damages so long as said circumstances continue (the "period of suspension"). These circumstances include, but are not limited to the following: conflict with federal, state or local laws, rules, regulations and executive orders; acts of God; strikes; lockouts; riots; wars; improper refusal or undue delay by any governmental agency in issuing a necessary approval, license or permit applied for by Lessee; equipment failures; and inability to obtain materials in the open market or to transport said materials. If the period of suspension commences more than 120 days prior to the end of the primary term of this lease, then that period of suspension shall be added to the primary term. If the period of suspension commences less than 120 days prior to the end of the primary term or at any time after the primary term, then this lease shall not terminate if Lessee shall commence or resume operations within 120 days after the end of the period of suspension.

13. If the estate of either party hereto is assigned, and the privilege of assigning in whole or in part is expressly allowed, the covenants and provisions of this lease shall extend to such party's heirs, devisees, legal representatives, successors or assigns. Notwithstanding any other actual or constructive knowledge of Lessee, no change in the ownership of land or assignment of royalties or other monies, or any part thereof, shall be binding on Lessee until 45 days after Lessee has received, by certified mail, written notice of such change and the originals or certified copies of those instruments that have been properly filed for record and that shall be necessary in the opinion of Lessee to establish the validity of such change of ownership or division of interest. No change or division in the ownership of said land, royalties or other monies, or any part thereof, however accomplished, shall increase the obligations or diminish the rights of Lessee, including, but not limited to, rights and obligations relating to the location and drilling of wells and the measurement of production. Upon assignment by Lessee, its successors or assigns, the assignor shall be released from, and the assignee shall assume, the responsibility to fulfill the conditions and to perform the covenants of this lease, express or implied, with regard to the interest assigned. Breach of any covenant or failure to fulfill any condition by an owner of any part of the leasehold interest created by this lease shall not defeat or affect the rights of the owner(s) of any other part.

14. Lessor hereby ~~warrants and agrees to defend the title to said land and~~ agrees that Lessee may at any time pay all or part of any land contract, mortgage, taxes, or other liens or charges with respect to said land, either before or after maturity and be subrogated to the rights of the holder thereof, and that Lessee shall be entitled to reimbursement out of any royalty or other monies payable to Lessor hereunder. This lease shall be binding upon each party who executes it without regard to whether it is executed by all those named herein as Lessor.

15. Lessee may at any time surrender this lease as to all or any part of said land, or as to any depths or formations therein, by delivering or mailing a release to Lessor if the lease is not recorded or by placing a release of record in the proper county if the lease is recorded. If this lease is surrendered only as to part of said land, any shut-in royalties which may thereafter be payable hereunder shall be reduced proportionately.

~~16. Lessee shall have the exclusive right to use any stratum or strata underlying the premises for the storage of gas or liquids and may, for such purposes, reopen and restore to operation any and all abandoned wells on the premises and may drill new wells thereon for the purpose of injecting and storing gas or liquids in such stratum or strata and withdrawing such gas or liquids therefrom. If Lessee intends to use the premises for such purpose or determines that it is so using the premises, Lessee may deliver to Lessor or have recorded in the county or counties in which this lease is recorded a declaration that the premises are being used, or from a specified date will be used for gas or liquid storage, and thereafter Lessee shall have the exclusive right to use the premises for such gas or liquid storage until such time as Lessee may deliver to Lessor or have recorded in such county or counties a surrender of the right granted to Lessee by this paragraph or until Lessee shall intentionally abandon the right to use the premises for such storage. During the period or periods that Lessee shall utilize the premises for the storage of gas or liquids, the royalties herein provided to be paid to Lessor shall accrue and become payable only on such gas and liquids as shall have been taken from such premises by Lessee over and above the amount thereof which Lessee theretofore shall have stored in such stratum or strata. For and during the period or periods that Lessee uses said premises for such storage, Lessee shall pay to Lessor a minimum royalty of Ten Dollars ($10.00) per acre per year on the number of acres covered by this lease, such payment to be made not later than sixty (60) days from and after~~

~~the end of each twelve month period during which the premises are utilized for storage. Lessee is expressly granted the right to use so much of the surface of the premises as is reasonably necessary in the exercise of the rights granted to Lessee by this paragraph. The rights granted to Lessee by this paragraph shall continue in force for the period of time hereinabove specified, but this lease, insofar as it grants to Lessee the right to prospect, explore and produce oil and gas from stratum or strata other than those employed in such storage shall not be continued in force solely by the storage of oil or liquid as provided in this paragraph.~~

17. All written notices permitted or required by this lease to be given Lessor and Lessee herein shall be at their respective addresses listed hereinabove, shall be by certified United States mail, and shall identify this lease by date, parties, description and recording data; provided that either party may change such notice address by giving written notice to the other party specifying the new address.

18. In the event any one or more of the provisions contained in this lease shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this lease.

19. This lease may, at Lessee's option, be extended as to all or part of the lands covered hereby for an additional primary term of two (2) years commencing on the date that the lease would have expired but for the extension. Lessee may exercise its option by paying or tendering to Lessor an extension payment of $ 150.00 per acre for the minerals then covered by the extended lease, said bonus to be paid or tendered to Lessor in the same manner as provided in Paragraph numbered 4 hereof with regard to the payment of shut-in royalties. If Lessee exercises this option, the primary term of this lease shall be considered to be continuous, commencing on the date of the lease and continuing from that date to the end of the extended primary term. Lessee's option shall expire on the first to occur of the following: (a) the termination or expiration of this lease or (b) the second anniversary of the expiration of the primary term stated in Paragraph numbered 2 above.

Executed as of this day and year first above written.

LESSOR:

BRYAN K. BARNETT, MAYOR FOR
CITY OF ROCHESTER HILLS

Charlotte Friswell

Pamela Olson

STATE OF MICHIGAN)
) SS (Acknowledgment)
COUNTY OF Oakland)

On this 15th day of JANUARY, ~~2012~~ 2013 (ESP) before me personally appeared BRYAN K. BARNETT known to me to be the person (s) described in and who executed the foregoing instrument, and who acknowledged to me that he (she, they) executed the same.

Karen S. Darin, Notary Public

My Commission Expires: 11-26-2013

Acting in Oakland County, MI
For OAKLAND County, MI

RETURN RECORDED COPY TO: 1503 Garfield Road North Traverse City, MI 496860

This instrument prepared by: Ben Brower of 1503 Garfield Road North, Traverse City, MI 49686.

R:\LAND\Forms\Lease Forms\LEASE FORM - PAID-UP-5.05.doc

KAREN S. DARIN
NOTARY PUBLIC, STATE OF MICHIGAN
COUNTY OF OAKLAND
MY COMMISSION EXPIRES 11-26-2013
ACTING IN THE COUNTY OF OAKLAND

EXHIBIT A
TO OIL AND GAS LEASE

This Exhibit A is attached to and made a part thereof of that certain Oil and Gas Lease dated JANUARY 15, 2015 entered into between the City of Rochester Hills, as Lessor, and Jordan Development Company, L.L.C., as Lessee, is hereby supplemented to add the following paragraphs, all of which serve to amend, and shall prevail whenever in conflict with, the provisions of the Oil and Gas Lease.

1. Lessee agrees that, as it pertains to the lands covered by this lease, it shall not utilize the procedure known as High Volume Hydraulic Fracturing wherein it uses sand or other forms of proppant to hydraulically fracture the well as commonly utilized in unconventional shale plays such as the Marcellus Shale in Pennsylvania.

2. Notwithstanding anything contained in this Oil and Gas Lease to the contrary, Lessor's royalty is hereby changed from one-eighth (1/8th) to one-sixth (1/6th) and everywhere in this lease where the fraction one-eighth (1/8th) appears, the fraction one-sixth (1/6th) is hereby substituted.

3. Lessee shall have no right of entry and shall conduct no operations on the surface of the leased premises without further official approval of the City Council and compliance, as necessary, with applicable ordinance or charter requirements. Stated another way, Lessee shall not erect, construct, store or maintain any wells, drill rig, storage tanks, pumps, pipes, or other in-ground or above-ground structures, facilities or equipment on the leased premises; Lessee, through its operations, shall not disrupt, interfere with, restrict, drain, damage, destroy or remove any natural or man-made condition, feature or improvement located on the leased premises; nor shall Lessee's operations hinder, interfere with, restrict or otherwise adversely affect the current or future use and development of the leased premises for parks, open space and public recreation without further official approval of the City Council and compliance, as necessary, with applicable ordinance or charter requirements

4. This lease covers oil, gas and related hydrocarbons only. No other minerals are to be considered part of this lease.

5. Lessee or West Bay Exploration Company shall at all times be the operator, as that term is generally construed or defined in the usual joint operating agreement or other standard oil field contract, for all exploration and production activities and all other activities under this Lease. With the exception of West Bay Exploration, Lessee shall not assign the operations, in whole or in part, to anyone other than a financially responsible, experienced and competent operator acceptable to Lessor and pursuant to Lessor's prior written approval, which approval shall not be unreasonably withheld.

6. Lessor has the right to examine and/or audit, at its sole expense and at Lessee's office, Lessee's accounts and books in connection with the payments to be made under this lease not more than once per year.

7. If at the end of the primary term a portion of the leased premises is pooled or unitized with lands that are not a portion of the leased premises so as to form a pooled unit or units, then operations on, completion of a well on, or production from such unit or units will not maintain this Lease in force as to that portion of the leased premises not included in such pooled unit or units.

8. Lessee shall commence paying royalties to Lessor within ninety (90) days after the well is completed as a producing oil well and marketed and within ninety (90) days after a gas well is connected with a pipeline and marketed, and shall continue to promptly pay all royalties no later than sixty (60) days past the last day of the month in which the royalty products were produced and payment has been received by Lessee from the respective purchaser(s). On any and all royalties which are not paid in accordance with the provisions of this paragraph, Lessee shall pay to Lessor interest at the rate of 10% per annum.

Signed for identification:

BRYAN K. BARNETT, MAYOR

EXHIBIT 1

LEGAL DESCRIPTION

This Exhibit 1 is attached to and made a part thereof of that certain Oil and Gas Lease dated JANUARY 15, 2013 entered into between the City of Rochester Hills, as Lessor, and Jordan Development Company, L.L.C., as Lessee

1) Nowicki Park (combined parcel)

Part of Northwest 1/4 of Section 8, Township 3 North, Range 11 East, City of Rochester Hills, Oakland County , Michigan described as: The South 35 acres of North 50.79 acres of West 1087.60 feet of said section 8, containing 35.0 acres more or less.

70-15-08-100-006, 70-15-08-100-007, 70-15-08-100-008, 70-15-08-151-001, 70-15-08-151-002

2) Tienken Road Park

Part of west 1/2 OF Southeast 1/4 of Section 6, Township 3 North, Range 11 East, City of Rochester Hills, Oakland County , Michigan described as: Beginning at a point on South section line East 612.00 feet from South 1/4 Corner, thence South 89-41-00 East on section line 564.00 Feet, thence North 03-12-40 West 783.00 Feet, thence N 89-41-00 West 564.00 FT, thence South 03-12-40 East 783.00 Feet to the point of beginning, containing 10.0 acres.

70-15-06-400-003

3) Van Hoosen Jones Stony Creek Cemetery

Part of the Northeast 1/4 of Section 11, Township 3 North, Range 11 East, City of Rochester, Oakland County, Michigan, being more particularly described as follows: Beginning at the North 1/4 corner of Section 11, thence South 02-18-03.6 West, 853.64 feet; thence South 02-31-29.4 West, 340.66 feet; thence North 89-04-50 East, 603.91 feet; thence North 02-26-16.9 East, 1162.61 feet; thence North 87-54-37.5 West, 604.41 feet to the beginning, and containing 16.32 acres.

OIL AND GAS LEASE
(PAID UP)

Lease No. _____

THIS AGREEMENT is made as of the 15th day of JANUARY, 2013, by and between City of Rochester Hills of 1000 Rochester Hills Drive, Rochester Hills, MI 48309 hereinafter called Lessor (whether one or more), and Jordan Development Company, L.L.C. of 1503 Garfield Road North Traverse City, MI 49696 hereinafter called Lessee.

1. Lessor, for and in consideration of $10.00 and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, and the covenants and agreements of the Lessee hereinafter contained, does hereby grant, lease and let unto Lessee the land described below, including all interests therein Lessor may acquire by operation of law, reversion or otherwise, (herein called "said land"), exclusively, for the purposes of exploring by geophysical and other methods, drilling, mining, operating for and producing oil and/or gas, together with all rights, privileges and easements useful or convenient in connection with the foregoing and in connection with treating, storing, caring for, transporting and removing oil and/or gas of whatsoever nature or kind, including coal seam methane gas, produced from said land or any other land adjacent thereto, including but not limited to rights to lay pipelines, build roads, drill, establish and utilize wells and facilities for disposition of water, brine or other fluids, and for enhanced production and recovery operations, and for purposes of conducting gas storage operations, and construct tanks, power and communication lines, pump and power stations, and other structures and facilities. Said land is located in the County of Oakland State of Michigan, and is described as follows:

- See Exhibit "1" attached hereto and made a part hereof for legal description.

- See Exhibit "A" attached hereto and made a part hereof for additional conditions.

containing 61.32 gross acres, more or less, ~~and all lands and interests therein contiguous or appurtenant to the land specifically described above that are owned or claimed by Lessor, or to which Lessor has a preference right of acquisition,~~ including but not limited to all lands underlying all alleys, streets, roads or highways and all riparian or submerged lands along and/or underlying any rivers, lakes or other bodies of water. The term "oil" when used in this lease shall mean crude oil and other hydrocarbons, regardless of gravity, produced at the well in liquid form by ordinary production methods, including condensate separated from gas at the well. The term "gas" when used in this lease shall mean hydrocarbons produced in a gaseous state at the well (not including condensate separated from gas at the well), helium, nitrogen, carbon dioxide and other commercial gases.

2. It is agreed that this lease shall remain in force for a primary term of five (5) years from the date of this lease, and as long thereafter as operations are conducted upon said land or on lands pooled or unitized therewith with no cessation for more than 120 consecutive days; provided, however, that in no event shall this lease terminate unless production of oil and/or gas from all wells located on said land, or on lands pooled or unitized therewith, has permanently ceased. If operations commenced during the primary term are discontinued less than 120 days before the end of the term, this lease shall not terminate at the end of the primary term if operations are again conducted within 120 days after the discontinuance. Whenever used in this lease the word "operations" shall refer to any of the following and any activities related thereto: preparing location for drilling, drilling, testing, completing, equipping, reworking, recompleting, deepening, plugging back or repairing of a well in search for or in an endeavor to obtain production of oil and/or gas, and production of oil and/or gas whether or not in paying quantities.

3. Lessee covenants and agrees to pay the following royalties: (a) To deliver to the credit of the Lessor into tank reservoirs or into the pipeline to which Lessee may connect its wells, one-eighth (1/8) of the oil produced and saved from said land, Lessor's interest to bear one-eighth (1/8) of the cost of treating oil to render it marketable pipeline oil, or from time to time, at the option of Lessee, Lessee may sell the oil produced and saved from said land and pay Lessor one-eighth (1/8) of the net amount realized by Lessee, computed at the wellhead, whether the point of sale is on or off said land. (b) To pay Lessor on gas produced from said land (1) when sold by Lessee, whether the point of sale is on or off said land, one-eighth (1/8) of the net amount realized by Lessee computed at the wellhead, or (2) when used by Lessee, for purposes other than those specified in Paragraph numbered 7 of this lease, the net market value, at the wellhead, of one-eighth (1/8) of the gas so used. As used in this Lease, the term net amount realized by Lessee computed at the wellhead shall mean the gross proceeds received by Lessee from the sale of oil and gas minus post-production costs incurred by Lessee between the wellhead and the point of sale, and the term net market value at the wellhead shall mean the current market value (at the time of production) of the gas at the market point where gas produced in the general area is commonly purchased and sold, minus the post-production costs that would be incurred by Lessee between the wellhead and such market point in order to realize that market value. As used in this lease, the term "post-production costs" shall mean all costs and expense of ~~(a) treating and processing oil and/or gas to separate and remove non-hydrocarbons including but not~~

~~limited to water, carbon dioxide, hydrogen sulfide and nitrogen, and (b) separating liquid hydrocarbons from gas, other than condensate separated at the well,~~ and (c) transporting oil and/or gas, including but not limited to transportation between the wellhead and any production or treating facilities, and transportation to the point of sale, ~~and (d) compressing gas for transportation and delivery purposes, and (e) metering oil and/or gas to determine the amount sold and/or the amount used by Lessee for purposes other than those specified in Paragraph numbered 7 of this lease, and (f) sales charges, commissions and fees paid to third parties (whether or not affiliated) in connection with the sale of the gas, and (g) any and all other costs and expenses of any kind or nature incurred in regard to the gas, or the handling thereof, between the wellhead and the point of sale. Lessee may use its own pipelines and equipment to provide such treating, processing, separating, transportation, compression and metering services, or it may engage others to provide such services, and if Lessee uses its own pipelines and/or equipment, post production costs shall include reasonable depreciation and amortization expenses relating to such facilities, together with Lessee's costs of capital and reasonable return on its investment in such facilities.~~ Prior to payment of royalty, Lessor shall execute a Division Order setting forth his interest in production. Lessee may pay all taxes and fees levied upon the oil and gas produced, including, without limitation, severance taxes and privilege and surveillance fees, and deduct a proportionate share of the amount so paid from any monies payable to Lessor hereunder.

4. If any well, capable of producing oil and/or gas, whether or not in paying quantities, located on said land or on lands pooled or unitized with all or part of said land, is at any time shut-in and production therefrom is not sold or used off the premises, nevertheless such shut-in well shall be considered a well producing oil and/or gas and this lease will continue in force while such well is shut-in, notwithstanding expiration of the primary term. In lieu of any implied covenant to market, Lessee expressly agrees to market oil and/or gas produced from Lessee's wells located on said land or on land pooled or unitized therewith, but Lessee does not covenant or agree to reinject or recycle gas, to market such oil and/or gas under terms, conditions or circumstances which in Lessee's judgment are uneconomic or otherwise unsatisfactory or to bear more than Lessee's revenue interest share of the cost and expense incurred to make the production marketable. If all wells on said land, or on lands pooled or unitized with all or part of said land, are shut-in, then within 60 days after expiration of each period of one year in length (annual period) during which all such wells are shut-in, Lessee shall be obligated to pay or tender, as royalty, to Lessor, the sum of ~~$1.00~~ 25.00 multiplied by the number of acres subject to this lease, provided, however that if production from a well or wells located on said land or on lands pooled or unitized therewith is sold or used off the premises before the end of any such annual period or if at the end of any such annual period this lease is being maintained in force and effect other than solely by reason of the shut-in well(s), Lessee shall not be obligated to pay or tender said sum of money for that annual period. This shut-in royalty payment may be made in currency, draft or check, at the option of Lessee, and the depositing of such payment in any post office, with sufficient postage and properly addressed to Lessor, within 60 days expiration of the annual period shall be deemed sufficient payment as herein provided.

5. If Lessor considers that Lessee has not complied with all its obligations hereunder, both express and implied, Lessor shall give written notice to Lessee specifically describing Lessee's non-compliance. Lessee shall have 120 days from receipt of such notice to commence, and shall thereafter pursue with reasonable diligence, such action as may be necessary or proper to satisfy such obligation of Lessee, if any, with respect to Lessor's notice. Neither the service of said notice nor the doing of any acts by Lessee in response thereto shall be deemed an admission or create a presumption that Lessee has failed to perform all its obligations hereunder. No judicial action may be commenced by Lessor for forfeiture of this lease or for damages until after said 120 day period. Lessee shall be given a reasonable opportunity after a final court determination to prevent forfeiture by discharging its express or implied obligation as established by the court. If this lease is canceled for any cause, it shall, nevertheless remain in force and effect as to (a) sufficient acreage around each well as to which there are operations, so as to constitute a drilling or maximum allowable unit under applicable governmental regulations, such acreage to be designated by Lessee in such shape as then existing spacing rules permit and (b) any part of said land included in a pooled or unitized unit on which there are operations. Lessee shall also have such easements on said land as are necessary or convenient for operations on the acreage so retained.

6 If this lease covers less than the entire undivided interest in the oil and gas in said land (whether Lessor's interest is herein specified or not), then the royalties, shut-in royalties and any extension payment pursuant to Paragraph numbered 19 below shall be paid to Lessor only in the proportion which the interest in oil and gas covered by this lease bears to the entire undivided interest therein.

7. Lessee shall have the right to use, free of cost, gas, oil and water produced on said land for Lessee's operations hereunder, except water from the wells of Lessor. When requested by Lessor, Lessee shall bury Lessee's pipelines below plow depth. No well shall be drilled nearer than 200 feet from the house or barn now on said land without written consent of Lessor. Lessee shall pay for damages caused by Lessee's operations to growing crops on said land. Lessee shall have the right at any time to remove all machinery and fixtures placed on said land, including the right to draw and remove casing and any other downhole equipment and fixtures.

8. Lessee is hereby granted the rights to pool or unitize said land or any part of said land, either before or after production is established, with other lands, as to any or all minerals or horizons, to establish units containing not more than approximately 320 acres; provided, however, such units may be established so as to contain not more than approximately 640 acres as to any or all of the following: (a) gas, (b) oil produced from formations located below the top of the Ordovician period, and (c) oil produced from wells classified as gas wells by the regulatory agency having jurisdiction. If units larger than those permitted above, either at the time established or thereafter, are required or permitted under any governmental rule or order to drill or operate a well at a regular location, to obtain the maximum allowable from any well or for any other reason, then the maximum unit size authorized hereby shall conform to the size required or permitted by such governmental rule or order. Lessee may enlarge the unit to the maximum area permitted herein and may reform said unit to include after-acquired leases within the unit area. Lessee may create, modify, enlarge or reform the unit or units as above provided at any time, and from time to time during the continuance of this lease, either before or after production is obtained. A unit established hereunder shall be effective for all purposes of this lease, whether or not all interests in the lands in the units are effectively pooled or unitized. Lessee may, but shall not be required to, drill more than one well in each unit. Lessee may reduce or terminate such unit or units at any time prior to the discovery of oil or gas on the pooled or unitized lands, or at any time after discovery subsequent to the cessation of production. Lessee may create, modify, enlarge, reform, reduce, or terminate each unit by recording a written declaration to that effect in the Register of Deeds or recorder's office in the county or counties in which such unit is located. Any operations conducted on any part of the lands pooled or unitized shall be deemed to be on the lands leased herein within the meaning of all provisions of this lease. Production of oil and/or gas from the unit shall be allocated to the lands described herein which are included in the unit in the same proportion as the number of surface acres in the lands described herein which are included in the unit bears to the total number of surface acres in the unit.

9. In addition to the rights to pool or unitize granted to the Lessee in Paragraph numbered 8 above, for the purpose of promoting the development of hydrocarbon production from shallow formations, as hereinafter defined, Lessee is granted the right to pool or unitize the shallow formations in said land, or any part of said land with other lands, to establish a unit or units of any size and shape for the drilling and operation of multiple wells. The right to pool or unitize is a recurring right exercisable either before or after production is established and is irrespective of whether authority similar to this exists with respect to such other land, lease or leases. The unit may consist of any number of tracts or parcels of land. The exercise of this right shall be effective only if the required well density (at least one straight hole well drilled into the pooled or unitized shallow formation for each 320 acres of the unit or one lateral well drilled in the pooled or unitized shallow formation for each 640 acres of the unit) is attained no later than five (5) years after recording of the written declaration of the unit. In the event lateral wells are drilled, the effective well density requirement shall be one well per 640 acres. As used herein, the term "shallow formations" shall mean formations between the surface of the earth and a depth of 2,500 feet. All provisions of Paragraph numbered 8, including those regarding Lessee's identification of a unit, the effect of operations conducted thereon and the allocation of production from wells thereon, shall apply in the same manner to a unit formed pursuant to this paragraph for production from shallow formations, except to the extent inconsistent with this paragraph. Lessee may amend, expand, reduce, reform or otherwise modify the unit by filing of record a written declaration to that effect, provided that the required well density is maintained, or is attained by the drilling of an additional well or wells within three (3) years after each such expansion. Lessor specifically acknowledges and agrees that the formation of units under this paragraph is intended to allow development of hydrocarbons in shallow formations which might otherwise not be economic, that units may be created, modified, enlarged, reformed, reduced or terminated to permit such economic development, that the validity of Lessee's actions in creating, modifying, enlarging, reforming, reducing or terminating such units shall not be dependent upon the existence of any geological justification, and that Lessee's right to create, maintain, modify, enlarge, reform, reduce or terminate any such units shall only be limited by the required well density provisions set forth above.

10. This lease is subject to laws and to rules, regulations and orders of any governmental agency having jurisdiction, from time to time in effect, pertaining to well spacing, pooling, unitization, drilling or production units, or use of material and equipment.

11. If, after the date hereof, the leased premises shall be conveyed in severalty or in separate tracts, the premises shall, nevertheless, be developed and operated as one lease, except that royalties as to any producing well shall be payable to the owner or owners of only those tracts located within the drilling unit designated by the state regulatory agency for such well and apportioned among said tracts on a surface acreage basis; provided, however, if a portion of the leased premises is pooled or unitized with other lands for the purpose of operating the pooled unit as one lease, this paragraph shall be inoperative as to the portion so pooled or unitized.

12. If Lessee is prevented from, or delayed in commencing, continuing, or resuming operations, or complying with its express or implied obligations hereunder by circumstances not reasonably within Lessee's control, this lease shall not terminate and Lessee shall not be liable for damages so long as said circumstances continue (the "period of suspension"). These circumstances include, but are not limited to the following: conflict with federal, state or local laws, rules, regulations and executive orders; acts of God; strikes; lockouts; riots; wars; improper refusal or undue delay by any governmental agency in issuing a necessary approval, license or permit applied for by Lessee; equipment failures; and inability to obtain materials in the open market or to transport said materials. If the period of suspension commences more than 120 days prior to the end of the primary term of this lease, then that period of suspension shall be added to the primary term. If the period of suspension commences less than 120 days prior to the end of the primary term or at any time after the primary term, then this lease shall not terminate if Lessee shall commence or resume operations within 120 days after the end of the period of suspension.

13. If the estate of either party hereto is assigned, and the privilege of assigning in whole or in part is expressly allowed, the covenants and provisions of this lease shall extend to such party's heirs, devisees, legal representatives, successors or assigns. Notwithstanding any other actual or constructive knowledge of Lessee, no change in the ownership of land or assignment of royalties or other monies, or any part thereof, shall be binding on Lessee until 45 days after Lessee has received, by certified mail, written notice of such change and the originals or certified copies of those instruments that have been properly filed for record and that shall be necessary in the opinion of Lessee to establish the validity of such change of ownership or division of interest. No change or division in the ownership of said land, royalties or other monies, or any part thereof, however accomplished, shall increase the obligations or diminish the rights of Lessee, including, but not limited to, rights and obligations relating to the location and drilling of wells and the measurement of production. Upon assignment by Lessee, its successors or assigns, the assignor shall be released from, and the assignee shall assume, the responsibility to fulfill the conditions and to perform the covenants of this lease, express or implied, with regard to the interest assigned. Breach of any covenant or failure to fulfill any condition by an owner of any part of the leasehold interest created by this lease shall not defeat or affect the rights of the owner(s) of any other part.

14. Lessor hereby ~~warrants and agrees to defend the title to said land and~~ agrees that Lessee may at any time pay all or part of any land contract, mortgage, taxes, or other liens or charges with respect to said land, either before or after maturity and be subrogated to the rights of the holder thereof, and that Lessee shall be entitled to reimbursement out of any royalty or other monies payable to Lessor hereunder. This lease shall be binding upon each party who executes it without regard to whether it is executed by all those named herein as Lessor.

15. Lessee may at any time surrender this lease as to all or any part of said land, or as to any depths or formations therein, by delivering or mailing a release to Lessor if the lease is not recorded or by placing a release of record in the proper county if the lease is recorded. If this lease is surrendered only as to part of said land, any shut-in royalties which may thereafter be payable hereunder shall be reduced proportionately.

~~16. Lessee shall have the exclusive right to use any stratum or strata underlying the premises for the storage of gas or liquids and may, for such purpose, reopen and restore to operation any and all abandoned wells on the premises and may drill new wells thereon for the purpose of injecting and storing gas or liquids in such stratum or strata and withdrawing such gas or liquids therefrom. If Lessee intends to use the premises for such purpose or determines that it is so using the premises, Lessee may deliver to Lessor or have recorded in the county or counties in which this lease is recorded a declaration that the premises are being used, or from a specified date will be used for gas or liquid storage, and thereafter Lessee shall have the exclusive right to use the premises for such gas or liquid storage until such time as Lessee may deliver to Lessor or have recorded in such county or counties a surrender of the right granted to Lessee by this paragraph or until Lessee shall intentionally abandon the right to use the premises for such storage. During the period or periods that Lessee shall utilize the premises for the storage of gas or liquids, the royalties herein provided to be paid to Lessor shall accrue and become payable only on such gas and liquids as shall have been taken from such premises by Lessee over and above the amount thereof which Lessee theretofore shall have stored in such stratum or strata. For and during the period or periods that Lessee uses said premises for such storage, Lessee shall pay to Lessor a minimum royalty of Ten Dollars ($10.00) per acre per year on the number of acres covered by this lease, such payment to be made not later than sixty (60) days from and after~~

~~the end of each twelve month period during which the premises are utilized for storage. Lessee is expressly granted the right to use so much of the surface of the premises as is reasonably necessary in the exercise of the rights granted to Lessee by this paragraph. The rights granted to Lessee by this paragraph shall continue in force for the period of time hereinabove specified, but this lease, insofar as it grants to Lessee the right to prospect, explore and produce oil and gas from stratum or strata other than those employed in such storage shall not be continued in force solely by the storage of oil or liquid as provided in this paragraph.~~

17. All written notices permitted or required by this lease to be given Lessor and Lessee herein shall be at their respective addresses listed hereinabove, shall be by certified United States mail, and shall identify this lease by date, parties, description and recording data; provided that either party may change such notice address by giving written notice to the other party specifying the new address.

18. In the event any one or more of the provisions contained in this lease shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this lease.

19. This lease may, at Lessee's option, be extended as to all or part of the lands covered hereby for an additional primary term of two (2) years commencing on the date that the lease would have expired but for the extension. Lessee may exercise its option by paying or tendering to Lessor an extension payment of $ 150.00 per acre for the minerals then covered by the extended lease, said bonus to be paid or tendered to Lessor in the same manner as provided in Paragraph numbered 4 hereof with regard to the payment of shut-in royalties. If Lessee exercises this option, the primary term of this lease shall be considered to be continuous, commencing on the date of the lease and continuing from that date to the end of the extended primary term. Lessee's option shall expire on the first to occur of the following: (a) the termination or expiration of this lease or (b) the second anniversary of the expiration of the primary term stated in Paragraph numbered 2 above.

Executed as of the day and year first above written.

LESSOR:

BRYAN K. BARNETT, MAYOR FOR
CITY OF ROCHESTER HILLS

Charlotte Fromholz

Pamela Allen

STATE OF MICHIGAN)
) SS (Acknowledgment)
COUNTY OF Oakland)

On this 15th day of JANUARY, ~~2012~~ 2013 (KSP) before me personally appeared BRYAN K. BARNETT known to me to be the person (s) described in and who executed the foregoing instrument, and who acknowledged to me that he (she, they) executed the same.

Karen S. Darin, Notary Public

My Commission Expires: 11-26-2013

Acting in Oakland County, MI
For OAKLAND County, MI

RETURN RECORDED COPY TO: 1503 Garfield Road North Traverse City, MI 496860

This instrument prepared by: Ben Brower of 1503 Garfield Road North, Traverse City, MI 49686.

R:\LAND\Forms\Lease Forms\LEASE FORM - PAID-UP-5.05.doc

KAREN S. DARIN
NOTARY PUBLIC, STATE OF MICHIGAN
COUNTY OF OAKLAND
MY COMMISSION EXPIRES 11-26-2013
ACTING IN THE COUNTY OF OAKLAND

EXHIBIT A
TO OIL AND GAS LEASE

This Exhibit A is attached to and made a part thereof of that certain Oil and Gas Lease dated JANUARY 15, 2015 entered into between the City of Rochester Hills, as Lessor, and Jordan Development Company, L.L.C., as Lessee, is hereby supplemented to add the following paragraphs, all of which serve to amend, and shall prevail whenever in conflict with, the provisions of the Oil and Gas Lease.

1. Lessee agrees that, as it pertains to the lands covered by this lease, it shall not utilize the procedure known as High Volume Hydraulic Fracturing wherein it uses sand or other forms of proppant to hydraulically fracture the well as commonly utilized in unconventional shale plays such as the Marcellus Shale in Pennsylvania.

2. Notwithstanding anything contained in this Oil and Gas Lease to the contrary, Lessor's royalty is hereby changed from one-eighth (1/8th) to one-sixth (1/6th) and everywhere in this lease where the fraction one-eighth (1/8th) appears, the fraction one-sixth (1/6th) is hereby substituted.

3. Lessee shall have no right of entry and shall conduct no operations on the surface of the leased premises without further official approval of the City Council and compliance, as necessary, with applicable ordinance or charter requirements. Stated another way, Lessee shall not erect, construct, store or maintain any wells, drill rig, storage tanks, pumps, pipes, or other in-ground or above-ground structures, facilities or equipment on the leased premises; Lessee, through its operations, shall not disrupt, interfere with, restrict, drain, damage, destroy or remove any natural or man-made condition, feature or improvement located on the leased premises; nor shall Lessee's operations hinder, interfere with, restrict or otherwise adversely affect the current or future use and development of the leased premises for parks, open space and public recreation without further official approval of the City Council and compliance, as necessary, with applicable ordinance or charter requirements

4. This lease covers oil, gas and related hydrocarbons only. No other minerals are to be considered part of this lease.

5. Lessee or West Bay Exploration Company shall at all times be the operator, as that term is generally construed or defined in the usual joint operating agreement or other standard oil field contract, for all exploration and production activities and all other activities under this Lease. With the exception of West Bay Exploration, Lessee shall not assign the operations, in whole or in part, to anyone other than a financially responsible, experienced and competent operator acceptable to Lessor and pursuant to Lessor's prior written approval, which approval shall not be unreasonably withheld.

6. Lessor has the right to examine and/or audit, at its sole expense and at Lessee's office, Lessee's accounts and books in connection with the payments to be made under this lease not more than once per year.

7. If at the end of the primary term a portion of the leased premises is pooled or unitized with lands that are not a portion of the leased premises so as to form a pooled unit or units, then operations on, completion of a well on, or production from such unit or units will not maintain this Lease in force as to that portion of the leased premises not included in such pooled unit or units.

8. Lessee shall commence paying royalties to Lessor within ninety (90) days after the well is completed as a producing oil well and marketed and within ninety (90) days after a gas well is connected with a pipeline and marketed, and shall continue to promptly pay all royalties no later than sixty (60) days past the last day of the month in which the royalty products were produced and payment has been received by Lessee from the respective purchaser(s). On any and all royalties which are not paid in accordance with the provisions of this paragraph, Lessee shall pay to Lessor interest at the rate of 10% per annum.

Signed for identification:

BRYAN K. BARNETT, MAYOR

EXHIBIT 1

LEGAL DESCRIPTION

This Exhibit 1 is attached to and made a part thereof of that certain Oil and Gas Lease dated JANUARY 15, 2013 entered into between the City of Rochester Hills, as Lessor, and Jordan Development Company, L.L.C., as Lessee

1) Nowicki Park (combined parcel)

Part of Northwest 1/4 of Section 8, Township 3 North, Range 11 East, City of Rochester Hills, Oakland County , Michigan described as: The South 35 acres of North 50.79 acres of West 1087.60 feet of said section 8, containing 35.0 acres more or less.

70-15-08-100-006, 70-15-08-100-007, 70-15-08-100-008, 70-15-08-151-001, 70-15-08-151-002

2) Tienken Road Park

Part of west 1/2 OF Southeast 1/4 of Section 6, Township 3 North, Range 11 East, City of Rochester Hills, Oakland County , Michigan described as: Beginning at a point on South section line East 612.00 feet from South 1/4 Corner, thence South 89-41-00 East on section line 564.00 Feet, thence North 03-12-40 West 783.00 Feet, thence N 89-41-00 West 564.00 FT, thence South 03-12-40 East 783.00 Feet to the point of beginning, containing 10.0 acres.

70-15-06-400-003

3) Van Hoosen Jones Stony Creek Cemetery

Part of the Northeast 1/4 of Section 11, Township 3 North, Range 11 East, City of Rochester, Oakland County, Michigan, being more particularly described as follows: Beginning at the North 1/4 corner of Section 11, thence South 02-18-03.6 West, 853.64 feet; thence South 02-31-29.4 West, 340.66 feet; thence North 89-04-50 East, 603.91 feet; thence North 02-26-16.9 East, 1162.61 feet; thence North 87-54-37.5 West, 604.41 feet to the beginning, and containing 16.32 acres.

EXHIBIT F

STATE OF MICHIGAN
DEPARTMENT OF CONSERVATION

Permit to Construct and Maintain Pipe Line

FOR AND IN CONSIDERATION OF Ten and 50/100 ($10.50) Dollars -, in hand paid, the receipt of which is hereby acknowledged, the Department of Conservation for the State of Michigan (hereinafter called the Grantor) does hereby grant to Susquehanna Pipe Line Company of Philadelphia 3, Pennsylvania (hereinafter called the Grantee) its successors or assigns, the right to lay a pipe line and maintain, operate, repair, replace and remove the same over and through the following state-owned lands, as indicated on the attached plat:

S½ of NE¼ lying South and West of M. C. R. R., Section 13, T 3 N, R 11 E, Oakland County.

Said pipe line right of way shall be a strip of land twenty-five feet wide, the center line of which shall be located and described as (bearings and distances):

Beginning at a point 505 feet west of the southeast corner of the SW¼ of NE¼, Section 13, T 3 N, R 11 E, thence N 47°45' E to the M. C. R. R. a distance of approximately 682 feet.

In addition to all other terms and conditions contained in this easement, it is understood and agreed that grantee will plant twenty-five hardwood trees, not less than three inches in diameter, of species to be selected by the area manager, to replace such trees and shrubs which will be destroyed in the construction of the line.

This permit is subject to the following conditions and requirements:

1. Grantee agrees to notify the authorized representatives of the Department of Conservation indicated at the end of this permit prior to commencing operations under this permit so that the Department shall be properly notified as to the time and place that such operations shall begin on the state-owned lands.

2. Said Grantee, in addition to the amount paid as indicated above covering the charge of twenty-five cents per lineal rod, agrees to pay any damages which may arise to merchantable timber or forest growth, or any improvements by operations under this permit. Said damages, if not mutually agreed upon, are to be ascertained and determined by three disinterested persons, one thereof to be appointed by said Grantor, its successors or assigns; one by the Grantee, its successors or assigns, and the third by the two appointed as aforesaid; and the award of such three persons shall be final and conclusive.

3. At the option of the Grantor, all or any part of the forest products cut by the Grantee hereunder shall be the property of the Grantor and shall be cut and piled or decked as directed by the Grantor's authorized representatives, provided, however, the Grantee shall not be charged damages for such forest products claimed by the Grantor.

4. Permittee and its employees shall take all reasonable precautions to prevent and suppress forest fires, shall cause no unnecessary damage to forest growth or to any plantations, and shall be responsible and liable for any damages to state property.

5. All brush or refuse resulting from operations under this permit shall be disposed of as directed by Grantor's authorized representatives. Before burning or setting any fires whatsoever, Grantee shall obtain the required permit from Grantor's authorized representatives.

6. Grantee shall bury said pipe line wherever necessary so as not to interfere with possible cultivation or Grantor's use of the land.

7. This right herein granted shall continue in full force and effect for as long a time as the pipe line is used for its intended purpose, and at such time that its use is discontinued, this permit shall become null and void. The Grantee shall, upon abandonment of the right herein granted, leave the premises in a condition satisfactory to the Grantor.

8. It is understood that any relocation of the pipe line constructed under this permit will require the approval of the Department of Conservation.

IN WITNESS WHEREOF, The Grantor, by its Director, has hereunto affixed its name and seal this 9th day of November, A. D. 1950.

Signed and acknowledged in presence of

J. D. Stephansky

Colleen R. Beyer

DEPARTMENT OF CONSERVATION
FOR THE STATE OF MICHIGAN

P. J. Hoffmaster, Director

STATE OF MICHIGAN)
) ss.
COUNTY OF INGHAM)

On this 21st day of November, A. D. 1950, before me a Notary Public in and for said county personally appeared P. J. Hoffmaster, Director of the Department of Conservation for the State of Michigan, to me known to be the same person who executed the within instrument, and who acknowledged the same to be his free act and deed and the free act and deed of the Department of Conservation for the State of Michigan in whose behalf he acts.

Joseph D. Stephansky,
Notary Public, Ingham County,
Michigan

My Commission Expires: January 12, 1954.

NOTE: Department field representative to be contacted relative to operations under this permit is:

George McClure, Rochester-Utica Recreation Area, 5741 Hamlin Road, R # 3, Utica, Michigan.

WHEN RECORDED SEND TO MR. WINFIELD GIVENS 1608 WALNUT ST. PHILADELPHIA 3, PA.

EXHIBIT G

RIGHT OF ENTRY AGREEMENT

THIS RIGHT OF ENTRY AGREEMENT ("Agreement"), made this 25th day of September, 2013, between the **CITY OF ROCHESTER HILLS**, a municipal corporation, having an address of 1000 Rochester Hills Drive, Rochester Hills, MI 48309 (hereinafter referred to as ("Grantor") and **SUNOCO PIPELINE L.P.** a Texas limited partnership, having an office at 525 Fritztown Road, Sinking Spring, Pennsylvania 19608 (hereinafter referred to as "BUYER").

GRANTOR is the owner of a parcel or tract of land, situated, and being in the City of Rochester Hills, County of Oakland, State of Michigan, 48307 more commonly known as Bloomer Park, Tax ID: 15-13-151-008, defined as the "Premises" therein.

GRANTOR hereby grants and conveys to GRANTEE, its representatives, agents, employees, contractors and subcontractors, the right to enter upon and utilize the Premises, for the purposes set forth below:

To, at GRANTEE's sole cost and expense, utilizing horizontal directional drilling, construct certain pipeline facilities, including, but not limited to, erecting, laying, constructing, maintaining, operating, repairing, inspecting, replacing, changing the size of, protecting, altering, abandoning and removing said facilities, including, but not limited to, fittings, meters, pipes, pipelines, conduits, tie-ins, electrical facilities and electric lines, and any and all other devices, equipment to facilitate the operation, maintenance, repair and use of its pipeline ("Facilities"), below the surface of the ground along, under, through and across said Premises.

GRANTOR and GRANTEE further acknowledge that GRANTEE is currently entitled to maintain its pipeline pursuant to a Permit to Construct and Maintain Pipe Line dated November 9, 1950 granted by the Department of Conservation For the State of Michigan to the Susquehanna Pipe Line Company, a predecessor to the GRANTEE, and that for the consideration of a payment of Fifty Thousand ($50,000.00) Dollars, GRANTOR will execute an Easement Agreement, or similar document, that will reflect the as-built location of the pipeline to be installed pursuant to this Agreement that will be of equal width as the Permit now in place and contain terms and conditions similar to the existing Permit.

GRANTOR will grant GRANTEE, its agents and contractors, access the Premises for the purpose of conducting these above referenced activities on the Premises during normal business hours, provided GRANTOR receives forty eight (48) hours prior notice. Prior to the start of the above referenced activities, GRANTEE will provide GRANTOR with its scope of work.

GRANTEE shall not interfere with the normal operation of the Premises or impair access to the Premises.

This Agreement and all of its terms, provisions and obligations shall be covenants running with the land affected thereby and shall inure to the benefit of and be binding upon GRANTOR and GRANTEE and their respective heirs, executors, administrators, successors and assigns.

GRANTEE SHALL DEFEND, INDEMNIFY, PROTECT AND HOLD HARMLESS SELLER, SUCCESSORS, ASSIGNS, TRANSFEREES, EMPLOYEES,

OK - AN

AGENTS, LESSEES, OFFICERS, DIRECTORS AND RELATED OR AFFILIATED ENTITIES (THE "INDEMNIFIED PARTIES") FROM ANY AND ALL LIENS, CLAIMS, DEMANDS, COSTS (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ACCOUNTANT'S FEES, ENGINEER'S FEES, CONSULTANT'S FEES AND EXPERT'S FEES), EXPENSES, DAMAGES, LOSSES AND CAUSES OF ACTION FOR DAMAGES (COLLECTIVELY, "LOSSES") BECAUSE OF INJURY TO PERSONS (INCLUDING DEATH) AND INJURY OR DAMAGE TO OR LOSS OF ANY PREMISES OR IMPROVEMENTS ARISING FROM OR CAUSED BY THE ACTS AND/OR OMISSIONS OF GRANTEE, EXCEPT TO THE EXTENT SUCH LOSSES ARE CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF SELLER OR THE OTHER INDEMNIFIED PARTIES.

GRANTEE SHALL ALSO INDEMNIFY, DEFEND AND HOLD HARMLESS GRANTOR, SUCCESSORS, ASSIGNS, TRANSFEREES, EMPLOYEES, AGENTS, LESSEES, CONTRACTORS, SUBCONTRACTORS, AS WELL AS TRUSTEES, BENEFICIARIES, PARTNERS, OFFICERS, DIRECTORS AND RELATED OR AFFILIATED ENTITIES FROM AND AGAINST ANY LOSSES ARISING FROM THE IMPOSITION OR RECORDING OF A LIEN BY, THROUGH OR UNDER BUYER FROM AND/OR IN CONNECTION WITH OR RESULTING FROM BUYER'S OPERATIONS ON SELLER'S LANDS, OR THE INCURRING OF COSTS OF REQUIRED REPAIRS, CLEAN UP, OR DETOXIFICATION AND REMOVAL UNDER ANY HAZARDOUS MATERIAL LAW WHICH MAY RESULT FROM GRANTEE'S ACTS OR OMISSIONS ON GRANTOR'S LANDS. GRANTEE IS NEITHER AN AGENT NOR AN EMPLOYEE OF GRANTOR, AND GRANTOR SHALL HAVE NO RESPONSIBILITY TO INSPECT OR OVERSEE GRANTEE'S OPERATIONS NOR TO INDEMNIFY OR CORRECT ANY POTENTIALLY HARMFUL, DANGEROUS OR DAMAGING CONDITIONS.

SPECIFICALLY EXCLUDED FROM THE FOREGOING INDEMNITIES IS ANY CLAIM FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OR ANY CLAIM FOR THE DISCOVERY OF ADVERSE ENVIRONMENTAL CONDITIONS NOT CAUSED BY THE ACTS OR OMISSIONS OF GRANTEE.

This Agreement contains the entire agreement and supersedes any and all prior oral understandings and/or agreements, if any, concerning the subject of the Agreement. GRANTEE confirms and agrees that GRANTOR has been made no promise or agreement by GRANTEE or any agent of GRANTEE that is not expressed or referenced specifically within the Agreement in executing the Agreement, that GRANTOR is not relying upon any statement or representation of GRANTEE or any agent of GRANTEE and that GRANTOR's execution of this Agreement is free and voluntary; this Agreement may not be modified or amended except on or after the date hereof by a writing signed by the other party against whom such modification or amendment is to be enforced and no party shall be liable or bound to any other party in any manner except as specifically set forth herein.

Exempt from transfer taxes under MCL 207.505(h) and 207.526(h).

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have caused these presents to be duly executed this 25th day of September, 2013.

The City of Rochester Hills, a municipal corporation

By: _____

Name: Bryan Barnett

Title: Mayor

Approved by John Staran
September 24, 2013.

STATE OF MICHIGAN :
:SS.
COUNTY OF OAKLAND :

BEFORE ME, the undersigned authority, on this day personally appeared Bryan Barnett, Mayor of the City of Rochester Hills, a municipal corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 25th day of September, 2013.

Christine A Wissbrun

Notary Public

_____

(Print Name of Notary Public Here)

_____ Cty., acting in _____ Cty., MI

My Commission Expires: _____

Christine A Wissbrun
Notary Public State of Michigan
County of Oakland
My Commission Expires 03/19/2014
Acting in the county of Oakland

Sunoco Pipeline L.P.
By: Sunoco Logistics Partners Operations GP
LLC, its general partner

By: Karen R McMillin
Name: Karen R. McMillin
Title: Director, Right of Way

STATE OF Texas

COUNTY OF Fort Bend

On this 27th day of September, 2013, before me, the undersigned officer, personally appeared Karen R. McMillin, who acknowledged herself to be the Director, Right of Way of Sunoco Logistics Partners Operations GP, LLC a Delaware limited liability company, general partner of SUNOCO PIPELINE L.P., a Texas limited partnership, and further acknowledged that she, as such officer, being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing the name of the limited liability company in its capacity as general partner of the limited partnership by herself as such officer.

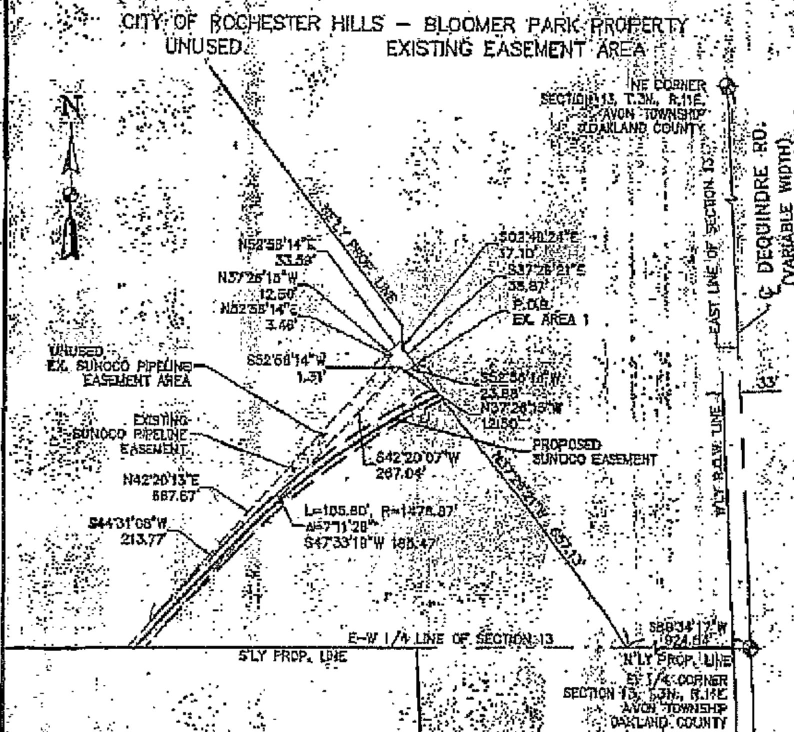
GIVEN UNDER MY HAND AND SEAL OF OFFICE this 27th day of September, 2013.

MARY SUSAN STEVENSON
Notary Public, State of Texas
My Commission Expires
August 02, 2016

Mary Susan Stevenson
Notary Public
Mary Susan Stevenson
(Print Name of Notary Public Here)
My Commission Expires: August 2, 2016

DRAFTED BY AND WHEN RECORDED RETURN TO:

SUNOCO PIPELINE L.P.
ATTN: Right of Way Department
525 Fritztown Road
Sinking Spring, PA 19608



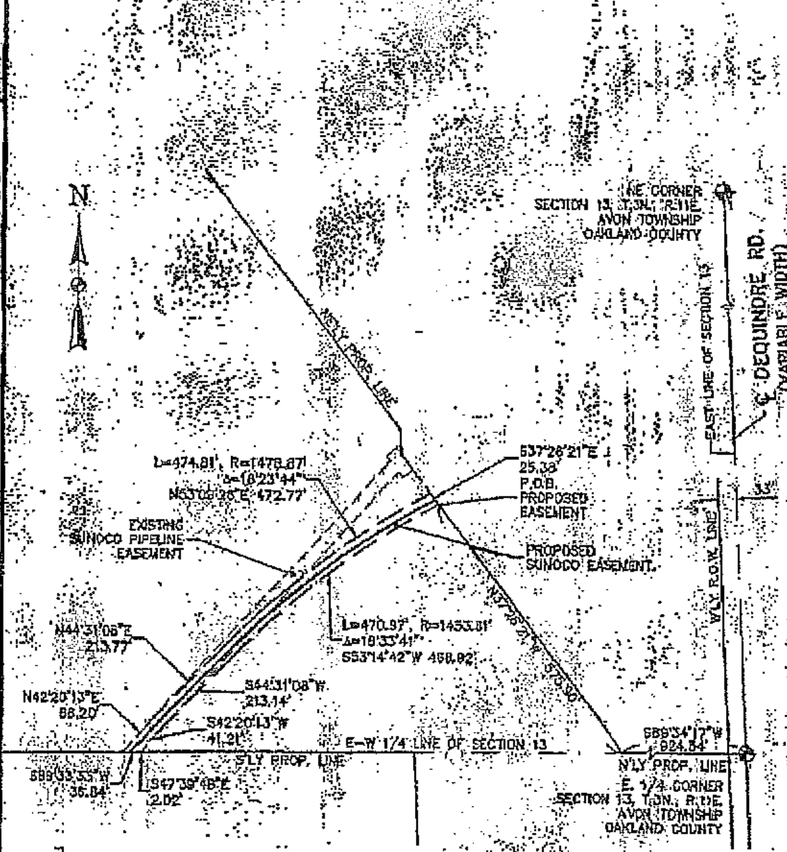
LEGEND

- EX. EASEMENT LINE
- EX. EASEMENT AREA
- SECTION CORNER
- P.O.B. POINT OF BEGINNING
- PROPOSED EASEMENT
- PROPOSED PIPELINE
- PROPERTY LINE (OVERALL)
- PROPERTY LINE (PARCEL)
- RIGHT OF WAY LINE
- SECTION LINE

NOTES
1. BEARING BASIS: STATE PLANE COORDINATES
2. BOUNDARY SURVEY NOT PERFORMED
3. BOUNDARY LINES SHOWN PER TAX DESCRIPTION

SECTION 13	**Garcia Surveyors, Inc.**	JOB: 1037-13-5070
T.3N., R.11E.		DATE: 09-20-13
AVON TOWNSHIP		REV.: —
OAKLAND COUNTY		REV.: —
MICHIGAN	**METRO CONSULTING ASSOCIATES**	BOOK/CREW: —
0 100 200	Michigan | Ohio | Indiana	DRAWN BY: DW
1 inch = 200 feet	800.525.6016 www.metrocs.net	CHECK BY: BEGO
		SHEET 1 OF 3

CITY OF ROCHESTER HILLS – BLOOMER PARK PROPERTY
PROPOSED EASEMENT AREA



LEGEND

- EX. EASEMENT LINE
- EX. EASEMENT AREA
- SECTION CORNER
- P.O.B. — POINT OF BEGINNING
- PROPOSED EASEMENT
- PROPOSED PIPELINE
- PROPERTY LINE (OVERALL)
- PROPERTY LINE (PARCEL)
- RIGHT OF WAY LINE
- SECTION LINE

NOTES
1. BEARING BASIS: STATE PLANE COORDINATES
2. BOUNDARY SURVEY NOT PERFORMED
3. BOUNDARY LINES SHOWN PER TAX DESCRIPTION

SECTION 13	**Garcia Surveyors, Inc.**	JOB: 1037-13-5876
T.3N., R.11E.		DATE: 08-20-13
AVON TOWNSHIP		REV: ---
OAKLAND COUNTY		REV: ---
MICHIGAN	**METRO CONSULTING ASSOCIATES**	BOOK/CREW: ---
0 100 200	Michigan | Ohio | Indiana	DRAWN BY: CW
1 inch = 200 feet	800.525.6016 www.metrocca.net	CHECK BY: BEGO
		SHEET 2 OF 3

EXISTING SUNOCO PIPELINE EASEMENT AREA

Commencing at the East 1/4 corner of Section 13, T.3N., R.11E., Avon Township, Oakland County, Michigan; thence S89°34'17"W 924.54 feet along the East-West 1/4 line of said Section 13 and the northerly property line as described; thence N37°28'21"W 657.13 feet along the northeasterly property line as described to the POINT OF BEGINNING; thence S52°36'14"W 23.88 feet; thence N37°28'15"W 12.60 feet; thence S52°36'14"W 7.31 feet; thence S42°20'07"W 207.04 feet; thence 185.90 feet along the arc of a 1478.87 foot radius non-tangential circular curve to the left, having a chord bearing S47°33'10"W 185.47 feet; thence S44°31'08"W 213.77 feet; thence N42°20'13"E 887.87 feet; thence N52°36'14"E 3.46 feet; thence N37°28'15"W 12.60 feet; thence N52°36'14"E 33.59 feet to the said northeasterly property line; thence the following two (2) courses along said northeasterly property line: S02°40'24"E 17.10 feet and S37°28'21"E 35.87 feet to the Point of Beginning; being a part of the Northeast 1/4 of said Section 13.

#15-13-276-003
#15-13-176-008

PROPOSED SUNOCO PIPELINE EASEMENT

Commencing at the East 1/4 corner of Section 13, T.3N., R.11E., Avon Township, Oakland County, Michigan; thence S89°34'17"W 924.54 feet along the East-West 1/4 line of said Section 13 and the northerly property line as described; thence N37°28'21"W 575.90 feet along the northeasterly property line as described to the POINT OF BEGINNING; thence 479.97 feet along the arc of a 1453.81 foot radius non-tangential circular curve to the left, having a chord bearing S53°14'42"W 477.82 feet; thence S44°31'08"W 213.14 feet; thence S42°20'13"W 41.21 feet; thence S47°39'48"E 2.02 feet to the southerly property line; thence S89°33'33"W 38.84 feet along said southerly property line; thence N02°29'13"E 65.20 feet; thence N44°31'08"E 213.77 feet; thence 474.81 feet along the arc of a 1478.87 foot radius circular curve to the right, having a chord bearing N53°09'28"E 472.72 feet to the said northeasterly property line; S37°28'21"E 28.38 feet along said northeasterly property line to the Point of Beginning. Being a part of the Northeast 1/4 of said Section 13.

#15-13-276-003
#15-13-276-008

SECTION 13	**Garcia Surveyors, Inc.**	JOB: 1037-13-5878
T.3N., R.11E.		DATE: 08-20-15
AVON TOWNSHIP		REV.: —
OAKLAND COUNTY		REV.: —
MICHIGAN	**METRO CONSULTING ASSOCIATES**	BOOK/PREV#: —
	Michigan | Ohio | Indiana	DRAWN BY: DW
	800.525.6016 www.metroca.net	CHECK BY: BEGO
		SHEET: 3 OF 3

EXHIBIT H

RECEIVED
OAKLAND COUNTY
REGISTER OF DEEDS

2014 APR 29 PM 12:52

21376
LIBER 46993 PAGE 715
$34.00 MISC RECORDING
$4.00 REMONUMENTATION
04/29/2014 12:57:57 P.M. RECEIPT# 39565
PAID - RECORDED - OAKLAND COUNTY
LISA BROWN, CLERK/REGISTER OF DEEDS

PIPELINE RIGHT-OF-WAY EASEMENT

THIS RIGHT-OF-WAY EASEMENT made this 8th day of April, 2014, by the City of Rochester Hills, a municipal corporation in the State of Michigan, having an address at 1000 Rochester Hills Drive, Rochester Hills, MI 48309 (hereinafter called "Grantor" whether one or more).

For and in consideration of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned Grantor does hereby GRANT, BARGAIN, SELL and CONVEY unto SUNOCO PIPELINE L.P., a Texas limited partnership, with an office at 525 Fritztown Road, Sinking Spring, PA 19608, and its successors and assigns (hereinafter collectively called "Grantee"), a permanent non-exclusive twenty-five foot (25') wide right-of-way and easement, ("New Easement Area") along a route as shown and described on Exhibit "A" attached hereto, to construct, install, maintain, operate, repair, inspect, alter, protect, change the size of, relocate, replace in whole or in part, remove and abandon a pipeline or pipelines and other appurtenant facilities including, but not limited to, above-ground markers, test stations and cathodic protection equipment (collectively the "Facilities") for the purpose of transporting oil, oil products, crude petroleum, natural gas, gas liquids, liquefied minerals, mineral solutions or any other liquids, gases or substances, including water, in, over, through, across, under, and along the lands owned by Grantor in the City of Rochester Hills, County of Oakland, State of Michigan, described as follows:

Parcel identification number(s): 15-13-151-008 & 15-13-276-003, being all that particular tract or parcel of land owned by Grantor or to which Grantor may have rights in said tract or parcel of land, being more specifically described in Exhibit "B" attached hereto (the "Property").

Moreover, for the same consideration set forth above, Grantor does hereby GRANT, BARGAIN, SELL and CONVEY unto Grantee a permanent non-exclusive twenty-five foot (25') wide right-of-way and easement containing abandoned pipeline, ("Existing Right-of-Way") (collectively, New Easement Area and Existing Right-of-Way shall be referred to herein as the "Right-of-Way") along a route as shown and described on Exhibit "A" attached hereto to allow for the grouting and abandonment in place of a certain existing pipeline all in accordance with applicable State and Federal standards under the Property.

OK - AN

Grantee shall have the right of ingress and egress, entry and access in, to, through, on, over, under and across the Property and any public road or public right-of-way or other easement to which Grantee has a right of access, for any and all purposes necessary and/or incident to the exercise by the Grantee of the rights granted to it by this Easement. When practical, Grantee and its agents and contractors will provide reasonable notice prior to entry and perform work during normal business hours. In the event Grantee must enter or perform work during times the park is closed, Grantee shall be responsible for securing the park from entry by anyone else.

The Grantor may use the Right-of-Way for any and all purposes not inconsistent with the purposes set forth in this Easement. However, the Grantor may not use any part of the Right-of-Way if such use may damage, destroy, injure, or interfere with Grantee's use of the Right-of-Way for the purpose for which the Right-of-Way is being sought by Grantee. Activities for which the Grantor may not use the Right-of-Way include without limitation the following: (1) construction of any temporary or permanent buildings; (2) drilling or operation of any well; (3) removal of soil or changing the grade or slope; (4) impounding surface water; (5) planting trees or landscaping; (6) installing fences over the Right-of-Way; provided, however, that Grantor may erect a fence perpendicularly with the Right-of-Way with Grantee's prior written approval. Grantor further agrees that no above- or below-ground obstruction that may interfere with the purposes for which this Easement is being acquired may be placed, erected, installed or permitted upon the Right-of-Way without the written approval of the Grantee. In the event the terms of this paragraph are violated, such violation shall immediately be eliminated by Grantor, at Grantor's sole cost and expense, upon receipt of written notice from Grantee or Grantee shall have the immediate right to correct or eliminate such violation-, at the sole expense of Grantor. Grantor shall promptly reimburse Grantee for any expense related thereto. Grantor further agrees that it will not, nor will Grantor permit others to, interfere in any manner with the purposes for which the Right-of-Way is being conveyed.

The Grantee shall have the right, but not the obligation, from time to time to mow the Right-of-Way and to trim, cut down or eliminate trees or shrubbery without further compensation to Grantor and in the sole judgment of Grantee, its successors and assigns, as may be necessary to prevent possible interference with the construction, operation and maintenance of Grantee's Facilities and to remove possible hazard thereto, and the right to remove or prevent the construction of any and all buildings, structures, reservoirs or other obstructions on the Right-of-Way which, in the sole judgment of the Grantee may endanger or interfere with the efficiency, safety, or convenient operation of the Grantee's Facilities. Grantee will engage in Best Tree Management and Preservation Methods recognizing the park nature of the Right-of-Way when engaged in trimming and removal.

Grantor represents and warrants that those persons signing this Easement are all those necessary to fully transfer and convey the rights set forth in this instrument to Grantee, and Grantor herein binds itself, its heirs, executors, administrators and assigns to warrant and forever defend said rights unto Grantee, its successors and assigns, from and against any person claiming the same or any part thereof.

This Easement may be executed in any number of counterparts, each of which shall be an original of this Easement but all or which, taken together, shall constitute one and the same Easement and be binding upon the parties who executed any counterpart, regardless of whether it is executed by all parties named herein.

The terms, conditions and provisions of this Easement are covenants running with the land and shall extend to and be binding upon the heirs, executors and administrators, personal representative, successors and assigns of the parties hereto.

Grantee shall have the right to assign this Easement and its rights and obligations hereunder, in whole or in part, and upon such assignment, any assignee shall be subject to all terms, covenants and conditions contained in this grant in the same manner and to the same extent as the original Grantee herein.

This Easement embodies the entire agreement between the parties and no representations or statements, verbal or written, have been made modifying, adding to, or changing the terms of this Agreement. This Easement may be modified only by written agreement signed by Grantor and Grantee. The parties agree to take all actions reasonably necessary to implement this Easement. Grantee shall record this Easement in the real property records of the County in which the Property is located.

To the fullest extent permitted by law, Grantee shall defend, indemnify and hold harmless Grantor and Grantor's officials, employees and volunteers against any and all claims, demands, suits, or loss, including all costs and attorney fees associated therewith, and for any damages which may be asserted claimed or recovered against or from Grantor or Grantor's officials, employees or volunteers or others working on behalf of Grantor by reason of personal injury, bodily injury or death and/or property damage, including loss of use or pollution thereof, which arises out of or is in any way connected or associated with Grantee's construction, installation, maintenance, operation, repair, inspection, alternation, protection, re-sizing, relocation, replacement, removal and/or abandonment of a pipeline or pipelines and other appurtenant facilities on the Property, except for any and all claims, demands, suits, or loss caused by the Grantor or Grantor's officials, employees, or volunteers negligence or willful misconduct.

[SIGNATURES ON THE FOLLOWING PAGE]

EXHIBIT B

Legal Description for Property

Parcel 1

A parcel of land in the City of Rochester Hills, County of Oakland, State of Michigan, known as tax map parcel 15-13-151-008 located in Section 13, Township 3 North, Range 11 East, more particularly described as follows:

Part of west half (W ½) of Northwest quarter (NW ¼) Beginning at point distant South 86° 04'00" East 45 feet and North 01°25'30" East 250.05 feet from West quarter (West ¼) corner, thence North 01°25'30" East 829.95 feet, thence South 87°15'28" East 355 feet, thence North 01°25'30" East 250 feet, thence South 87°15'28" East 902.90 feet, thence South 01°40'00"East 1084.46 feet, thence North 86°04'00" West 1275.23 feet to beginning, also that part of East half of Northwest quarter (E ½ of NW ¼) and Northeast quarter (NE ¼) lying Southerly of MCRR right-of-way except South 250 feet of West 160 feet, also that part of East half of Southeast quarter(E ½ of SE ¼) lying Southwesterly of MCRR right-of-way and Northerly of centerline of Avon Road.

Parcel 2

A parcel of land in the City of Rochester Hills, County of Oakland, State of Michigan, known as tax map parcel 15-13-276-003 located in Township Three (3) North, Range (11) East, Section Thirteen (13) more particularly described as follows:

Railroad right-of-way across the following North half of Northwest quarter, Northwest quarter of the Northeast quarter, South half of the Northeast quarter, Northeast quarter of Southeast quarter (N ½ of NW ¼, NW ¼ of NE ¼ , S ½ of NE ¼ , NE ¼ of SE ¼).

Being a portion of that property conveyed to the City of Rochester Hills by State of Michigan Department of Natural Resources by Deed dated December 17th, 1993 and recorded in Liber 14718 on page 651 in the Office of Register of Deeds in Oakland County, Michigan.

Rochester Hills

1000 Rochester Hills Dr.
Rochester Hills, MI 48309
(248) 656-4800
Home Page:
www.rochesterhills.org

Certified Copy

Easement: RES0091-2014

File Number: 2014-0138 **Enactment Number: RES0091-2014**

Request to Approve a Pipeline Right-of-Way Easement to Sunoco Pipeline L.P. through Bloomer Park

Resolved, that the Rochester Hills City Council hereby Approves a Pipeline Right-of-Way Easement to Sunoco Pipeline L.P. through Bloomer Park.

I, Tina Barton, City Clerk, certify that this is a true copy of RES0091-2014 passed at the Rochester Hills City Council Regular Meeting held on 4/7/2014 by the following vote:

Moved by Mark A. Tisdel, Seconded by Michael Webber

Aye: Hooper, Tisdel, Webber and Wiggins

Nay: Morita

Absent: Brown and Kochenderfer

Tina Barton, City Clerk

April 28, 2014

Date Certified

EXHIBIT I

ROCHESTER HILLS
MICHIGAN

innovative by nature

September 21, 2012

Dear Residents and Property Owners:

In recent weeks, several residents and property owners have received a packet of information from Land Services, Inc. that, in the most general of terms:

1. Explains their intent to explore for oil and gas reserves in subsurface pockets (termed "structures").
2. Requests the property owner(s) to sign and have a lease notarized.
3. Lists an amount to be paid to the owner(s) for agreeing to lease their subsurface rights for the exploration and extraction of oil and gas.

Information

The City has met with representatives of Jordan Management Company, LLC., and their attorney, Mike Cox, former State Attorney General. They have informed the City that the State Department of Natural Features (MDNR) has awarded their company the exploration rights for Oakland County. The City experienced a similar level of activity in 2005 from the same company.

Some of the information provided to the City includes the following:

- MDNR solicited bids from qualified companies to be awarded areas of the State.
- The areas are awarded on a county-wide basis in groupings of 160 acres or ¼ square mile.
- West Bay Exploration Company is part of the Jordan Management Company.
- There are 4 general areas in/near the city that early sonar detection systems have indicated that oil may exist. (Note: Oil is their pursuit due to current market prices).
- 2 of the 4 areas are near the Intersection of Adams and Tienken.
- The 3rd area is east of Tienken and Livernois by Paint Creek.
- The 4th area is located near Tienken and Sheldon.
- The City has been assured, and the letter states, that this process does not include Hydraulic Fracturing or "fracking" as it has become known.
- The depths that the "structures' are found are usually between 2,000 feet to 10,000 feet deep. The drilling operation can be set up as much as 2 miles away due to the ability to directional bore. The horizontal distance is a factor of the depth of the "structure".
- The leases requested are written to cover five years. The lease also provides for extensions.

-The Process

- It is our understanding that West Bay would like to secure at least 75% of leases from the landowners within the estimated lease area, the 160 acre section, before they can construct and begin operations of an exploratory drilling operation. However, the State only requires that they receive a majority of landowners' leases (50% plus 1).
- The drilling operation is to confirm what their early sonar detection system provided, some evidence as to the existence of a "structure". The early sonar testing is usually done late at night and from the roadway with a specially equipped truck. There is no vibration or shaking that occurs.
- After drilling and once a "structure" is confirmed and adequate amounts are determined, the company can begin extraction or put the extraction on hold. The delay may be due to workload elsewhere or market fluctuations.
- It is estimated that the drilling activity takes about 3 weeks.
- Once drilling is complete, it is decided by the company to extract or cap the well. If extraction begins, different equipment is installed and placed behind a security fence. The equipment consists of a pump, valves, and a structure about the size of a house trailer.
- The State regulates that they can only withdraw up to 5% of the volume annually. A portion of the revenues are paid to the State and become the source of the MDNR Trust Fund. The landowner(s) is also paid and that amount is a factor based on the surface land area or acreage under the landowner's control and market prices. The Company retains the balance.
- It is our understanding that the Company is obligated to pay the landowner a minimum amount per acre as set by the state, just for the right to conduct the exploration. If oil is found and extracted, there will be additional payments.
- There may have been some misinformation, but it is our understanding that the lease being offered to permit subsurface exploration will also serve as the lease for extraction if a "structure" is found and is deemed to hold sufficient mineral quantity (oil or gas).

It has been the City's experience that West Bay Exploration Company is operating under the auspices of the State of Michigan Department of Natural Resources.

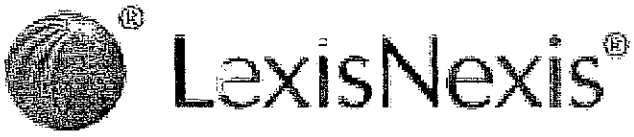
PLEASE NOTE: THE CITY CANNOT TELL YOU WHAT TO DO IN REGARD TO THIS LEASE REQUEST AND CANNOT PROVIDE YOU LEGAL COUNSEL.

If you do have additional questions, please contact the author of the letter sent by Land Service, Inc on behalf of West Bay Exploration Company. Thank you.

Sincerely,

Bryan K. Barnett, Mayor
City of Rochester Hills

EXHIBIT J



GREG FLEMING, WILLIAM SUSICK and EDWARD F. COOK, Plaintiffs-Appellants, and MAX FELLSMAN, Plaintiff, v MACOMB COUNTY CLERK, Defendant-Appellee.

No. 279966

COURT OF APPEALS OF MICHIGAN

2008 Mich. App. LEXIS 1325

June 26, 2008, Decided

PRIOR HISTORY: [*1]
Macomb Circuit Court. LC No. 2006-004256-AW.

DISPOSITION: Reversed. We direct the trial court to grant summary disposition in plaintiffs' favor and to grant plaintiffs' request for injunctive relief. We do not retain jurisdiction.

JUDGES: Before: Owens, P.J., and Meter and Schuette, JJ.

OPINION

PER CURIAM.

Plaintiffs Greg Fleming, William Susick, and Edward F. Cook appeal as of right from the trial court's July 30, 2007, order granting summary disposition in favor of defendant Macomb County Clerk (county clerk). The trial court dismissed plaintiffs' claims for declaratory and injunctive relief and permitted the county clerk to mail unsolicited absent voter ballot applications to county residents over the age of 60 living in communities in which the local city, township, or village clerk did not mail unsolicited applications. We reverse. [1]

1 We wish to make clear that we fully support the right of citizens to vote, encourage qualified voters to exercise this right, and do not discourage lawful means to increase voter turnout. However, for the reasons stated in this opinion, defendant's actions are neither statutorily nor constitutionally authorized and, therefore, the trial court erred when it failed to enjoin her from [*2] doing them.

On September 21, 2006, the Macomb County Board of Commissioners (the board) passed a resolution authorizing the county clerk, Carmella Sabaugh, [2] to mail absent voter ballot applications for the November 2006 general election to "Macomb County registered voters age 60 and over." The resolution limited the mailing list by eliminating those registered voters who lived in communities in which the city, township, or village clerk automatically mailed applications to voters over the age of 60. [3] Notably, the board authorized Sabaugh to mail the applications in her *official capacity* as county clerk and to spend approximately $ 13,000 to prepare and mail the applications.

2 Sabaugh, in her official capacity as Macomb County Clerk, is the defendant in this case. We will refer to her interchangeably as "Sabaugh" and as "the county clerk" in this opinion.

3 Sabaugh informed the board that the local

clerks in ten Macomb County communities automatically sent absent voter ballot applications to registered voters over the age of 60, but the local clerks in the remaining 13 communities did not automatically mail these applications.

Sabaugh strongly encouraged the board to pass this resolution [*3] and presented several policy arguments to support her position. [4] Coincidentally, Sabaugh, a Democrat, was running against Republican Terri Lynn Land for Secretary of State in the November 2006 election. According to press reports at the time, Republicans in Macomb County began questioning Sabaugh's motives, claiming that Macomb County senior citizens tend to vote Democratic and noting that "[t]he timing [was] suspect." [5]

4 To support her position, defendant notes that private groups, including the Democratic and Republican parties, send absent voter ballot applications to their supporters. Yet she fails to note that the entities she identifies that mail absent voter ballot applications are *private* entities. Conversely, defendant is a public official acting in her *public* capacity with *public* money to send unsolicited absent voter ballot applications to only a portion of qualified absent voters in Macomb County. In this appeal, we do not address the question whether private groups may mail absent voter ballot applications to their members, and defendant's attempt to invite comparison between her actions and those of private groups is unavailing.

5 Presumably, these opponents of the county [*4] clerk's actions were concerned that defendant was using public money to make voting easier for a demographic that was inclined to support her campaign for Secretary of State and the campaigns of other members of her political party, but not facilitate voting for other demographics.

Shortly after the resolution was passed, plaintiffs filed suit seeking to prevent the mass mailing of absent voter ballot applications, alleging violations of the Michigan Election Law, *MCL 168.1 et seq.*, and requesting injunctions to prevent the county clerk from mailing the unsolicited applications. Plaintiffs also alleged that the proposed mailings violated the Equal Protection clause of the Fourteenth Amendment and the purity of elections clause of the Michigan Constitution, and diluted the votes of other Michigan voters. They specifically requested a preliminary injunction to prevent the county clerk from mailing applications for absent voter ballots for the November 2006 election, which the trial court denied.

Accordingly, on October 5, 2006, the county clerk mailed 49,234 absent voter ballot applications to Macomb County voters over the age of 60 who had not otherwise been sent an absent voter ballot [*5] application from their city, village, or township clerk. In a press release, Sabaugh claimed that the mailing resulted in the casting of "at least 7,700 additional votes" in the November 2006 general election. [6]

6 The parties stipulated that Sabaugh made this claim. However, the lower court record does not include any evidence to support Sabaugh's claim.

The parties filed cross-motions for summary disposition to address the question whether Sabaugh was authorized to mail the unsolicited absent voter ballot applications in her official capacity as county clerk. When the trial court issued its opinion in July 2007, it noted that although the November 2006 general election had occurred nearly a year earlier, it would still address the issue on the merits because the issue was of continuing public interest and was capable of repetition yet evading review. In particular, the court noted that the board likely would continue to pass resolutions allowing the county clerk to mail unsolicited absent voter ballot applications before similar elections, leading to future scenarios in which plaintiffs would again have insufficient advance notice to pursue to its conclusion the question whether the [*6] county clerk had the authority to mail these applications before the mailing and election would occur. Although the trial court noted that the Michigan Election Law was silent regarding whether the county clerk was authorized to mail unsolicited absent voter ballot applications to voters age 60 and older, it determined that the county clerk was properly authorized by board resolution to conduct the mailing. The trial court also rejected plaintiffs' claims that the mailing violated the "purity of elections" clause of the Michigan Constitution or the Equal Protection clause of the Fourteenth Amendment or that it diluted the vote of other Michigan voters.

On appeal, plaintiffs challenge the trial court's order granting defendant's motion for summary disposition and

dismissing plaintiffs' claims. We review the trial court's determination regarding a motion for summary disposition de novo. *MacDonald v PKT, Inc, 464 Mich. 322, 332; 628 N.W.2d 33 (2001)*. We also review de novo questions of law, including underlying issues of constitutional and statutory construction. *In re Petition by Wayne Co Treasurer, 478 Mich. 1, 6; 732 N.W.2d 458 (2007)*.

The trial court improperly granted defendant's [*7] motion for summary disposition and denied plaintiffs' motion for the same. Defendant lacked statutory or constitutionally-granted authority to mail unsolicited absent voter ballot applications. Further, by conducting the mailing, defendant violated the purity of elections clause of the Michigan Constitution. Because we find that these mass mailings are illegal and unconstitutional, we hold that defendant, in her official capacity, may not mail unsolicited absent voter ballot applications to targeted individuals in the future.

Const 1963, art 2, § 4 provides for the Legislature's control over elections, in relevant part, as follows:

> The legislature shall enact laws to regulate the time, place and manner of all nominations and elections, except as otherwise provided in this constitution or in the constitution and laws of the United States. The legislature shall enact laws to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting.

The duties of a county clerk or a county board of commissioners (supervisors) "shall be provided by law" pursuant to *Const 1963, art 7, §§ 4,* [*8] *8*.

The Legislature enacted the Michigan Election Law pursuant to its constitutional grant of authority. Under the Michigan Election Law, the county clerk, the chief judge of the county probate court, and the county treasurer serve as the board of election commissioners for that county. *MCL 168.23(1)*. Pursuant to *Secretary of State v Berrien Co Bd of Election Comm'rs, 373 Mich. 526, 530-531; 129 N.W.2d 864 (1964)*, the county clerk and the county board of election commissioners must follow the directions provided by the Secretary of State in her role as Michigan's chief election officer. The county board of commissioners has no expressly authorized role in elections. Instead, the board's roles include "pass[ing] ordinances that relate to county affairs and do not contravene the general laws of this state or interfere with the local affairs of a township, city, or village within the limits of the county . . . ." *MCL 46.11(j)*. The board also has a duty to "[r]epresent the county and have the care and management of the property and business of the county if other provisions are not made." *MCL 46.11(l)*.

The Michigan Election Law addresses the circumstances under which a voter is entitled [*9] to an absent voter ballot. *MCL 168.758(1)* defines an "absent voter" as follows:

> For the purposes of this act, "absent voter" means a qualified and registered elector who meets 1 or more of the following requirements:
>
> (a) On account of physical disability, cannot without another's assistance attend the polls on the day of an election.
>
> (b) On account of the tenets of his or her religion, cannot attend the polls on the day of election.
>
> (c) Cannot attend the polls on the day of an election in the precinct in which he or she resides because of being an election precinct inspector in another precinct.
>
> (d) Is 60 years of age or older.
>
> (e) Is absent or expects to be absent from the township or city in which he or she resides during the entire period the polls are open for voting on the day of an election.

> (f) Cannot attend the polls on election day because of being confined in jail awaiting arraignment or trial.

A qualified absent voter is permitted to apply for an absent voter ballot pursuant to *MCL 168.759*. For both primary and general elections, "[t]he elector shall apply in person or by mail with the clerk of the township, city, or village in which the elector is registered." *MCL 168.759(1)-(2)*. **[*10]** *MCL 168.759(3)* provides that an application for an absent voter ballot may be made in the following three ways:

> (a) By a written request signed by the voter stating the statutory grounds for making the application.
>
> (b) On an absent voter ballot application form provided for that purpose by the clerk of the city, township, or village.
>
> (c) On a federal postcard application.

Finally, *MCL 168.759(5)* requires, in pertinent part,

> The clerk of the city, township, or village shall have absent voter ballot application forms available in the office of the clerk at all times and shall furnish an absent voter ballot application form to anyone upon a verbal or written request. . .

When interpreting the Michigan Election Law to determine whether the county clerk is authorized to mail absent voter ballot applications, we may not "'impose different policy choices than those selected by the Legislature.'" *People v McIntire, 461 Mich. 147, 152; 599 N.W.2d 102 (1999)*, quoting *People v McIntire, 232 Mich. App. 71, 119; 591 N.W.2d 231 (1998)* (YOUNG, J., dissenting). Our primary goal is to ascertain and give effect to the intent of the Legislature. *Weakland v Toledo Engineering Co, Inc, 467 Mich. 344, 347; 656 N.W.2d 175 (2003)*, **[*11]** mod *468 Mich. 1216 (2003)*. When a statute's language is unambiguous, we must assume that the Legislature intended its plain meaning and enforce the statute as written. *DiBenedetto v West Shore Hosp, 461 Mich. 394, 402; 605 N.W.2d 300 (2000)*. We may only look beyond the statute to determine the Legislature's intent when the statutory language is ambiguous. *Id.*

The legal maxim *expressio unius est exclusio alterius*, i.e., "[t]he expression of one thing is the exclusion of another," "is a rule of construction that is a product of logic and common sense." *Hoerstman Gen Contracting, Inc v Hahn, 474 Mich. 66, 74 &* n 8; *711 N.W.2d 340 (2006)*. This well-recognized maxim of statutory construction "expresses the learning of common experience that when people say one thing they do not mean something else." *Feld v Robert & Charles Beauty Salon, 435 Mich. 352, 362; 459 N.W.2d 279 (1990)*, quoting 2A Sands, Sutherland Statutory Construction (4th ed), § 47.24, p 203. The maxim is "safely" used when a statute creates rights or duties "not in accordance with" the common law. *Feld, supra at 362* (citation omitted).

> "When what is expressed in a statute is creative, and not in a proceeding according to the **[*12]** course of the common law, it is exclusive, and the power exists only to the extent plainly granted. Where a statute creates and regulates, and prescribes the mode and names the parties granted right to invoke its provisions that mode must be followed and none other, and such parties only may act." [*Feld, supra at 362-363* (citation omitted).]

In *Taylor v Currie, 277 Mich. App. 85; 743 N.W.2d 571 (2007)*, this Court applied a plain reading of the statute and the legal maxim *expressio unius est exclusio alterius* to determine that *MCL 168.759* prohibits a city clerk from mailing unsolicited absent voter ballot applications. [7] It stated:

> *MCL 168.759(5)* provides, in relevant part, that "[t]he clerk of the city, township, or village shall have absent voter ballot application forms available in the office of the clerk at all times and shall furnish an absent voter ballot application form to anyone upon a verbal or written request." This subsection clearly addresses the

distribution of applications for absent voter ballots. Under a plain reading, this subsection establishes two duties for city clerks. First, the clerk must have applications for absent voter ballots available in the clerk's office [*13] at all times. Second, the clerk "shall" provide an application to anyone upon verbal or written request.

"'The general rule, with regard to municipal officers, is that they have only such powers as are expressly granted by statute or by sovereign authority or those which are necessarily to be implied from those granted.'" *Presnell v Wayne [Co] Bd of Co Rd Comm'rs, 105 Mich. App. 362, 368; 306 N.W.2d 516 (1981)*, quoting *56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 276*, p 327. Or as our Supreme Court has stated, "[t]he extent of the authority of the people's public agents is measured by the statute from which they derive their authority, not by their own acts and assumption of authority." *Sittler v Michigan College of Mining & Tech Bd of Control, 333 Mich. 681, 687; 53 N.W.2d 681 (1952)* (citations and punctuation omitted). As such, "[p]ublic officers have and can exercise only such powers as are conferred on them by law. . . ." *Id.* (citations and punctuation omitted).

Applying this rule to *MCL 168.759*, it is clear that the city clerk has no powers concerning the distribution of ballot applications other than those that are expressly granted in the [*14] statute. And the power to mail unsolicited ballot applications to qualified voters is not expressly stated anywhere in this statute. Nor have appellants cited any other statute that confers this power on the city clerk.

As for whether the mass mailing of unsolicited ballot applications is implicitly authorized by statute, we conclude that it is not. First, a power is necessarily implied if it is essential to the exercise of authority that is expressly granted. *Conlin v Scio Twp, 262 Mich. App. 379, 385; 686 N.W.2d 16 (2004)*. The authority expressly granted in *MCL 168.759(5)* is that the clerk must have applications for absent voter ballots available in the clerk's office at all times and that the clerk "shall" provide an application to anyone upon verbal or written request. The mass mailing of unsolicited ballot applications is not essential to the clerk's either making ballot applications available in the clerk's office or to providing them upon request. Second, on the basis of the maxim *expressio unius est exclusio alterius*, (the expression of one thing is the exclusion of another), *Feld*[, *supra at 362*] (opinion by RILEY, C.J.), we read the statute to preclude mass mailings when it [*15] specifically states that the clerk shall provide the applications upon written or verbal request. "[W]hen a statute limits a thing to be done in a particular mode, it includes a negative of any other mode." *Christensen v Harris Co, 529 U.S. 576, 583; 120 S. Ct. 1655; 146 L. Ed. 2d 621 (2000)* (citation and punctuation omitted). Accordingly, we conclude that *MCL 168.759(5)* does not implicitly permit the city clerk to mail absent voter ballot applications without having received a verbal or written request. [*Taylor, supra at 94-96.*]

7 The plaintiff, a candidate for Detroit City Council, alleged that the defendant city clerk planned to improperly mail 150,000 unsolicited applications. The trial court determined that the city clerk was precluded from mailing such unsolicited applications and issued a preliminary injunction to prevent the mailings. *Taylor, supra at 89*. The city clerk disregarded the preliminary injunction and mailed the applications. *Id. at 89-90*. As a result, the city clerk was convicted of criminal contempt. *Id. at 90*. At the conclusion of the trial court proceedings, the trial court entered a permanent injunction precluding the mailing of unsolicited absent voter ballot [*16] applications.

Id. at 93.

Because it is a published opinion, *Taylor* has precedential value and we are bound by its holding. *MCR 7.215(C)(2)*. Accordingly, the necessary outcome of this case is relatively straightforward. A county clerk, like a city clerk, has no express statutory authority under the Michigan Election Law to mail or otherwise distribute unsolicited absent voter ballot applications. See *Taylor, supra*. The Michigan Election Law does not even expressly authorize a county clerk to mail such applications upon request or to keep the applications on hand in her office for interested voters. Instead, the county clerk's statutory role during the election process is as an intermediary; she receives information from the Secretary of State and distributes it to city, village, and township clerks. See *MCL 168.647*, 653a, 709. The county clerk, in her role as a county election commissioner, prepares and distributes the official ballots used in precincts around the county, including the official absent voter ballots. See *MCL 168.668a*, 689-691, 709, 713-714. In relation to the absent voter process, the county clerk has express authority to safeguard and distribute the absent voter ballots **[*17]** to local clerks in advance of an election, *MCL 168.715-717*, but no statute expressly allows a county clerk to deliver a ballot directly to a voter or to deliver absent voter ballot applications.

Accordingly, the county clerk lacks the implied authority to distribute absent voter ballot applications. As noted in *Taylor, supra at 94*, a local government officer possesses those powers "necessarily to be implied" from those expressly granted. "Powers implied by general delegations of authority must be 'essential or indispensable to the accomplishment of the objects and purposes of the municipality.'" *Lansing v Edward Rose Realty, Inc, 442 Mich. 626, 634; 502 N.W.2d 638 (1993)*, quoting 5 McQuillin, Municipal Corporations (rev 3d ed), § 15.20, p 102. None of the statutorily-defined duties described earlier relate to increasing voter turnout or making the election process less onerous for voters. In fact, none of the county clerk's statutorily-defined duties require direct contact with voters. Mailing absent voter ballot applications is not related to, let alone essential to, a county clerk's duty to distribute election information and materials to local clerks, to prepare and distribute official **[*18]** ballots to voting precincts, or to distribute absent voter ballots to local clerks before an election. Accordingly, a county clerk lacks both express and implied statutory authority to mail unsolicited ballot applications.

Further, the board cannot confer on the county clerk the authority to conduct such a mailing. Like the county clerk, the board has only those powers expressly granted to it by the constitution and by statute and those powers necessarily implied from the powers expressly granted. *Conlin, supra at 385*. We must liberally construe the powers granted to local governments to include those powers "fairly implied and not prohibited by th[e] constitution." *Saginaw Co v John Sexton Corp of Michigan, 232 Mich. App. 202, 221; 591 N.W.2d 52 (1998)*, quoting *Const 1963, art 7, § 34*.

The Legislature granted the following relevant powers to county boards of commissioners:

> (j) By majority vote of the members of the county board of commissioners elected and serving, pass ordinances that relate to county affairs and do not contravene the general laws of this state or interfere with the local affairs of a township, city, or village within the limits of the county, and pursuant to [*MCL 46.10b*] **[*19]** provide suitable sanctions for the violation of those ordinances. . . .
>
> * * *
>
> (l) Represent the county and have the care and management of the property and business of the county if other provisions are not made. [*MCL 46.11*]

The board's resolution concerns voting in a statewide election and, therefore, does not "relate to county affairs" or "the care and management of the business of the county." Furthermore, the resolution contravenes *MCL 168.759*. A municipal government may not prohibit acts that are authorized by state law or, conversely, authorize acts that are prohibited by state law. *Rental Prop Owners Ass'n of Kent Co v Grand Rapids, 455 Mich. 246, 262; 566 N.W.2d 514 (1997)*; *Conlin, supra at 385*; *Frens Orchard, Inc v Dayton Twp Bd, 253 Mich. App. 129, 136-137; 654 N.W.2d 346 (2002)*. As noted earlier, the Michigan Election Law neither expressly nor impliedly authorizes county clerks to mail unsolicited absent voter ballot applications to qualified voters. Further, the Michigan Election Law does not permit county boards of

commissioners to play any role in the election process. Accordingly, the board lacked the authority to authorize the county clerk to take an action not allowed **[*20]** by statute.

Plaintiffs also argue that defendant violated the "purity of elections" clause. Because this Court's ruling in *Taylor* also controls with regard to this issue, we agree.

> The Michigan Supreme Court has interpreted the "purity of elections" clause to embody two concepts: "first, that the constitutional authority to enact laws to preserve the purity of elections resides in the Legislature; and second, 'that any law enacted by the Legislature which adversely affects the purity of elections is constitutionally infirm.'" The phrase "purity of elections" does not have a single precise meaning. However, "it unmistakably requires . . . fairness and evenhandedness in the election laws of this state." [*McDonald v Grand Traverse Co Election Comm, 255 Mich. App. 674, 692-693; 662 N.W.2d 804 (2003)* (internal citations omitted).]

In *Taylor, supra at 97*, this Court found that the city clerk's mass mailing of absent voter ballot applications violated the purity of elections clause. [8] The *Taylor* Court reasoned that the city clerk had distributed "propaganda" in her official capacity and at the city's expense. *Id.* There was no indication in *Taylor, supra at 85*, that the absent voter ballot applications **[*21]** were designed in such a manner that they would have skewed an applicant's vote one way or another. Therefore, the *Taylor* Court's ruling appears to imply that even apparently neutral applications sent by a city clerk in her official capacity constitute improper propaganda material. Although we recognize that we are bound by the *Taylor* Court's holding, we question whether the distribution of absent voter ballot applications that apparently do not favor particular candidates or political parties constitute "what amounts to propaganda at the city's expense." *Taylor, supra at 97. Random House Webster's College Dictionary* (1997) defines "propaganda" as "information or ideas methodically spread to promote or injure a cause, movement, nation, etc." We fail to see how public mailings of apparently neutral absent voter ballot applications methodically promote anything besides the mere act of voting. However, we are compelled by *Taylor* to find that the neutrally-designed absent voter ballot applications constitute propaganda and, therefore, violate the purity of elections clause of our constitution. [9]

8 The Court's opinion regarding this violation of the purity of elections clause, in its entirety, **[*22]** is as follows:

> This interpretation of *MCL 168.759* is consistent with the sound public policy behind Michigan's election law, which, as stated in the preamble, was enacted, in part, "to provide for the purity of elections; to guard against the abuse of the elective franchise." This is in keeping with the Michigan Constitution, which provides that "[t]he legislature shall enact laws to preserve the purity of elections . . . ." *Const 1963, art 2, § 4.* The Michigan Supreme Court has interpreted the "purity of elections" clause to embody two concepts: "first, that the constitutional authority to enact laws to preserve the purity of elections resides in the Legislature; and second, 'that any law enacted by the Legislature which adversely affects the purity of elections is constitutionally infirm.'" *Socialist Workers Party v Secretary of State, 412 Mich. 571, 596; 317 N.W.2d 1 (1982)*, quoting *Wells v Kent Co Bd of Election Comm'rs, 382 Mich. 112, 123; 168 N.W.2d 222 (1969).* The phrase "purity of elections" "requires . . . fairness and evenhandedness in the election laws of this state." *Socialist Workers Party, supra at 598.*
>
> The city clerk, who is an elected official, has the role of neutral **[*23]** arbiter or referee. As a requirement of that office, the city clerk must take and subscribe

an oath or affirmation stating:

> I do solemnly swear (or affirm) that I will support the Constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of the office of [city clerk] according to the best of my ability. [*Const 1963, art 11, § 1.*]

> To construe *MCL 168.759* to permit Currie to distribute, in her official capacity, what amounts to propaganda at the city's expense is certainly not within the scope of Michigan election laws or the Michigan Constitution. *MCL 168.759(5)* does not permit a city clerk to mail absent voter ballot applications without having received a verbal or written request. Accordingly, we conclude that the trial court did not err in granting injunctive relief on this basis. [*Taylor, supra at 96-97.*]

9 We also note that permitting absent voter ballot mailings to only a select category of eligible absent voters could encourage a public official to target public funds to mail applications to voter groups likely to support her candidacy or her party's candidates for office.

Regardless, we also conclude that the purity of elections **[*24]** has been violated in this case because the mailing of absent voter ballot applications to only a select group of eligible absent voters undermines the fairness and evenhandedness of the application of election laws in this state. Although *MCL 168.758(1)* lists six categories of voters eligible to vote by absent voter ballot, the county clerk's mailing of absent voter ballot applications to only one of the six eligible groups means that the county clerk used public funds to make it easier for one group (voters 60 and older) to vote without providing a similar advantage to other categories of eligible absent voters. Not only is this fundamentally unfair, but the county clerk's actions hinder the evenhanded application of election laws by failing to provide this benefit to all eligible absent voters. Accordingly, the clerk's actions violate the purity of elections clause and, therefore, are unconstitutional.

Defendant contends that even if the mass mailing violated state law or the constitution, plaintiffs are not entitled to relief because they failed to show any injury or harm. However, plaintiffs are not required to show a substantial injury distinct from that suffered by the public **[*25]** in general in order to establish standing in an election case. *Helmkamp v Livonia City Council, 160 Mich. App. 442, 445; 408 N.W.2d 470 (1987)*. "[T]he right to vote is an implicit fundamental political right that is preservative of all rights." *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71, 479 Mich. 1, 16; 740 N.W.2d 444 (2007)* (internal quotations omitted). Although the right to vote is constitutionally protected, our Supreme Court has noted that the "equal right to vote is not absolute." [10] *Id.* (internal quotations omitted). Instead, the Legislature must "preserve the purity of elections" and "guard against abuses of the elective franchise." *Const 1963, art 2, § 4*. Defendant's actions undermined the constitutional right of the public to participate in fair, evenhanded elections and, therefore, constituted an injury. Consequently, plaintiffs had standing to bring a cause of action to remedy this injury. See *Helmkamp, supra*.

10 For example, a state can impose residency requirements on voters. *Carrington v Rash, 380 U.S. 89, 91; 85 S. Ct. 775; 13 L. Ed. 2d 675 (1965)*.

We disagree with defendant's contention that plaintiffs' challenge is moot and does not **[*26]** fall within the "capable of repetition yet evading review" exception. "An issue is moot if an event has occurred that renders it impossible for the court to grant relief. We will review a moot issue only if it is publicly significant and is likely to recur, yet is likely to evade judicial review." *Attorney Gen v Michigan Pub Service Comm, 269 Mich. App. 473, 485; 713 N.W.2d 290 (2005)*. Defendant noted that several city clerks within the county automatically

mail absent voter ballot applications to voters over age 60 on a continual basis, and defendant will likely seek to mail unsolicited absent voter ballot applications for future elections. As in this case, there is no guarantee that potential future plaintiffs will have adequate notice to pursue the matter to its conclusion before another election. Therefore, we agree with the trial court's conclusion that this issue is capable of repetition yet evades review.

We also note that the law of the case doctrine does not preclude the trial court or this Court from reviewing the case because this Court's earlier opinion regarding this case merely concerns the trial court's failure to grant plaintiffs' motion for a preliminary injunction. **[*27]** In *Fleming v Macomb Co Clerk*, unpublished opinion per curiam of the Court of Appeals, issued March 27, 2007 (Docket No. 273502), this Court determined that plaintiffs' challenge based on the trial court's failure to award a *preliminary* injunction was moot because the applications to vote by absent voter ballot in the 2006 general election had already been mailed and the election had already occurred. The Court recognized, however, that plaintiffs' claims for permanent relief were still pending in the trial court at that time and that those claims could proceed to trial. *Id.* The Court found that the issue related to the *preliminary* injunction was not capable of repetition yet evading review at that time because there was no indication that the county clerk intended to mail more absent voter ballot applications while the trial court proceedings were pending. [11]

11 Because we conclude that defendant's actions were neither constitutional nor statutorily authorized, we will not consider appellant's contentions that the county clerk's decision to mail unsolicited absent voter ballot applications violated the Equal Protection clause or resulted in vote dilution.

Reversed. We direct the trial **[*28]** court to grant summary disposition in plaintiffs' favor and to grant plaintiffs' request for injunctive relief. We do not retain jurisdiction.

/s/ Donald S. Owens

/s/ Patrick M. Meter

/s/ Bill Schuette

EXHIBIT K

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DON'T DRILL THE HILLS, INC.,

Plaintiff,

vs

Case No. 14-140827-CH

CITY OF ROCHESTER HILLS,

Defendant.

____/

HEARING

BEFORE THE HONORABLE JAMES M. ALEXANDER, CIRCUIT JUDGE

Pontiac, Michigan - Wednesday, October 8, 2014

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(Appearances Continued . . .)

statute is there, this park was used for an underground pipeline.

So, under the city charter, we have that existing use argument that they didn't even brief. There's nothing in their response brief that even touches that.

And then, again, under the state statute it's even stronger, because there is none of this -- there's no additional language. It just talks to sell a park. Granting of an easement is not the sale of a park.

And then just stepping back from the broader picture of all this, it appears to me that the intent of this city charter was, and I believe it started with because they were going to construct a water reservoir tower on Tienken Park. But, clearly, the intent of this statute was, we want the parks to be used by the citizens. We don't want there to be a water reservoir tower, we don't want it to be sold for a Wal-Mart to be put in, or anything like that. It is to preserve the park.

And I would submit to you that what has happened here before the new easement it was used as a park, after this modification of the easement it's used as a park. The park has not been disturbed at all, and it will not be disturbed. And just stepping back and