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To: City Council
City of Ann Arbor, Michigan

Via: email

Re: City of Ann Arbor City Council Resolution to Award a Construction Contract to Hoffman Brothers, Inc. (\$1,216,099.75; Bid No. ITB-4127A) for the **NORTHSIDE INTERCEPTOR SANITARY SEWER RELOCATION PROJECT**

DS 18 11 – 0767

Dear Honorable Members of the Ann Arbor City Council:

I am writing about the “Northside Interceptor Sanitary Sewer Relocation Project” which you approved at your meeting on June 20, 2011. The agenda item number for the project is shown above.

I am asking you to reconsider your approval of that project and to postpone action on the proposed project until the City decides to move forward with the project that includes the prospective “Fuller Rail Station” and the adjoining parking structure (occasionally hereinafter referred to jointly as the “FRS” project). Some of the reasons that justify rescission of the action you took on June 20, 2011 are as follows:

- The agenda for the June 20, 2011 meeting did not properly identify the topic, depriving the public of any opportunity to comment on the project and also depriving each of you to fully deliberate the proposal.
- The bids were submitted on June 17, 2011 and are valid for 60 days. Thus the City Council has until August 16, 2011 to approve the contract. There was no need to rush to approve the contract on June 20 and there is no need to approve it at your meeting on July 5.
- The city staff has not provided any evidence that the sanitary drain at the site should be moved, absent going forward with the FRS project. The 30-year age issue makes little sense. I suspect that most sanitary sewers in Ann Arbor are older.
- The storm drain element of the project also is not required unless the FRS project is undertaken

- The water main elements of the project will be unusable until the city completes the “water main loop” across Fuller Road in 2013. Thus, the work proposed for this year can be done next year or during 2013 without adverse effect to the city.
- The water main elements of the project includes features such as hydrants, gate valves, etc that will not be needed if the proposed FRS project is not approved.
- Further, in the event the FRS project is not approved another routing for completing the water main loop is available, at lower cost than the routing identified in the proposed contract.
- The stormwater detention pond portion of the project is in possible violation of a deed covenant requiring part of the affected land to be used for **park purposes only**. Title of the land affected reverts to the grantor if the land ceases to be used as required in the deed.
- The project will involve the destruction of five trees and the transplanting to the opposite side of Fuller Road of 24 other trees, some for no reason that has anything to do with the sanitary sewer, storm sewer, and water main work. The majority of the trees that presently exist just north of the portion of Fuller Park leased to the University for parking will be gone in the event this project goes forward as proposed.
- Funding of this project with money from the Sewage Disposal System Fund, the Storm Water System Fund and Water Distribution System Fund is inappropriate and probably illegal, for the reason that there certainly is no public benefit from the project unless the FRS project moves forward and there possibly or probably is no public benefit accruing to the public by using Fund accounts to pay for the work that ordinarily is the responsibility of the project sponsor.

The balance of the letter provides elaboration regarding the above points. I begin by enumerating in items (1) through (9) below several essential elements of the proposed project. More details regarding my comments and opinions are presented beginning in item (10) below.

- (1) Bids for the subject project were due on June 17, 2011.
- (2) The project’s title as shown on the cover of the “Invitation to Bid” that was made available to prospective bidders is “**FULLER ROAD STATION, PHASE ONE NORTHSIDE INTERCEPTOR SANITARY SEWER RELOCATION AND SITE UTILITY CONSTRUCTION PROJECT** “
- (3) The documents made available to prospective bidders include the following:
 - (a) a 209-page document entitled “Contract Documents”, which is at <http://www.a2gov.org/government/financeadminservices/procurement/Documents/ITB-4127A.pdf>

(b) a set of 26 plans, which is at
<http://www.a2gov.org/government/financeadminservices/procurement/Documents/ITB-4127A%20Plan%20Set.pdf>

- (4) The 209-page document identified above includes the minutes of a pre-bid meeting which took place in the City Hall on January 31, 2011 and involved city officials and prospective contractors. The minutes of the meeting describe the purpose of the project as follows:

“The purpose of the project was introduced with the primary need to relocate the sanitary sewer and install site utilities being the site preparation for the facilitation of the future Fuller Road Station, Phase One Intermodal Facility Project.” [pdf page 200 of 209]

- (5) The “Legislation Text” delivered to the City Council either at or prior to its June 20, 2011 meeting includes the following statements regarding the bids received and the work to be done:

(a) ***“Four bids for the construction were received and opened on Friday, June 17, 2011.”***

(b) ***“Work includes the realignment and replacement of approximately 825 feet of 60 inch sanitary sewer. This 30 year old sewer is part of trunk line that delivers sewage effluent directly to the waste water treatment plant.”***

(c) ***“Project work also includes construction of approximately 525 feet of 24 inch storm sewer. A portion of this work is required to replace an existing storm sewer that is above, and in conflict with, the proposed 60 inch sanitary sewer realignment. The remainder of the work will upgrade the existing storm pipe.***

(d) ***“Lastly, the project involves placing approximately 925 feet of new 12 inch water main and associated bends, fittings, valves and other related items in a phased effort to eliminate a dead end main that services Fuller Pool and bring it into compliance with city standards. The effort will create a looped system that provides for redundancy and increases the reliability of water delivery to the pool by allowing for distribution from an alternate direction should a problem occur requiring shutdown of the primary source main. The first phase of work will be completed later this fall as a part of this project. The next and final phase to complete the loop is planned for 2013 with the resurfacing of Fuller Road’***

I have added the underlining in the above quotation for emphasis.

- (6) The project documents as made available to the prospective contractor show that the work to be done includes the sanitary sewer, storm sewer and water main installations described above, plus the following:

- (a) Transplanting of 24 trees which are identified on Sheet #7 of the project plans as “Trees to be transplanted” and which are indicated on that sheet as having trunk diameters that as of 2009 ranged from 3 to 12 inches (DBH) [ref: Keynote 10 on Sheet #7, which is as follows: “**Transplant tree to Fuller Park location across Fuller Road – (coordinate location in park with city staff)**”.]
- (b) Destruction of 5 trees which are identified on Sheet #7 of the project plans as “Trees to be removed” and which are indicated on that sheet as having trunk diameters which as of 2009 ranged from 3 to 34 inches (DBH)
- (c) Removal of lawn and topsoil from most of the Fuller Road frontage along the easterly 60% of the existing parking lot, as marked by shading on Sheet #7 of the project plans
[ref: Sheet #7 Keynote 3, which states “**Remove lawn and topsoil from site.**”]
- (d) Removal of lawn and topsoil from the portion of the site bounded...
 - on the west by the existing parking lot,
 - on the north by Fuller Road and the dense wooded area along the pedestrian walkway, and
 - on the east by the wooded area at the easterly end of the existing soccer field
 [ref: Sheet #7 Keynote 3, which states “**Remove lawn and topsoil from site.**”]
- (e) Other tasks
- (7) The following statement appears on “Contract Documents” page AD-1 (pdf page 3 of 209): “**After the time of opening, no Bid may be withdrawn for a period of 60 days. The City reserves the right to accept any Bid, to reject any or all Bids, to waive irregularities and/or informalities in any Bid, and to make the award in any manner the City believes to be in its best interest.**”
- (8) The “Legislation Text” states that the low bid for the project is \$1,216,099.75 and that the allocations of that bid to the various functions and funds are as follows:
- | | |
|---------------------------------|----------------|
| Sewage Disposal System Funds | \$1,063,164.68 |
| Storm Water System Funds | \$28,965.24 |
| Water Distribution System Funds | \$123,969.83 |
- (9) The “Contract Documents” volume includes the following statements on pages DS-1 and DS-2 (pdf pages 47 and 48 of 209) regarding project commencement and duration:
- The Contractor shall start work within seven (7) calendar days after award and receipt of the fully executed contract. It is expected that City Council will authorize award of the contract on June 20, 2011 and the award and the fully executed contract will be delivered to the Contractor by July 5.***

At a minimum all work associated with constructing the proposed 60" RCP sanitary sewer pipe between station 6+00 and station 9+00, and constructing the proposed 24" RCP storm sewer pipe between station 1+00 and station 5+23 shall be complete on or before August 20, 2011.

All work required to relocate and install the 60" RCP interceptor sanitary sewer to full operating service shall be completed on or before October 15, 2011. The entire project, except for work required to maintain the athletic field turf, shall be completed on or before November 15, 2011.

All work associated with maintenance of the athletic field turf shall be done in accordance with the Detailed Specification for Seeding & Mulching, Modified and shall be completed on or before September 15, 2012.

The document states that the August 20, 2011 deadline will serve to accommodate the installation of underground conduits parallel to the existing Detroit Edison north-south easement near the easterly end of the site.

Comments and Opinions:

- (10) To aid in comprehending the location and scope of the project, I have added a color code to Sheet #26 of the project plans. That sheet is attached. The color codes on that drawing are pink for the sanitary sewer, green for the storm sewer, and blue for the water main.
- (11) Although the "Legislation Text" submitted on June 20, 2011 to the City Council states that the 60 inch diameter sanitary sewer is 30 years old, I have seen nothing to suggest that this sewer is in need of replacement. Well-constructed sanitary sewers should have a service life in excess of 50 years. Problems that may occur during the sewer pipe's expected lifetime can be repaired, either from within the pipe while it is taken temporarily out of service or by excavating at the point of a problem. My conclusion is that there is no public benefit resulting from replacing the storm drain at this time.
- (12) The storm drain portion of the project is essentially for on-site drainage. The drain will be 24 inches and diameter and will connect to a stormwater detention pond that already exists on the premises. It apparently will replace an 18 inch diameter storm drain that already extends from the space leased to the University of Michigan for surface parking. There appears to be no need for this new drain other than to serve the prospective needs of the proposed "Fuller Road Station" and adjoining parking structure.
- (13) Also, the length of the storm sewer piping that will be installed appears to be less than half the total storm sewer piping installation shown on Plan Sheet #26. The construction documents show that a "bulkhead" will be installed at each end of what will be installed pursuant to the proposed contract. In other words, the 24 inch diameter storm sewer segment that will be installed will not be put into service until the balance of the site's storm drain is installed.

- (14) The water main to be installed pursuant to the proposed contract will be along the south side of Fuller Road between the easterly end of the site and approximately the midpoint of the portion of the property leased to UM for the surface parking lot. It is unusable for public purposes until the water main loop is completed to the swimming pool on the north side of Fuller Road. The City document referenced in Paragraph 5(d) above states that the remainder of the loop is expected to be built during 2013.

It appears to me that the location of this loop is based on the anticipation that the Fuller Road Station and adjoining parking structure will be constructed, not on the need for a loop to make water service at the swimming pool more reliable.

If in fact a loop is needed to benefit the swimming pool it would be far cheaper to construct the loop on the north side of Fuller Road, opposite the easterly end of the proposed construction site.

- (15) The construction plan calls for the removal of a stately black walnut tree that the drawings state had a diameter as of 2009 of 34 inches (DBH). The table of "Trees to be Removed" on Sheet 7 of the plans for this project identifies the tree's condition to be "poor". I have had one individual who has more experience with deciduous trees than I do look at the tree. The individual states that the tree needs some maintenance and should have 100 more years of life. This tree possibly could be saved if the sanitary sewer is moved about 10 feet northward. An opinion from an independent forester or botanist is warranted.
- (16) Of the 24 trees to be transplanted, a total of eight are at the east end of the area leased to the University for parking and not in positions that impede the proposed construction work.
- (17) When the 5 trees slated for removal and the 24 trees slated for transplanting are gone, the total number of trees along the north side of the existing parking lot will be reduced from approximately 20 to approximately 7.
- (18) I have received from the Sierra Club's Huron Valley Group a copy of a deed recorded by the Washtenaw County Register of Deeds on 14 December 1931 on Page 139 in Liber 302 of Deeds. Grantor is Huron Farms Company, a Michigan corporation. Grantee is the City of Ann Arbor. I understand, but have not yet had an opportunity to confirm, that this deed is for or includes the easterly end of the portion of Fuller Park that is south of Fuller Road and between the existing soccer field and the Huron River. The closing sentence of this deed is as follows: ***"The above described property is conveyed to said second party for park purposes only and shall revert to said first party when it ceases to be used for said purpose."***
- (19) I offer the following opinions:

- (A) If the existing stormwater detention pond is on the property identified in (18) above, the City probably is in violation of the deed covenant requiring the land to be used for “park purposes only”, for the reason that the primary reason for the detention pond is to accommodate stormwater runoff from the paved area used predominantly for the parking of automobiles operated by individuals who are not visitors of Fuller Park.
- (B) Future use of the stormwater detention pond, whether or not it is expanded, probably is a new violation of the aforesaid deed restriction
- (C) My personal experience is that developers of private property are required to pay for the installation of sanitary sewer and storm sewer system changes and extensions necessitated by a project. It also is my personal experience is that water main extensions are paid for private developers who need those extensions for their projects.

In this case there is no benefit to the public at large for the proposed outlays, especially given that the proposed Fuller Road Station and associated parking structure project has not yet been approved by the City Council.

Thus all of the costs of this proposed project should be charged to the prospective project account, if and when it is approved, and not to any of the following:

Sewage Disposal System Fund
Strom Water System Fund
Water Distribution System Fund.

- (D) The proposed contract is premature, inasmuch as the proposed contract documents state that all of the work other than restoration of the soccer field will be completed in 4 months and 10 days. The contract probably need not be awarded before next calendar year, even if the City Council were to approve the Fuller Road Station/parking structure project tomorrow.
- (E) If the City Council approves this project and it subsequently does not approve the proposed Fuller Road Station/parking structure project, the funds for the contract now before the City Council will have been wasted.

I appreciate your consideration of the above comments.

Respectfully,

Dietrich R. Bergmann

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