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VIA E-MAIL & U.S. MAIL

City Council
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, MI 48309

Re: ***Proposed Oil and Gas Lease***

Dear City Council:

The Rochester Hills City Council is considering a proposed Oil and Gas Lease requested by Jordan Development Company, LLC, of Traverse City, wherein Jordan, as the Lessee, would lease from the City the right to explore, extract and sell oil and gas that may be located beneath the surface of the City's Nowicki Park, Tienken Park and Stoney Creek Cemetery parcels, collectively comprising approximately 61 acres. These oil and gas rights will be part of a larger, pooled unit being assembled by Jordan. In consideration, the City will be paid a bonus of \$150 per acre and will also receive royalties on the oil and gas produced and sold.

The City Council has asked for our written legal opinion whether the proposed Oil and Gas Lease may be authorized under the City Charter, as amended in 2011 to add Section 11.8 – Parks and Open Spaces, as follows:

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.

.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. [Emphasis added]

This charter amendment resulted from a citizen-driven initiative designed to require voter approval before the City may transfer or convert public parks and open space to non-recreational uses.

At the outset, it is important to understand the distinction between leasing the land and leasing the oil and gas rights. Those are two distinctly different things. Oil and gas rights may be sold or leased separately from the land itself, and that is what is being proposed here. Only the subsurface oil and gas rights are covered by the proposed lease. The City's surface estate will be unaffected, meaning the City's ownership, possession, use and control of the land, including the right to develop, occupy, use and/or preserve the land for park and open space (and cemetery) are unencumbered and unchanged by the proposed Oil and Gas Lease.

The form of lease presented is fairly standard and is modeled after the lease form used for State land. But, there are a number of important conditions that have been written into Exhibit A of the proposed lease to expressly provide that: (1) Lessee shall not utilize the hydraulic fracturing process (i.e., no "fracking"); (2) Lessee does not have the right to enter onto the property and may not conduct operations (including erection or construction of drills, wells, rigs, pipes, pumps, tanks, or other in-ground or above-ground structures, facilities or equipment) on the surface of the land without further approval of the City Council *and* compliance with applicable ordinance or charter requirements; (3) 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 property; and (4) Lessee's operations shall not hinder, interfere with, restrict or otherwise adversely affect the current or future use and development of the land for parks, open space and public recreation without further approval of the City Council *and* compliance with applicable ordinance or charter requirements.

Consequently, because the proposed Oil and Gas Lease covers only subsurface oil and gas rights, does not allow the Lessee to enter onto, use or occupy the surface the land, does not restrict or interfere with the City's use, development or conservation of the land, does not transfer or alienate the City's ownership, use or control of the land, and does not convert any City park or open space to another use, I conclude, and reaffirm my prior verbal opinion, that Section 11.8 of the City Charter is not implicated and does not diminish the City Council's

lawful authority to consider and approve the proposed Oil and Gas Lease as presented.* Underpinning my opinion are the protective conditions written into the proposed Oil and Gas Lease which are designed to ensure the subject park and open space land will remain as such and will not be transferred, occupied or converted to another use.

Very truly yours,



John D. Staran

JDS/ijd
Enclosure

cc: Mayor Bryan K. Barnett

* If circumstances were different with Lessee proposing to enter onto, use, occupy or alter the surface of the land, Charter Section 11.8 may apply and require a referendum vote to authorize.