

**CITY OF LIVONIA – CITY COUNCIL
MINUTES OF STUDY MEETING HELD June 5, 2023**

Meeting was called to order at 8:00 p.m. by Council President Jim Jolly. Present: Rob Donovic, Scott Morgan, Brandon McCullough, Kathleen McIntyre, Scott Bahr, and President Jim Jolly. Absent: Vice President Laura Toy.

Elected and appointed officials present: Susan Nash, City Clerk; Michael Fisher, Assistant City Attorney; Todd Zilincik, City Engineer; Don Rohraff, Director of Public Works; Ted Davis, Superintendent of Parks and Recreation; and Michael Slater, Director of Finance.

Councilmember Donovic led the Pledge of Allegiance.

President Jolly shared that Councilmember Donovic is now officially a veteran having recently concluded his service in the United States Army. He thanked him for his service.

AUDIENCE COMMUNICATION: None.

NEW BUSINESS

1. BLOCK PARTY: Allison Adams, re: to be held Saturday, July 22, 2023, from 2:00 p.m. to 10:00 p.m., on Flamingo Blvd. between Clarita Ave. and Pickford St., with a rain date of Saturday, August 5, 2023.

Allison Adams presented the request to Council.

Councilmember Donovic offered an approving resolution for the Consent agenda.

DIRECTION:	APPROVE	CONSENT
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2. BLOCK PARTY: Tracy Nolte, re: to be held Saturday, August 5, 2023, from 2:00 p.m. to 10:00 p.m., on Marie Street and Court, between Knolson St. and Minton Ave., with a rain date of Saturday, August 12, 2023.

The petitioner was not present.

Councilmember McCullough offered an approving resolution for the Regular agenda.

DIRECTION:	APPROVE	REGULAR
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3. BLOCK PARTY: Judy Weiser, re: to be held Saturday, August 5, 2023, from 4:30 p.m. to 7:30 p.m., in the cul-de-sac of Liverpool Avenue, with no rain date requested.

Judy Weiser presented the request to Council.

Councilmember McCullough offered an approving resolution for the Consent agenda.

DIRECTION:	APPROVE	CONSENT
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4. BLOCK PARTY: Mikael Gandy, re: to be held Sunday, August 13, 2023, from 1:00 p.m. to 7:00 p.m., in front of the homes at 14183 and 14167 South Livonia Crescent, with a rain date of Saturday, August 26, 2023.

Mike Gandy presented the request to Council.

Councilmember Morgan offered an approving resolution for the Consent agenda.

DIRECTION: APPROVE CONSENT

5. REQUEST TO WAIVE THE SIDEWALK REQUIREMENT: Joseph Eadeh, American Building, Co., re: for the newly constructed home at 18937 Melvin.

Joe Eadeh presented the request to Council.

Councilmember Bahr offered an approving resolution for the Consent agenda.

DIRECTION: APPROVE CONSENT

6. REAPPOINTMENT OF MICHAEL A. TESTA TO THE ZONING BOARD OF APPEALS: City Council President, Jim Jolly, re: for a three-year term which will expire on July 12, 2026.

President Jolly presented the request to Council.

Councilmember McIntyre offered an approving resolution for the Consent agenda.

DIRECTION: APPROVE CONSENT

7. REAPPOINTMENT OF MARTHA PTASHNIK TO THE ZONING BOARD OF APPEALS: Councilmember Scott Bahr, re: for a three-year term which will expire on July 12, 2026.

Councilmember Bahr presented the request to Council.

Councilmember Morgan offered an approving resolution for the Consent agenda.

DIRECTION: APPROVE CONSENT

8. REQUEST TO APPROVE NOTICE OF INTENT RESOLUTION: Department of Finance, re: to allow the City to proceed with the issuance of not-to exceed \$6,500,000 in Water Supply and Sewage Disposal System Revenue Bonds as a new money issue for the purpose of paying all or part of the cost of replacing and upsizing of water mains for the City's Water Supply and Sewage Disposal System.

Michael Slater, Director of Finance, presented the request to Council.

Councilmember McIntyre asked who would be issuing and selling the bonds.

Michael Slater indicated the purpose of the notice of intent is to do a publication. He believes if 10% of registered voters object to the issuance of this bond, it would then end up on a city ballot for approval. The bonds would most likely be sold to the market by the City in October and financial institutions will often buy them in a competitive process. He indicated we have Bond Counsel and a Financial Advisor. He said the last water and sewer bond that we issued directly was 2005. In recent years, we borrowed through DWRP which is the state avenue to borrow money for these projects. This year, we were not high enough on the priority list for our project to be funded through DWRP so this is the alternative.

Councilmember Bahr said he spoke to Mr. Slater over the phone because he was concerned that interest rates aren't favorable, and he wondered if we should borrow the money when we have it in our funds. He said Mr. Slater explained there is a certain reserve that needs to be kept due to the potential risk of very large expenses from a catastrophic event to our water systems. We want to be conservative with the funding that we have available which is why the Administration is recommending that we borrow this money.

Councilmember Donovic asked how long we anticipate it would take to pay it back.

Mr. Slater indicated it would be 20 years.

Councilmember Morgan offered an approving resolution for the Consent agenda.

DIRECTION: APPROVE CONSENT

9. REQUEST FOR AUTHORIZATION TO PURCHASE ONE (1) FREEMOTION FITRIG, ACCESSORIES AND STORAGE: Department of Parks and Recreation, re: for the Jack E. Kirksey Recreation Center, from budgeted funds.

Ted Davis, Superintendent of Parks and Recreation, presented the request to Council.

Councilmember Bahr said he noticed that Direct Fitness only bid on the rig and not the attachments or storage. He asked if the price would be less to go that route and then ask them for the cost to add on the attachments and storage.

Ted Davis indicated that was a different type of equipment and he would like to go with a specific match to their current equipment.

Councilmember McCullough offered an approving resolution for the Consent agenda.

DIRECTION: APPROVE CONSENT

10. REQUEST FOR AUTHORIZATION TO PURCHASE ONE (1) NAUTILUS MULTI 14 STATION: Department of Parks and Recreation, re: for the Jack E. Kirksey Recreation Center, from budgeted funds.

Ted Davis, Superintendent of Parks and Recreation, presented the request to Council.

Councilmember Morgan offered an approving resolution for the Consent agenda.

DIRECTION: APPROVE CONSENT

11. REQUEST FOR AUTHORIZATION TO WAIVE THE SEALED BID PROCESS AND PURCHASE FROM SOLE SOURCE PROVIDER: Department of Public Works, re: for the purchase of stormwater, water main and sanitary manhole-related items in an amount not to exceed \$150,000.00 annually, for the period of July 1, 2023, to June 30, 2024.

Don Rohraff, Director of Public Works, presented the request to Council.

Councilmember Donovic asked if EJ has really been in business since 1883.

President Jolly asked if there was the possibility of doing a tour of their facility.

Don Rohraff indicated they have had the foundry well over 100 years and he can set up a tour during next year's APWA Conference.

Councilmember Donovic offered an approving resolution for the Consent agenda.

DIRECTION: APPROVE CONSENT

12. REQUEST TO AMEND THE ENGINEERING CONTRACT THROUGH THE QUALIFICATION BASED SELECTION (QBS) PROCESS WITH ANDERSON, ECKSTEIN AND WESTRICK, INC. (AEW) FOR DESIGN ENGINEERING SERVICES FOR THE WEST CHICAGO ROAD RECONSTRUCTION PROJECT (HARRISON ROAD TO INKSTER ROAD); Engineering Division, re: same (CR 336-21).

Todd Zilincik, City Engineer, presented the request to Council.

Councilmember Donovic offered an approving resolution for the Consent agenda.

DIRECTION: APPROVE CONSENT

13. AWARD OF CONTRACT: Engineering Division, re; for the Water Main Improvements for Project Areas 7, 8, and 9.

Todd Zilincik, City Engineer, presented the request to Council.

Todd indicated there were several bids provided on MITN. The low bidder including inspector days is Murphy Pipeline Contractors in the amount of \$5,422,555. He indicated we worked with OHM and based on the letter of recommendation, are asking to award the contract to Murphy Pipeline in that amount. Jessica Katers from OHM is present to answer any questions regarding the letter of recommendation or

background information. He said this project is to repave Belle Creek Lane and Bloomfield, as it was delayed last year, and to complete it by the end of October.

President Jolly indicated all Councilmembers received an email regarding this matter.

John Bidigare, Bidigare Contractors, 14769 Riverside, indicated he sent the referenced email and wanted to explain that his company has done more of this type of work in Michigan over the last ten years than any others. Bidigare was second low bidder by less than 2%. He indicated that Murphy Pipeline has done four jobs since 2009. He said his company has done jobs in almost every major city in Southeast Michigan. Numerous cities have granted change orders for additional work due to completion on time, quality, and outstanding workmanship. This includes the City of Livonia Footing Drain Disconnection Program, on which OHM was the engineer. Every city's DPW directors and engineers have given them outstanding reviews. And in many of those cities, they've worked change orders for many years thereafter. They have held their prices and 95% of their projects are under budget with no cost overruns. He believes Livonia would choose Bidigare Contractors if these bids were even, because of their quality and minimal cost overruns. They just finished a project in Coventry Gardens two years ago and did one on Seven Mile. Their company self-performs all work and does not subcontract as they have six crews. He was told the low bidder has subcontracted in West Bloomfield Township and Rochester Hills. He stated Livonia had a job in 2015 where the contractor came in from out of state and that job was in the millions in cost overruns. The recommendation at that time was DVM Contractors. That project was also less than 2% difference on bid price, which totaled about \$300,000. The city went with the low bidder against the recommendation of the of the engineer at that time. The engineer, OHM, has sent a letter stating there are too low bids. It doesn't say anywhere in that letter that it's been recommended.

President Jolly asked Mike Fisher, Assistant City Attorney, to explain the local bidder preference built into the Ordinance to shed some light on the information shared.

Michael Fisher said the 3% preference would have been used here if it applied.

Todd Zilincik explained when the bidder is in Livonia, the preference is 3% for a bid of \$200,000 or more or 1% for bids below \$200,000. This contract is 5.4 million, it would be 3%, but it must be a Livonia based business per the ordinance.

President Jolly stated the address that Mr. Bidigare gave was on Riverside in Livonia and asked if that is a personal address.

Todd indicated the business address is Plymouth.

Mr. Bidigare indicated Riverside is his personal address.

President Jolly asked Jessica Katers from OHM Advisors, if she has any information as to why OHM is making the recommendation.

Jessica Katers indicated OHM provided a summary of the bids received and did due diligence in performing reference checks. They determined whether the bidders met the experience requirements. In their reference checks, they spoke to no less than five references for Murphy Pipeline and called well over 15. They also made at least three calls to Bidigare references, even though they have had multiple contracts with them in the past. In determining the acceptability of the bid, both the first and second low bidder met the qualifications that were put out in the RFP, and both had acceptable references. She stated OHM has documentation as to those conversations with the municipalities that contacted.

Councilmember McCullough asked Jessica if their reference checks included liquidated damages or default on past projects.

Jessica Katers indicated they talked to both municipalities that had completed projects and municipalities that were currently within a project with the Murphy Pipeline Group. They discussed change orders and/or extras and for the majority there were no major claims, or there were no claims that were left on processed or that resulted in major overruns.

Councilmember McCullough indicated there is usually a recommendation from the engineer or architect in this field and it appears OHM gave an opinion that both contractors are okay. He asked if there is any preference or recommendation beyond what is in the packet.

Jessica Katers indicated OHM stated both contractors are qualified to do the project. They understand there is about a 3% difference between the first and second bid, but it isn't their purview to discuss financial matters. What they did want to present is the fact that per the qualifications that were checked, the projects that have been completed, they both appear to be qualified contractors to complete a successful project.

Councilmember McCullough explained when his employer goes through RFPs for MITN, with an architect or engineer involved, they usually go their direction. They always select the lowest qualified bidder, and the lowest bidder is not always the best in many cases. This is a big project, and the numbers came in sharp which shows the tight scope. It's one of those things that you take the engineer and your administration's decision on.

Councilmember Morgan asked where Murphy Pipeline's company is located and if they do the work or hire subcontractors.

Jessica Katers said they are more of a national contractor and have crews in multiple different locations. One of the questions OHM asked them is which crew will be on this project. There is a crew based here in Michigan that are Murphy Pipeline employees.

Councilmember Morgan asked if they are employees or contractors.

Jessica Katers stated they are employed by Murphy Pipeline.

Councilmember Morgan asked if Bidigare Construction hires subcontractors.

Jessica Katers indicated Bidigare is based in Plymouth and they self-perform all work that they do.

Councilmember McIntyre asked why self-performing the work wasn't a part of the RFP.

Jessica Katers said it is part of the big package to include any subcontractors they intend to use in the bid. If there was a subcontractor listed that was felt to be inappropriate for the project, they could ask for a substitution. Currently, neither the bidder has listed any subcontractors in the bid package.

Councilmember McIntyre asked if there are contractual requirements regarding self-performing versus subcontractors.

Jessica Katers said there could be set up percentage wise, based on the dollar amount of the contract, but this one was not set up that way. This one states a subcontractor being brought in that was not listed in the bid package would need to be approved by the city.

Councilmember McIntyre asked who to question as to why that was not a part of the RFP.

Jessica Katers said there are clauses within the contract that cover subcontracting and how the process is handled. The percentage of a contract that must be performed by the general contractor is a prerogative and not something previously put into the contracts, but it's something that could be included going forward.

Councilmember McIntyre said she is surprised the requirement for self-directed work was not stipulated in the RFP since it seems that we are now saying the low bidder isn't really the best choice.

Jessica Katers said neither bidder has indicated they aren't going to self-perform the work.

Councilmember McIntyre asked if bidding rules for municipal contracts allow us to go back and ask the bidders specifically about commitments for self-performance.

Jessica Katers said there is a clause in the contract that indicates we can ask for clarification of additional criteria to do a more in-depth evaluation.

Councilmember Bahr asked Jessica if the low bidder was using subcontractors for any of the five references that were checked.

Jessica Katers said they were not to her knowledge.

Councilmember Bahr asked if there was anything that would cause doubt as to whether the low bidder is able to do the work sufficiently by looking at the references.

Jessica Katers stated the references indicated the low bidder performed the projects and they have working water systems as a result of those projects. She said everyone has quirks with the way a project comes to fruition and things like restoration may or may not be everyone's best project. There were some things that did come up, but nothing that was of major impact to the projects that we checked references on.

Councilmember McIntyre said there has been discussion about the issue of pre-chlorination pipe bursting and the company formerly known as D and D, now known as Murphy, was one of the one of the companies that started this technology. She asked if they no longer use that protocol and if that would be a potential area of concern. She also asked if the RFP addressed the issue of pre-chlorination pipe bursting.

Jessica Katers said this does not preclude them from asking later to change the methodology in which they wish to install the replacement water main. She indicated D and D performed the 2020 DWRF project and Bidigare performed the 2021 DWRF, both with the pre-chlorinated pipe bursting methodology. She clarified that D and D as stated wasn't the low bid here, it is Murphy Pipeline.

Councilmember McIntyre said she believes it to be preferred technology and asked if it was possible to confirm that the low bidder would use this process on the project as a part of awarding the contract.

Jessica Katers said she feels it would be fair to ask, in writing, that this type of methodology be used.

Councilmember McCullough asked if this was an AIA contract format on MITN, if there was a performance bond, and liquidated damages.

Jessica Katers said it is not AIA, it is CEE and there is a performance bond and liquidated damages. There are liquidated damages set up for two streets involved in the project to get those done by September 15th and the other would start in June of 24.

Councilmember Donovic said Council must do their due diligence in getting questions answered since they are always asked by residents. He asked how long they anticipate this multi-phase project will take.

Jessica Katers said the contract length is currently through June of 2024. There will be a shutdown period because pre-chlorinated pipe is a seasonal install. They will have to stop in January or February, depending on the weather, and restart again in early spring.

Councilmember Donovic said we have a specified number of inspection days and asked what happens if the contractor exceeds it. He also said he understands that it's difficult to ever get liquidated damages.

Jessica Katers said there is a retainage held as part of the contract. It is typically 10% of the contract cost, or 10% of the work performed to date, and it would be utilized to pay any additional inspection days that are required. It would be \$680 per inspection day, and they are tracked just like any other type of item that is paid for through the contract. If those are exceeded, the city would have the opportunity to back charge the contractor for that.

Councilmember Donovic said we have a Florida based company that bought out other companies and a local company that has done tons of work in our community, which is right down the street with a Livonia resident as owner. He has looked at some of the other community's council meetings and found they went with a different bid and not the Florida based company. He indicated the letter councilmembers received has caused some confusion and states a crew from Georgia was apparently doing the work in West Bloomfield. He asked Jessica to elaborate as to whether it is a Georgia based crew, this other national crew, or a Michigan crew doing the work? He also asked if we could guarantee that a Michigan based crew is doing the work according to the contract.

Jessica Katers said there is no requirement that it must be a Michigan based company the way the contract is written. That is not something that has been written into any of our previous contracts. She cannot answer what crew we are going to get on the job. She said representatives from Murphy Pipeline are here and they may be able to answer that question.

Councilmember Donovic said he doesn't feel it is necessary for Council to make a requirement to use a Michigan based company. He just personally would rather go with a local company rather than one that is out of state.

Councilmember Bahr said there is a letter from the administration that expressly recommends that we go with Murphy Pipeline contractors. He feels we have two contractors that are qualified and have the technology we're looking for. He is not seeing any reason why we should ignore the recommendation in front of us and not go with the low bidder. He asked if someone could explain why we should go with the second lowest bidder.

Don Rohraff, Director of DPW, said the letter to Council brought up questions, comments, and history. He confirmed a letter of recommendation was sent from the department. He said the company, the contractor, and the crew that have done work for the city in the past was D and D and that is not the company that bid on this project, it is Murphy. He is aware that OHM has approached Murphy. He spoke with a representative from Murphy today, which was the first time that he has gotten any feedback. He was also told he would get a letter today. He said this will be the crew that we're going to be putting on the job and that commitment has yet to be received.

He said a Murphy representative is present and may have that information. He shared that these are some of the concerns they have had moving forward.

Councilmember Bahr said a letter was sent to Council recommending the contract be awarded to Murphy Pipeline and asked if there has been a concern that has arisen to changed that recommendation.

Don Rohraff said there has not.

Councilmember McIntyre said Don made the recommendation and asked him if it was a soft recommendation because these questions haven't been answered. She also asked why the questions were not asked and concerns were not expressed when he was writing the letter of recommendation.

Don Rohraff said those questions were being addressed or trying to be addressed. As more research and follow-up on references was being done, more of these questions have come up. He indicated they have a deadline and were trying to make sure that it makes a council meeting so that they are not falling off the timeline to get roads paved in the fall. He said he signed the letter and that's the recommendation. He said he is hoping to get some kind of commitment of the crew that we're going to get here tonight.

Councilmember McIntyre asked if there was a pre-bid meeting and if any of these questions were asked at that time.

Don Rohraff said he would have to refer to Mr. Zilincik for that.

Todd Zilincik said there was no pre-bid meeting. He indicated they have done numerous contracts with OHM before, and they fine-tuned it. He stated there is only so much they can do to make sure it's fair when it is bid out.

President Jolly asked if there was a representative from Murphy Pipeline present to answer questions and give a guarantee that it will be a Michigan crew doing the work.

Mark DiMichele, employee of Murphy Pipeline, indicated he was the owner of D and D Water and Sewer until he was bought out by Murphy Pipeline about two months ago. He said D and D Water and Sewer has done over ten million dollars' worth of work in the City of Livonia successfully without any issues over the past five years. There were no liquidated damages, no subcontractors, and no problems whatsoever. He is committing that the D and D of the past, which is now part of Murphy will be performing this contract with local crews. No out of state subcontractors. They will be self-performing all work with their own crews. He said he knows there have been a lot of rumors and behind the scenes discussions about their capabilities. He feels their record speaks for itself and they can properly perform. He offered to provide a letter to that effect, to solidify this recommendation.

Councilmember Bahr said he doesn't see any reason to go against the recommendation that they have in front of them. He also explained, for the residents'

benefit, that we did a first read on water rates earlier tonight. And when we vote on water rates, we vote on covering the costs that have already been incurred. These are the discussions where we control the rate and have a chance to keep water rates as low as possible. That is why we spent so much time on this tonight.

Councilmember Bahr offered an approving resolution for the low bidder on the Regular agenda.

President Jolly asked Mr. DiMichele if he is actively engaged in the operation of the local business as he had been in the past, since it was acquired by Murphy.

Mr. DiMichele said he is in charge of the entire Michigan operation, and he will be actively engaged on this project.

Councilmember McIntyre thanked everyone that worked on this. She indicated her questions are to ensure that they make the right decision.

Councilmember Donovic said he has a personal belief system that he wants to support local contractors. He respects and understands the fact that Mr. DiMichele is local, and recently sold his company, being acquired by a larger corporate company. He said he now has bosses to answer to and they are not here in Michigan. He said he appreciates what our department heads have done. His concerns are based around some of the things he read in the letter with some references. He said when he is supporting a company with a 5.56-million-dollar contract, he wants to make sure he can pick up the phone and call the contractor if there's an issue and he isn't sure we will get that same level of service from a company that is thousands of miles away in a different state.

Councilmember McCullough asked if OHM could have the reference checks forwarded to Council.

Jessica Katers said OHM will forward that information to the City Engineer before the next Regular meeting.

Councilmember Morgan said after listening to all parties there is still hesitation, and he would like to see the reference information as well. He offered a denying resolution on the Regular agenda.

President Jolly asked that any additional information be sent to our City Engineer, Todd Zilincik, or directly to Council at citycouncil@livonia.gov.

President Jolly verified that Councilmember Morgan would like to offer an alternative approving resolution for the second low bidder so that both are on the table.

DIRECTION:	APPROVE LOWEST BIDDER	REGULAR
	APPROVE 2ND LOW BIDDER	REGULAR

14. REQUEST TO AMEND CONTRACT WITH OHM ADVISORS FOR CONSTRUCTION ENGINEERING FOR THE 2023 WATER MAIN REPLACEMENT PROJECT, PROJECT AREAS 7, 8 & 9; Engineering Division, re: for same (CR 336-21)

Todd Zilincik, City Engineer, presented the request to Council.

Councilmember Bahr offered an approving resolution for the Regular agenda subject to change depending on the results of the previous item on June 26th.

DIRECTION:

APPROVE

REGULAR

AUDIENCE COMMUNICATION: None

*The start time of the Study Meeting may be delayed if the 7:00 PM Regular Meeting has not yet adjourned.

NOTICE(S)

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For the Regular Meeting of June 26, 2023

SUSAN M. NASH, CITY CLERK