



cityofnovi.org

CITY of NOVI CITY COUNCIL

Agenda Item E
May 6, 2013

SUBJECT: Approval to exercise option for purchase of approximately 5-acre parcel of land located on Ten Mile Road just east of Wixom Road, the site of the former Comerica Oil and Gas Lease (SOMOCO), under an option agreement executed by the City of Novi and Edward and Rochelle Wodowski dated June 15, 1999, for the amount of \$20,000, and to direct the City Administration to undertake, prior to closing, the appropriate due diligence with respect to the site, including (but not limited to) an environmental review to the extent required to determine the satisfactory condition of the property following the oil and gas extraction use, the entire amount of the transaction not to exceed \$34,000 without further approval of the Council.

SUBMITTING DEPARTMENT: Parks, Recreation & Cultural Services *JSU*

CITY MANAGER APPROVAL: *UAD*

BACKGROUND INFORMATION:

The attached option agreement was entered into between the City and the Wodowskis in June, 1999. There were two transactions at the time. The City bought a larger surrounding parcel from the Wodowskis for approximately \$230,000 and at the same time secured the option on this 5-acre site that was the site of the "Comerica" oil and gas well that operated until recently. The City took an option on that smaller site, which is now completely surrounded by City owned property. The amount required to exercise the option is \$20,000.

On March 21, 2013, the City received correspondence from the Wodowskis' attorney indicating that the oil and gas lease covering the property has expired and terminated. That triggered the 120-period that the City has to exercise the option.

The City Administration has reviewed the property and recommends that the City exercise the option. The acquisition would give the City title to what is now a "finger" encroachment into what is otherwise a City-owned open space and natural area. It could potentially serve the City's purposes in connection with the Greenways Regional Pathway that would allow the City to reduce the potential impacts to natural features and potentially reduce construction costs.

Obviously, the fact that it has been used for an oil and gas well is significant, and the agreement allows the City time to conduct the necessary environmental assessments in that regard (as well as the other usual due diligence). The City would not be required to complete the purchase of the property if the environmental analysis is not satisfactory. The City has asked for the company's records in that regard in the hopes of getting an early start on the review. The recommendation is to approve the exercise of the option and begin the necessary activities for acquisition as contemplated in 1999.

It is the Administration's expectation that both the purchase of the property and the necessary environmental assessment can be funded within the current fiscal year in the parks and recreation park acquisition line item, which will affect current year fund balance projections. A preliminary estimate of the cost of such a review (both a Phase 1 and Phase 2 review) is approximately \$10,000, but the actual cost will not be known until later in the due diligence process. In order to accommodate potential additional costs, and closing costs, a "not-to-exceed" limitation is suggested at \$34,000.

RECOMMENDED ACTION: Approval to exercise option for purchase of approximately 5-acre parcel of land located on Ten Mile Road just east of Wixom Road, the site of the former Comerica Oil and Gas Lease (SOMOCO), under an option agreement executed by the City of Novi and Edward and Rochelle Wodowski dated June 15, 1999, for the amount of \$20,000, and to direct the City Administration to undertake, prior to closing, the appropriate due diligence with respect to the site, including (but not limited to) an environmental review to the extent required to determine the satisfactory condition of the property following the oil and gas extraction use, the entire amount of the transaction not to exceed \$34,000 without further approval of the Council.

	1	2	Y	N
Mayor Gatt				
Council Member Casey				
Council Member Fischer				
Council Member Margolis				

	1	2	Y	N
Council Member Mutch				
Council Member Staudt				
Council Member Wrobel				

Richard A. Polk, P.C.
Attorney at Law

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Bingham Farms, MI 48025

Voice (248) 633-0040
Fax (248) 633-0045
rpolk@rapolklaw.com

March 21, 2013

Via email: tschultz@jrsjlaw.com

Thomas R. Schultz, Esq.
Johnson, Rosati, Schultz & Joppich, P.C.
34405 W. Twelve Mile Road, Suite 200
Farmington Hills, MI 48331-5627

Re: Comerica Oil and Gas Lease #1-29/#2-29 ("Lease")

Dear Mr. Schultz:

As we discussed yesterday, I represent Edward and Rochelle Wodowski ("Wodowski") the Lessors of the above referenced Lease covering a parcel of land in Novi, Michigan, which is subject to the terms of an Option Agreement dated June 15, 1999 between Wodowski and the City of Novi, to be exercised following notice that the wells have been abandoned by the lessee.

Attached are copies of the Option Agreement and letter dated March 14, 2013 from Somoco, Inc., advising that the site has been abandoned. Consider this letter as notice to the City of Novi that you have one hundred twenty (120) days from receipt of this letter to exercise the option as provided in the Option Agreement. Although the Agreement required notice to be sent by Registered Mail, you have waived that requirement.

Please respond to the undersigned as to your intentions regarding this option, and contact me in the event you should have any questions.

Very truly yours,



Richard A. Polk

RAP/cd
Enclosures
cc/w/enc: Edward and Rochelle Wodowski

OPTION AGREEMENT

OPTION AGREEMENT made this 15th day of June, 1999, between Edward Wodowski and Rochelle Wodowski, his wife whose address is 3360 Buckingham Trail, West Bloomfield, MI 48323 (the "Seller") and the CITY OF NOVI, a Michigan municipal corporation, whose address is 45175 W. Ten Mile Road, Novi, Michigan 48375 (the "Purchaser").

1. In consideration of and in accordance with the terms and conditions of a certain Offer to Purchase entered into between Seller and Purchaser on June 15 and June 29, *1999, Seller hereby gives and grants to Purchaser the exclusive option to purchase, for ^{or}respectively, the price and on the terms and conditions hereinafter set forth, the real property situated in the City of Novi, County of Oakland, State of Michigan, generally described as follows:

Land in the City of Novi, County of Oakland, State of Michigan, to-wit:

Part of the NW 1/4 of Section 29, T.1N., R.8E., City of Novi, Oakland County, Michigan, described as beginning at a point located N86°34'01"E 648.48 feet along the North line of said Section 29 from the NW corner of said section; thence continuing N86°34'01"E 292.29 feet along said section line; thence S03°25'59"E 197.00 feet; thence S86°34'01"W 104.91 feet; thence S03°25'59"E 309.49 feet; thence S09°29'00"W 268.42 feet; thence S86°34'01"W 261.81 feet; thence N03°25'59"W 340.64 feet; thence N33°26'52"E 105.43 feet; thence N18°55'26"E 138.82 feet; thence N04°06'34"E 139.77 feet; thence N03°25'59"W 76.19 feet to the point of beginning. Containing 5.009 acres and is subject to easements, restrictions and right-of-way of record. Bearings based on GRID BEARING-NAD 83 SPC MI. SOUTH ZONE

(hereinafter "Property")

2. The full purchase price for the Property is Twenty Thousand and 00/100 Dollars (\$20,000.00). The purchase price is to be paid in cashier's or certified check, or by wire transfer, at Seller's option, in United States funds at the time of closing.

3. This Option may be exercised by written notice of such exercise delivered to Seller prior to 5:00 p.m. local time on the one hundred twentieth (120th) day after Purchaser shall receive written notice by registered mail from Seller that the oil and gas lease covering the Property has expired and terminated. If such date falls on a Saturday, Sunday or legal holiday, that Option Period shall end at 5:00 p.m. local time on the next day that is not a Saturday, Sunday or legal holiday. ("Option Period"). Such notice to Seller shall be sent by registered mail to Seller. Exercise of this Option to Purchase is at the sole discretion of Purchaser. Upon the failure of Purchaser to exercise this Option to Purchase the Property within the Option Period, there shall be no further liability or obligation of the parties under this agreement, the one to the other.

4. If the Option to Purchase is exercised by Purchaser within the Option Period, Seller shall convey to Purchaser good and marketable title to the Property, as may be more particularly described based upon a survey that may be performed on the Property on behalf of the Purchaser, at Purchaser's expense, by warranty deed at the time of closing.

5. If the Purchaser exercises its option to purchase, as provided herein, the Seller agrees to furnish Purchaser, as evidence of title, as soon as possible, a commitment for title insurance issued in an amount not less than the purchase price bearing date later than the Purchaser's exercise of its option to purchase with policy pursuant thereto to be issued insuring Purchaser. The Purchaser shall be responsible for payment of the applicable title insurance premium for the title insurance policy at the closing.

6. If objection to the title is made in the commitment for title insurance or based upon a written opinion of Purchaser's attorney that the title is not in the condition required for performance hereunder, the Seller shall have thirty (30) days from the date it is notified in writing of the particular defects claimed, either (a) to fulfill the requirements in said commitment or to remedy the title defects set forth in said attorney's opinion or (b) return all sums paid to Seller by Purchaser in full termination of this agreement if unable to furnish satisfactory title. If the Seller is able to comply with such requirements or remedy such defects within the time specified as evidenced by written notification, revised commitment or endorsement to commitment, the Purchaser agrees to complete the sale within thirty (30) days of receipt thereof or within the time stated in paragraph 11, whichever is greater. If the Seller is unable to furnish satisfactory title, Purchaser may, at its option, rescind and terminate this agreement.

7. If this agreement is terminated as provided herein, this agreement shall terminate without further liability or obligation of either party to the other. Purchaser agrees that it will not object to any matters disclosed on the title insurance commitment which can be discharged by Purchaser at the closing upon the payment of money, in an amount not exceeding the purchase price.

8. The Seller shall deliver and the Purchaser shall be entitled to exclusive and sole possession of the Property on the date of the closing.

9. All taxes, assessments and charges which have become due and payable and a lien upon the Property at the date of closing of this option shall be paid by the Seller. Current taxes, if any, shall be prorated and adjusted as of the date of closing in accordance with due date basis of the municipality or taxing unit in which the Property is located. For this purpose taxes shall be considered as being paid in advance. Interest, rents, water and sewer bills, if any, shall be prorated and adjusted as of the date of closing.

10. The Purchaser shall pay the cost of recording the warranty deed, and any charge by the Oakland County Treasurer for tax certification of the warranty deed at the time of the closing. Seller shall be responsible for payment of the applicable county and state real estate transfer tax at the time of closing.

11. If Purchaser exercises its option to purchase, the closing of this Option shall take place at the offices of the Purchaser or the title company that may conduct the closing within sixty (60) days after the fulfillment, to the satisfaction of Purchaser, of all of the conditions contained in this agreement and after delivery of the commitment of title insurance. If such day falls on a Saturday, Sunday or legal holiday, the closing shall take place on the next day that is not a Saturday, Sunday or legal holiday.

12. The Purchaser, at its sole expense, shall have forty-five (45) days from the date of Purchaser's exercise of its option to purchase within which to have a boundary survey performed with respect to the Property and to secure soil tests of the Property. The Purchaser, its employees, agents, representatives, engineers, and surveyors shall have the right of access to the Property within such time for the purpose of performing a boundary survey of the Property and obtaining appropriate surveys, soil tests, borings, and inspections which the Purchaser may deem necessary to determine if the Property contains hazardous substances. The Purchaser, at the Purchaser's expense, shall restore the Property to its condition existing prior to performing a boundary survey or the making of any such surveys, test, borings or inspections. The Purchaser shall indemnify and hold the Seller harmless from and against any and all claims, demands, suits, actions, proceedings, damages, liabilities, losses, costs and expenses, including attorney's fees (collectively "Claims") made or asserted as a result of the Purchaser's exercise of such right of access. The Purchaser, at its sole cost and expense, shall defend the Sellers against such Claims.

If, as a result of the boundary survey, the Purchaser determines the Property to be unacceptable to Purchaser, or if the report of soil tests made by qualified experts shows that the Property contains hazardous substances at levels that are unacceptable to Purchaser, the Purchaser may, at its option, rescind and terminate this agreement by providing written notice to Seller prior to the expiration of such forty-five (45) day period. In the event Purchaser fails to provide timely written notice that the Property is unacceptable, Purchaser shall be deemed to have accepted the environmental and survey condition of the Property.

13. Seller represents that Seller, to the best of Seller's knowledge, has not, and agrees that it will not, engage in or knowingly permit any other party to engage in any activity on the Property that could result in the Property or the owners thereof incurring liability under the Natural Resources and Environmental Protection Act of 1994, as amended, any rule or regulation promulgated thereunder, or any other law or rule of any federal, state or local government, or agency, concerning releases or threatened release of hazardous substances, public health and safety or pollution or protection of the environment (collectively the "Environmental Statutes").

Further, the Seller represents that, to the best of the Seller's knowledge, during the Seller's ownership of the Property, there has not been and agrees that, prior to the closing date, the Seller shall not knowingly cause or permit there to be discharged, emitted, stored, spilled, buried or released on, in, at, or under the Property, any pollution, contamination, hazardous, or toxic substances, effluent, polychlorinated biphenyl,

methylene chloride, trichloroethylene, 1, 2, -transdichloroethylene, dioxins, dibenzofurans, asbestos, asbestos-containing materials, radioactive materials or other environmental hazards, including but not limited to, those included in the Environmental Statutes.

14. Seller represents and warrants to Purchaser as follows:

- a. Seller is the fee owner of the Property.
- b. Except as otherwise specifically stated herein, to the best of Seller's knowledge, no person or legal entity, other than Seller, is using or has any right to use, or is in, or has right to possession of, the Property or any part thereof.
- c. Except as otherwise specifically stated herein, to the best of Seller's knowledge, there are no unrecorded claims, rights or liens by any person other than Seller with respect to the Property, including but not limited to water, timber, mineral, gas or oil rights or leases; or claims of easements or boundary line disputes, encroachments or overlaps with respect to the Property.
- d. To the best of Seller's knowledge, there are no claims of any kind whatsoever arising from events happening prior to the date of this Agreement and pertaining to the Property.
- e. Except as may be otherwise specifically stated herein, Seller shall indemnify and hold the Purchaser harmless from and against any and all claims, demands, suits, actions, proceedings, damages, liabilities, losses, costs and expenses, including attorney fees (collectively "claims") made, asserted or arising from events happening prior to the date of Closing and pertaining to the Property or contrary to any of Seller's representations contained herein. The Seller, at its sole cost and expense, shall defend the Purchaser against any such claims.

15. All of Seller's representations contained in this Agreement shall survive the Closing of the transaction contemplated herein.

16. After Purchaser exercises its option to purchase, in the event of default by the Purchaser hereunder, the Seller may, at its option, elect to enforce the terms hereof or rescind and terminate this agreement.

17. After Purchaser exercises its option to purchase, in the event of default by the Seller hereunder, the Purchaser may, at its option, elect to enforce the terms hereof or rescind and terminate this agreement.

18. Except as otherwise represented and provided herein, Purchaser acknowledges that the purchase of the Property is "AS IS".

19. The purchase of the Property by the Purchaser from Seller, pursuant to this agreement, will be in lieu of condemnation.

20. Each party acknowledges that the parties participated equally in the drafting of this agreement, and accordingly, no court construing this agreement shall construe it more strictly against any party hereto.

21. The covenants herein shall bind and inure to the benefit of the personal representatives, administrators, successors and assigns of the respective parties.

22. The foregoing constitutes the entire agreement between Seller and Purchaser with respect to the Property, and supersedes any and all prior and contemporaneous written or oral promises, representations or conditions in respect thereto. The terms and conditions set forth herein may not be changed, modified or revised orally, but only by an agreement in writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this agreement at Oakland County, MI on the day and year first above written.

WITNESSES:

Signed by:

SELLER

Richard A. Polk
RICHARD A. POLK

Edward J. Wodowski
EDWARD WODOWSKI

Susan P. Johnson
SUSAN P. JOHNSON

Rochelle Wodowski
ROCHELLE WODOWSKI, his wife

Date: 6-15-99, 1999

STATE OF MICHIGAN)
)SS:
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 15th day of June, 1999, by EDWARD WODOWSKI and ROCHELLE WODOWSKI, his wife

Richard A. Polk
RICHARD A. POLK, Notary Public
OAKLAND County, Michigan
My commission expires: 4/27/2000

WITNESSES:

CITY OF NOVI, a Michigan municipal corporation, PURCHASER

Nancy Reutter
NANCY REUTTER

By: Kathleen D. McLallen
Kathleen McLallen, Mayor

Mary Ann Cabadas
MARY ANN CABADAS

By: Tonni B. Bartholomew
Tonni Bartholomew, City Clerk

Date: JUNE 29, 1999

STATE OF MICHIGAN)
)SS:
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 29 day of JUNE, 1999, by Kathleen McLallen and Tonni Bartholomew, Mayor and City Clerk of the City of Novi, a Michigan municipal corporation, on behalf of said corporation.

MARY ANN CABADAS
Notary Public, Oakland County, MI
My Commission Expires Oct 5, 2002

Mary Ann Cabadas
_____, Notary Public
OAKLAND County, Michigan
My commission expires: 10-5-2002

SOMOCO, INC.
SOUTHERN MICHIGAN OIL COMPANY, INC.

13605 S. West Bay Shore / Suite 200
Traverse City, MI 49684
231-946-0200 / Fax: 231-946-8180

March 14, 2013

Edward and Rochelle Wodowski
3360 Buckingham Trail
West Bloomfield, Michigan 48323

Dear Mr. and Mrs. Wodowski,

I am following up on my correspondence of January 17th regarding the Comerica #1-29 / #2-29 well site which Somoco is abandoning after plugging the wells and whether you wished to retain the entrance drive. You may also want us to leave the gate.

We will need to complete a Landowner Assumption form which will inform the MDEQ of anything you wished to retain on the property.

If you have any questions regarding the above please call or e-mail to timb@hotmail.com.

Sincerely,



Tim Baker
Vice-President
Engineering and Operations
Somoco / West Bay Exploration Company

Enclosure

Somoco Property



Map Produced Using the
City of Novi, Michigan
Internet Mapping Portal



Author:
Date: 3/28/2013

MAP INTERPRETATION NOTICE

Map information depicted is not intended to replace or substitute for any official or primary source. This map was intended to meet National Map Accuracy Standards and use the most recent, accurate sources available to the people of the City of Novi. Boundary measurements and area calculations are approximate and should not be construed as survey measurements performed by a licensed Michigan Surveyor as defined in Michigan Public Act 132 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map. This map was produced under the terms of the City's Internet Site Use Policy available at <http://cityofnovi.org/Resources/SiteUsePolicy.asp>