

**CITY OF EXCELSIOR**

**Hennepin County, Minnesota**

**MINUTES**

**Special City Council Meeting**

**Monday, April 11, 2011**

**6:30 p.m.**

**1. Call to Order/Roll Call**

Mayor Ruehl called the meeting to order at 6:32 p.m. Council members present: Berghorst, Fulkerson, Miller (arrived at 6:34 p.m.), and Mayor Ruehl. Council members absent: Caron. Also Present: City Manager Luger, City Attorney Staunton, Consulting City Engineer Eisen, and City Clerk Johnson.

**2. Agenda Approval**

Berghorst moved, Fulkerson seconded, to approve the agenda as presented. Motion carried 3/0.

**3. Excelsior Parkland Soil Cover Project – Bid Contest Hearing**

City Attorney Staunton said that the City Council awarded a contract for the Excelsior Parkland Soil Cover Project to Frattalone Companies at the April 4, 2011 Council meeting. That decision was based on the City Council's finding that Sunram was not a "responsible bidder".

He went on to tell the Council it would hear first from Kevin Eisen, the City's consulting engineer for the project, to give an overview of the reasons why he reached the conclusion that Sunram was not a responsible bidder. Then a representative from Sunram will present evidence and testimony why Sunram is a responsible bidder. After the presentations, the City Council will have the opportunity to discuss the information presented and ask questions.

Staunton said that the purpose of the competitive bidding law is to ensure that work is performed for the City of Excelsior and Hennepin County at the lowest possible price. The word "responsible" means that the party must have the capability, experience, and wherewithall to competently perform the work. The sole purpose of the hearing tonight is to focus on Sunram's capabilities to competently perform the work.

**3. Excelsior Parkland Soil Cover Project – Bid Contest Hearing – (Continued)**

Kevin Eisen gave a PowerPoint presentation. He said that Excelsior Parkland was a dump that was given to the City for parkland. Dumped items remain in the ground resulting in toxic materials in high concentrations in the soil subsurface. The project work includes excavation of the site and transportation and disposal of hazardous materials. The project also includes demolition, soil import, installation of a parking lot, trail construction vapor venting system component extensions, site monitoring equipment extensions, the installation of a new water line, re-vegetation, and biostabilized slope construction.

There are multiple regulatory agencies involved in the project: the Minnesota Pollution Control Agency, the Minnesota Department of Health, the Minnehaha Creek Watershed District, and Hennepin County. The project includes environmental excavation work. He noted that Studer Pond is directly connected to Lake Minnetonka. This site is also close to businesses and residences.

This is a highly visible site and because of the hazardous materials, it is highly likely that OSHA will visit the site at least once. Special consideration is needed when dealing with hazardous materials. Eisen showed photos of dump materials from Excelsior Parkland and other dump sites. If the contractor runs into a problem, it needs to be dealt with immediately. There are special considerations and requirements that need to be taken into consideration. There is a history of burning at this site, so he doesn't anticipate a lot of volatile materials. An extensive investigation of the shoreline has not been done, because they didn't want equipment close to the edge without knowing what they would encounter.

The bid and contract documents were written with a thorough description of the types of contaminants. It had details for the parking lot, trail, soil needs, how things were to be laid out, final grades, etc. The documents also provided an opportunity to ask for additional information, such as experience in last 5 years, other commitments, financial wherewithall, etc. After receiving the bids, he asked Sunram for this additional information. Upon reviewing the information from Sunram he noticed a lack of experience with this type of work. He subsequently requested similar information from the second lowest bidder, Frattalone.

**3. Excelsior Parkland Soil Cover Project – Bid Contest Hearing – (Continued)**

Eisen stated that Sunram does have references and experience dealing with demolition and parking lot and trail construction. Sunram also has experience in water line extensions and biostabilized slope construction.

However, Sunram does not have any contaminated soil or dump excavation, transportation, or disposal experience. Sunram only has experience dealing with asbestos-impacted soils. The contaminants on Excelsior Parkland are different types of contaminants. It is important to have companies who are experienced with these types of contaminants and soils. Barr Engineering's oversight is intended to help with this project. The person doing the excavating has direct control of what he has in his scoop.

Lee Sunram, Sunram Construction, said that Sunram has been in business for 29 years. It is a specialty contractor. Sunram has worked with Barr Engineering on many jobs, but most of those jobs were water slope and soil mediation and the sites did not have contamination. He can't say those jobs were more complicated than this project, because no one really knows what will be found on this site. Throughout the years, Sunram has had different crews that were good at doing different types of work. Sunram has always been known for installing modular block retaining walls, and that's still the majority of their work. Sunram is always looking for other work to expand their experience.

Lee Sunram said that an individual was hired last year to work for Sunram that has 20 years of experience in this type of work. This individual had worked for Frattalone Companies, Inc. A second person who also has the required certifications was hired last Friday. These two individuals are trained to do this type of work, plus Sunram has a consultant engineer who can be utilized if needed. These two individuals will know if a contaminant is risky, which items need to go where, and if the site needs to be shut down.

Lee Sunram said that he doesn't want to take on a job and not be able to finish it. Before he and his son bid a job, which takes time and effort, they look at all of the requirements. Sunram has the equipment, manpower, and the necessary materials to do the job. He knows they can do this job. The job will start a couple of weeks later than he had hoped, but they should be able to get this wrapped up in the timeframe they had factored on their calendar. It's important to get the job done so people can utilize the gardens this year. He's a gardener and knows what is needed.

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(Continued)**

Lee Sunram said they do not have a lot of experience in this type of work, but the people they have hired have.

Ryan Sunram, Sunram Construction, said they don't have a lot of experience in this type of work, but the people they have hired and will have in the field doing the work have the experience. He is very comfortable that they can get the work done.

Miller asked the Sunrams to describe sites similar to the City's site that they've worked on. Ryan Sunram said that they did a site in the City of Robbinsdale that was somewhat similar except that it was contaminated with mostly asbestos, not the same chemicals that are an issue on the Excelsior Parkland site.

Miller asked when the Robbinsdale project was done. Ryan Sunram said it was in 2006.

Miller asked for a list of hazardous materials that Sunram has handled. Lee Sunram said that last winter they excavated a 60-inch pipe for the City of Golden Valley that had filled up with approximately 2,000 cubic yards of contaminated soil. The contaminated soil was trucked to a landfill in Shakopee, and all of the proper manifests were filed. They planned on hauling the materials from Excelsior Parkland to the same landfill.

Miller asked if that project involved tar, heavy metals, and dioxins. Ryan Sunram said the site had tar but not the other materials.

Lee Sunram said they had done some work in Wolf Park for the City of St. Louis Park a number of years ago. The project entailed covering the soil with fabric and adding a foot of top soil over the site. Miller asked if there were any dioxins, metals, or tars that had to be removed. Lee Sunram said no.

Miller asked if Sunram has done any projects near a water body like this project. Lee Sunram said the project in Golden Valley was next to an outlet into a creek, so they had to put the appropriate protections in place to protect the water. He noted that WSB & Associates was the consulting engineer for that project and were on site during the job.

Miller asked the Sunrams to describe a project where an unexpected drum, item, or toxic material was uncovered. Lee Sunram said they do a lot of city

**3. Excelsior Parkland Soil Cover Project – Bid Contest Hearing – (Continued)**

parks. In many cases, the land was dedicated to the city for a park and there is no way of knowing what people have dumped there. When they've graded the property they've come across such things as tree stumps, vehicle engines, 5-gallon gas cans with holes in them, concrete, asphalt chunks, etc.

Miller asked how many employees have their certifications. Lee Sunram said that Mike Rickert was hired last spring. Rickert worked for Frattalone for over 20 years and he is certified for asbestos and hazardous materials. Ryan Sunram said that over the years Rickert has done a lot of these types of projects.

Miller asked if Rickert would be operating the backhoe. Ryan Sunram said yes. Ryan Sunram said that they have also hired another person who had been Rickert's right hand man at Frattalone. This person also has all of the certifications and he started with Sunram last Friday.

Miller asked how much experience the other employees on staff have with the work entailed with the City's project. Ryan Sunram said that none of the other employees are certified.

Miller asked the Sunrams if they had concerns with their employees' work. Ryan Sunram said that Rickert will be the one excavating the soil and others will be backfilling or doing other tasks.

Lee Sunram said one advantage with the down economy is that they can draw employees that have the necessary certifications from the members of the labor unions.

Mayor Ruehl asked what kind of equipment and manpower is needed for this project. Ryan Sunram said they would begin by cleaning off the site and then start excavating the south side. As soil is taken out they will import sand. They would have the backhoe and probably two skid steer loaders. Getting the parking lot in is critical and then it is relatively easy to add the top soil.

Mayor Ruehl asked if they would have four or five people on site along with the equipment. Ryan Sunram said that they could have up to 7 employees once they start working on the retaining wall.

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(Continued)**

Fulkerson said Sunram's been in business for 29 years, but they haven't branched out or hired people to do this type of work until recently. Lee Sunram said that they are always looking for new avenues. A lot of the work they've done is just a little different than this work. Wolf Park was a contaminated site, but it did not have some of the toxins that the City's site has.

Fulkerson clarified that Sunram has not done work in this area, but is looking at branching into this type of work. Lee Sunram said that is correct. Sunram Construction has not been in this line of business for a long time, but now havehave employees who have experience.

Fulkerson said that's true, but the employees are recent recruits. Lee Sunram said yes, but the employees have 20 years of experience in this type of work. The portion of the site that needs to be excavated is 2 feet deep along the pond. It is not the entire park area. It is a small sliver of area that is the critical part of the entire project. The employees they will have on site with the certification will know what to do if they run into an unexpected material, plus there will also be a consulting engineer on site during the work.

Fulkerson asked how long the consulting engineer has been with Sunram. Ryan Sunram said that the engineer had worked with their company on the Robbinsdale site.

Mayor Ruehl asked what role the supervisor would have with regard to the project and how often would he be on site. Ryan Sunram said that Rickert will be the supervisor and he will be on site during the excavation. Lee Sunram said there will be two excavators and two dumpsters on site. As material is dug up, those individuals will determine what dumpster the material should be placed. If they have questions beyond that they have Barr Engineer's expertise. They want to do a good job.

Mayor Ruehl asked if both excavators are certified and have experience. Ryan Sunram said yes.

Mayor Ruehl asked if Sunram has a full complement of equipment so in case of a breakdown the work can be finished on time. Lee Sunram said that they have six excavators. He admitted that Sunram does not have the equipment that other contractors who bid this project have, but the only place they

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would be short is the trucking and they can hire out 20 trucks a day if needed. They want the green light so they can start planning and move equipment so they can get the job finished by the end of May or first part of June.

Mayor Ruehl asked Eisen how the bid documents were structured. Eisen said a variety of items were unit costs and others such as equipment was a lump sum.

Mayor Ruehl asked Eisen when he reviewed the bids if it appeared that everyone was seeing the same project and documents. Eisen said yes.

Mayor Ruehl asked if preparing a schedule was part of the submission. Eisen said no.

Mayor Ruehl asked if there was a schedule in the documents. Eisen said there was a completion date, but it was dependent on when the snow melted. The intent was to negotiate a schedule with the contractor.

Ryan Sunram said if just part of the snow could be moved work along the edge could begin before the snow completely melted.

Bob Bolles, 229 George Street, said rather than analyzing the two contractors the City needs to look at a division of responsibility. There should be an onsite inspector so you have a division of responsibility. An onsite engineer or inspector will separate the responsibility and probably separate the liability for the various components. The gardens should not enter into the equation. It is more important to get a good job done.

Eisen said it is Barr Engineering's responsibility is to provide the onsite observation. Mayor Ruehl clarified that Barr Engineering will have someone on site overseeing while the work is being completed. Eisen said that is correct.

Staunton said that this afternoon additional information was submitted by Sunram, one of which was Mike Rickert's certification. Staunton asked Eisen what was new? Eisen said the training documentation for Mike Rickert confirms his long history of having the hazmat credentials.

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Staunton asked the name of the second individual who Sunram just hired who was also certified. Ryan Sunram said Troy Williams is the other individual.

Fulkerson asked if this information was provided with the bids. Staunton said some of the materials were submitted after Sunram's qualifications were questioned.

Luger said that Fratallone was also asked to provide the same information, which they did.

Staunton said the purpose of this hearing is not to compare the two contractors, but to look at the qualifications of Sunram.

Mayor Ruehl asked Eisen, given the additional information that has been presented, is there anything here that would change or modify his thoughts or recommendation. Eisen said he knows that Sunram has individuals now who have done this type of work, but the makeup of the organization does not change his recommendation at this time because the organization does not have a demonstrated record of successful completion of projects like this one. It may have a couple of individuals with experience but it has no track record of a team that has successfully completed this type of work.

Lee Sunram said the employees they hired worked for the competition. He noted that the umbrella of people is constantly changing within that same organization. He can see Eisen's point, but the two employees they have worked together for many years. That's one of the reasons they hired the second person.

Miller asked Eisen if he would describe why if the two experienced employees are running the excavator and there is an on-site engineer why he doesn't think that's sufficient. Eisen said when you are working on an environmental site there is an approach that needs to be taken. There needs to be a safety plan in place, and there's a large possibility that OSHA will stop by the site so you want to make sure you have a good crew working on the site. Maybe these two employees have worked together, but to him it's a process of demonstrated success. He has not seen that with this crew. He doesn't question that Rickert and Williams are not qualified, but he has no way of knowing about the other five on the site or how all of them will work

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together. The site supervisor is typically outside watching the site, not running the machinery. To him, Sunram has not been able to demonstrate a successful project with this crew.

Lee Sunram said that everyone wants the same result and no one wants a big mess. Sunram has as much as any contractor with the two certified excavating operators. When the critical cut area is done, there will be a consultant from Barr Engineering on site full time. There is not going to be another contractor who can do better than this. If the excavators see possible contamination they need to adjust before they continue. He strongly feels that Sunram can do as good a job or better than any other contractor.

Miller asked if Williams is certified for hazardous materials. Ryan Sunram said yes Williams is certified, but he does not have a copy of the certification yet.

Berghorst said she understands that Sunram has qualified people and that there will be an engineer on site. She asked Lee and Ryan Sunram if either of them will be on the site during this process. Mr. Sunram said they aren't allowed on the site because they are not certified, but they would attend any meetings that are held for the project.

Staunton asked if the other five employees will be certified. Ryan Sunram said they will hire five individuals who have certifications from the labor unions. Lee Sunram said they will line up these people if they are awarded the contract.

Miller asked how many of the seven that will be on site will be current employees. Ryan Sunram said the two excavation operators. They will need to hire five people with certifications through the labor unions.

Ryan Sunram said that once the hazardous material is contained they would send in a second crew to do the retaining wall. Eisen said that's possible, but they will need to file a new work plan before making the change.

Fulkerson said she understands how Eisen came up with his conclusion. She can see that Sunram doesn't have the experience, and is using this job to gain the experience.

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Miller said based on what he's heard Sunram has not had a lot of experience in this field. Sunram has one employee who has been with them a little over a year and one that was just hired last Friday who are certified to do the work, and a pool of staff that they can tap into through the labor unions. The cautionary thing for him is that with this project there is contamination that if it is not dealt with properly could potentially flow into Lake Minnetonka. It doesn't appear that Sunram has worked with the different toxins that are on this site; Sunram has mainly worked with covering up more than digging up sites. These jobs are not to the level that the City is dealing with here, which adds up to a number of cautionary items.

Lee Sunram said if the City Manager hired a plumbing inspector who had 20 years experience, she wouldn't go out and check the inspector's work. Sunram is affiliated with the unions so they can pull people in that have the certifications and qualifications.

Miller said when the question is asked does this company have experience, the answer is no. If Sunram could say that they've done this type of project or had experience with these types of contaminants then it wouldn't be a problem.

Mayor Ruehl said he's been trapped in the same spot. In this case, the client is looking for demonstrated success; a prepared and executed plan with key people is critical. It's just a little too ad hoc to pull people together in this timeframe. He thanked Ryan Sunram for doing his homework and thinking this through, but then he finds out neither Ryan or Lee Sunram can even be on site because they don't have the certification. This is a little too iffy and makes him uncomfortable. He is not sure he likes the idea of having the supervisor on the equipment. He is concerned enough to lean toward the engineer's recommendation. It bothers him to do that, but he doesn't feel like he can disagree with the recommendation.

Lee Sunram said why would anyone bid for the City of Excelsior and become low bid if someone that you were bidding against was more qualified. There will probably always be someone more qualified. Where do you draw the line.

Mayor Ruehl said he understands how Sunram feels. He's had to hire the experience in and build the rapport. It is a long slow process to get into a

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new industry. Proven success is what the clients are looking for. It's the idea of the organization, supervision, and history of experience. The overall project organization and key experience is not quite there, and demonstrated success is not there.

Fulkerson asked for guidance from the City Attorney on what Council action is needed.

Staunton said the City treated the letter from Sunram as an appeal of the Council's decision last week that they were not a responsible bidder. Basically, it was a request for a reconsideration of the Council's decision last week. This was an opportunity for Sunram to provide information and answer questions. The Council needs to decide if they are going to grant that appeal and reverse the decision or deny the appeal and confirm the award to Fratallone. The City Council has had some good discussions and staff can draft the findings and conclusions document to summarize what has transpired here and create a record of the information and facts on which the City Council based its decision. The City Council can then approve the document at the Council's meeting on Monday, April 18<sup>th</sup> to formalize the findings.

Miller moved, Fulkerson seconded, to deny Sunram's appeal and confirm the Council's decision to award the contract for the Excelsior Parkland Soil Cover Project to Fratallone Companies.

Motion carried 4/0.

**4. Adjournment**

Fulkerson moved, Berghorst seconded, to adjourn the meeting at 7:52 p.m.  
Motion carried 4/0.

Respectfully submitted,

Cheri Johnson  
City Clerk