

ORDINANCE NO. 1716 AC CMS

AN ORDINANCE DETERMINING CERTAIN UNIMPROVED REAL PROPERTY OWNED  
BY THE CITY OF OBERLIN TO NOT BE NECESSARY FOR ANY MUNICIPAL PURPOSE  
AND APPROVING AN AGREEMENT BETWEEN THE CITY OF OBERLIN AND  
ROGERS-FERMITECH, INC., FOR THE SALE OF SAME

WHEREAS, the City of Oberlin is the owner of certain unimproved real property hereafter described which is not needed or necessary for any municipal purpose, and

WHEREAS, Rogers-Fermitech, Inc., is desirous of purchasing said property from the City for the sum of \$75,000 cash, and

WHEREAS, the City is willing to sell said property to Rogers-Fermitech, Inc., upon certain conditions,

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, a majority of all members elected thereto concurring:

SECTION 1. That the real property owned by the City of Oberlin and outlined in the survey map attached hereto as "Exhibit A" is hereby declared to be surplus and not needed or necessary for any municipal purpose.


SECTION 2. That the proposed agreement attached hereto as "Exhibit B", between the City of Oberlin and Rogers-Fermitech, Inc., for the purchase by Rogers-Fermitech, Inc., of said surplus real property owned by the City for the sum of \$75,000 is hereby authorized and approved, and the City Manager is hereby directed to execute the same on behalf of the City.

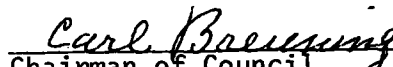
SECTION 3. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of the Council and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 4. That this ordinance shall take effect at the earliest date allowed by law.

PASSED: 1st Reading - July 11, 1983  
2nd Reading - July 25, 1983 (Emergency)  
3rd Reading -

ATTEST:

  
Clerk of Council

  
Chairman of Council

POSTED: July 26, 1983

OFFER TO PURCHASE

ROGERS FERMITECH, INC., a corporation organized and existing under the laws of the State of Indiana and qualified to do business in the State of Ohio, having its principal office and place of business at 421 Great Circle Road, Nashville, Tennessee 37202, and its mailing address at Post Office Box 25250, Nashville, Tennessee 37202 ("Purchaser"), hereby offers to purchase from the CITY OF OBERLIN, OHIO, a municipal corporation organized and existing under the laws of the State of Ohio, having its principal office at 85 South Main Street, Oberlin, Ohio 44074 ("Vendor"), that certain parcel of land situated in Lorain County, Ohio, containing approximately eleven (11) acres, and outlined in red on the survey attached hereto and made a part hereof as Exhibit A (the "Land"), together with all tenements, hereditaments, rights, privileges, interests, easements and appurtenances belonging or in any wise pertaining to the Land (collectively, the "Property"), upon and subject to the following terms and conditions:

1. Purchase Price. The purchase price for the Property (the "Purchase Price") shall be the sum of Seventy-Five Thousand Dollars (\$75,000.00). The Purchase Price shall be paid in the following manner: At the closing, Purchaser shall pay in cash to Vendor the entire Purchase Price.

2. Title to Property. The Property shall be sold and conveyed to Purchaser free and clear of any and all liens, leases and encumbrances of any kind or nature whatsoever except the following (the "Permitted Exceptions"):

(a) Current real estate taxes not delinquent;

(b) An easement to be reserved by Vendor to place, operate, maintain, repair and replace water lines and necessary appurtenances on, under and across the north thirty (30) feet of the Property, subject, however, to the covenants and conditions that Vendor shall (i) minimize damage to the existing vegetation in such strip and (ii) restore such strip to its original grade, surface such strip with suitable soil and seed such strip with grass seed following the placement, and any maintenance, repair or replacement, of such water line(s); and

(c) Such other liens, leases and encumbrances as may be approved by Purchaser.

As evidence of such title, Vendor shall obtain and deliver to Purchaser, within fifteen (15) days after Vendor's acceptance of this Offer:

(a) A title guaranty (the "Guaranty") issued by a title insurance company satisfactory to Purchaser ("Title Insurer"), in which Title Insurer shall guarantee that good and marketable title to the fee simple estate in the Property, subject only to the Permitted Exceptions, is vested in Vendor; and

(b) A land title survey of the Property (the "Survey") prepared by a registered land surveyor or professional engineer satisfactory to Purchaser and certified to Purchaser and Title Insurer as of a current date.

Within ten (10) days after receipt of the Guaranty and the Survey, Purchaser shall give Vendor written notice of any exceptions enumerated in the Guaranty and any states of fact shown on the Survey which would materially adversely affect Purchaser's intended use, development and/or occupancy of the Property and which are therefore unsatisfactory to Purchaser. Vendor shall have fifteen (15) days after receipt of that notice to have those exceptions removed and those states of fact corrected, and if Vendor is unable to do so, the agreement contained herein shall terminate and all obligations and liabilities of the parties hereunder shall cease. Whether or not the transactions contemplated hereby are consummated, the cost and expense of the Guaranty and the Survey shall be borne

solely by Vendor, and the cost and expense of any further evidence of title shall be borne solely by Purchaser.

3. Representations, Warranties and Covenants of Vendor.

By its acceptance of this Offer, Vendor represents and warrants to, and covenants with, Purchaser that:

(a) Vendor has not made any contract to sell all or any part of the Property to any person other than Purchaser, nor has Vendor given to any person an option to purchase all or any part of the Property.

(b) The Property is presently zoned to the M-1, Light Industrial, zoning district classification, and Purchaser's intended use of the Property is a permitted use thereof under such zoning district classification.

(c) On or before September 1, 1983, subject to delays beyond its reasonable control, Vendor, at its sole cost and expense, shall construct a temporary access road to the Property extending approximately two hundred (200) feet from the present terminus of Artino Street, including a temporary culvert over the drainage ditch.

(d) On or before December 31, 1983, subject to delays beyond its reasonable control, Vendor, at its sole cost and expense, shall extend Artino Street approximately five hundred sixty (560) feet, including a one hundred ten (110) foot diameter cul-de-sac at the terminus thereof. Such extension of Artino Street shall have a width of not less than thirty (30) feet and shall have eighteen (18) inch curbs and gutters on each side; and such cul-de-sac shall have similar curbs and gutters. All such construction shall be in conformity with Vendor's specifications for construction of public streets.

(e) On or before September 1, 1983, subject to delays beyond its reasonable control, Vendor, at its sole cost and expense, shall provide (i) temporary electric drop to the proposed building site on the Property, and (ii) temporary water tap to the Property by means of a fireplug tap at the present terminus of Artino Street.

(f) On or before December 31, 1983, subject to delays beyond its reasonable control, Vendor, at its sole cost and expense, shall extend its water, storm and sanitary sewer, and electric utility facilities underground along Artino Street approximately four

hundred fifty (450) feet to the aforementioned cul-de-sac. All such utilities shall be available for Purchaser's use at the rates set forth in Vendor's codified ordinances, shall be adequate and shall have sufficient capacity for Purchaser's intended use, development and occupancy of the Property.

(g) Vendor shall commence construction of the municipal improvements described in paragraphs 3(d) and 3(f) hereof immediately after the date of closing, and shall proceed with such construction with diligence and without interruption.

(h) The Property is located within a real estate tax abatement zone, thereby qualifying the improvements to be erected by Purchaser upon the Property for abatement of real estate taxes thereon.

4. Conditions Precedent to Vendor's Obligations.

Vendor's obligations hereunder shall be subject to fulfillment of the following conditions precedent, provided, however, that Vendor may conditionally or unconditionally waive either of such conditions:

(a) Vendor shall obtain a donation in the sum of not less than Forty-Five Thousand Dollars (\$45,000.00)

from the Oberlin Community Improvement Corporation for construction of the municipal improvements described in paragraph 3(d) hereof.

(b) Vendor shall obtain a low-interest loan from the Ohio Department of Economic Development in the sum of One Hundred Twenty-Five Thousand Dollars (\$125,000.00), or such lesser amount as is desired by Vendor, upon terms and conditions satisfactory to Vendor, for construction of such municipal improvements.

5. Conditions Precedent to Purchaser's Obligations.  
Purchaser's obligations hereunder shall be subject to fulfillment of the following conditions precedent, provided, however, that Purchaser may conditionally or unconditionally waive any of such conditions:

(a) Purchaser shall obtain, or determine to its satisfaction that it can obtain, all permits, consents, approvals, permissions and other things ("Approvals") required or desired by Purchaser to be obtained from all Federal, state and local governmental, municipal, public and other officials, authorities, bodies and agencies in order to permit Purchaser's intended use, development and occupancy of



the Property. Vendor shall cooperate with Purchaser and furnish Purchaser all necessary information needed to obtain all such Approvals. Upon request of Purchaser, Vendor shall execute any and all applications for all such Approvals and any related documents which Purchaser deems necessary to file with any governmental authority in connection with Purchaser's proposed use, development and occupancy of the Property.

(b) Gas and telephone utilities to service the Property shall be available for Purchaser's use at or within the property lines of the Property at standard rates, and such utilities shall be adequate and shall have sufficient capacity for Purchaser's intended use, development and occupancy of the Property.

(c) Purchaser shall determine to its satisfaction that the soil conditions, qualities, density and bearing capacity of the Property are suitable for Purchaser's intended development without the necessity of an extraordinary filling or compaction or any other extraordinary engineering or construction measures or expenditures which, in the opinion of Purchaser, would render the intended use or development of the Property infeasible from any economic or other standpoint; that

the surface water drainage of the Property is satisfactory for Purchaser's intended use, development and occupancy of the Property; and that there will be no site preparation costs or expenses which, in the opinion of Purchaser, would render the intended use, development or occupancy of the Property infeasible.

(d) There shall be no Federal, state or local laws, ordinances, rules, regulations, codes or orders which would, in Purchaser's opinion, prohibit, prevent, delay, interfere with, or make undesirable or infeasible, Purchaser's presently intended use, development or occupancy of the Property.

(e) Vendor's City Council shall have adopted an ordinance authorizing the execution of an agreement with Purchaser pertaining to revenue bond financing of the industrial facility proposed to be developed by Purchaser upon the Property, and Vendor and Purchaser shall have executed such agreement.

6. Closing. The transactions contemplated hereby shall be closed at the offices of Title Insurer in Lorain County, Ohio, on a date and at a time mutually agreeable to Vendor and Purchaser, within thirty (30) days after fulfillment or waiver of the conditions and requirements contained herein, provided

that if the closing does not take place on or before August 31, 1983, either party may terminate the agreement contained herein whereupon all obligations and liabilities of the parties hereunder shall cease. At the closing, Vendor shall deliver to Purchaser the following considerations against simultaneous delivery of the consideration described in paragraph 1:

(a) A quitclaim deed conveying the fee simple estate in the Land to Purchase free and clear of any and all liens, leases and encumbrances of any kind or nature whatsoever except the Permitted Exceptions; and

(b) A vendor's affidavit in the form prescribed by Title Insurer,

both of which considerations shall be prepared by Vendor at its sole cost and expense and shall be in form and substance reasonably satisfactory to Purchaser. Vendor shall be liable for all state transfer taxes, all county transfer fees and one-half of Title Insurer's escrow fees, and Purchaser shall be liable for all recording fees, and one-half of Title Insurer's escrow fees.

7. Closing Prorations. The following items shall be prorated between Vendor and Purchaser as of the date of closing: (i) real estate taxes assessed for and becoming a

lien during the calendar year in which closing occurs, using, for closing purposes, the then present tax rate if the applicable tax rate has not been set, and (ii) all assessments for municipal improvements (provided that Purchaser shall not be liable for any assessments for the original construction of the municipal improvements described in paragraphs 3(d) and 3(f) hereof.

8. Possession. Vendor shall deliver possession of the Property to Purchaser at the time of Closing.

9. Survival of Representations, Warranties and Covenants. All representations, warranties and covenants made herein shall survive the acceptance of this Offer and the consummation of the transactions contemplated hereby.

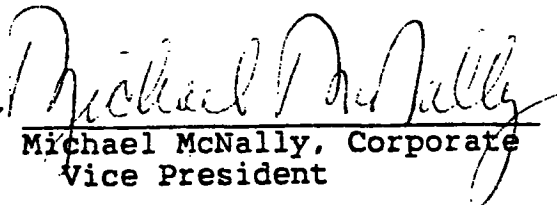
10. Expenses; Brokerage. Except as herein specifically provided to the contrary, Vendor and Purchaser shall each bear its own expenses incurred in connection herewith, and neither shall be liable to the other for any of such expenses, whether or not the transactions contemplated hereby are consummated. Any brokerage fees or commissions payable in connection with this Agreement or with the transactions contemplated hereby shall be borne solely by Vendor.

11. Entire Agreement; Written Modifications. This instrument contains the entire agreement between Vendor and Purchaser with respect to the subject matter hereof. All representations, promises and prior or contemporaneous understandings between the parties with respect to the subject matter hereof are merged into and expressed in this instrument, and any and all prior agreements between the parties with respect to the subject matter shall not be amended, modified or supplemented without the written agreement of Vendor and Purchaser at the time of such amendment, modification or supplement.

12. Duration of Offer. This Offer shall expire if written acceptance endorsed hereon is not delivered to Purchaser at the address set forth above on or before July 28, 1983.

Dated: July 22, 1983.

ROGERS FERMITECH, INC.

By   
Michael McNally, Corporate  
Vice President

ACCEPTANCE OF OFFER TO PURCHASE

The CITY OF OBERLIN, OHIO (Vendor), hereby accepts the foregoing Offer to Purchase and agrees to sell and convey the

Property to Purchaser upon and subject to the terms and conditions set forth therein.

CITY OF OBERLIN, OHIO

By Dale S. Sugerman  
Dale S. Sugerman, City  
Manager

Approved as to form by  
Eric Severs, City Attorney,  
Ordinance No. 1716 AC CMS  
dated July 25, 1983.

Eric A. Severs  
Eric Severs, City Attorney