

**Unapproved Special Minutes of  
REDFIELD CITY COUNCIL**

August 15, 2013  
5:00 p.m.

The City Council met in special session at 626 Main St., Redfield, SD on Thursday, August 15, 2013 at 5:00 p.m.

MEMBERS PRESENT: Mayor Jayme Akin, Frank Schwartz, Dave Moeller, Eileen Kearney, Mike Siebrecht, Joe Morrisette, Larry Eldeen, Lue Anne Keating, and Darrell Ronnfeldt.

STAFF PRESENT: Adam L. Hansen and City Attorney Paul Gillette @ 5:02 p.m.

CALL TO ORDER: Mayor Akin called the meeting to order at 5:00 p.m.

ADOPT AGENDA: Motion by Schwartz, seconded by Moeller to adopt the agenda as presented. Motion carried.

Executive Session – Litigation SDCL 1-25-2 (3)

Motion by Ronnfeldt, seconded by Kearney to enter executive session for litigation matters per SDCL 1-25-2 (3) at 5:03 p.m. Motion carried.

Mayor Akin declared the meeting out of executive session at 5:21 p.m.

ORDINANCES AND RESOLUTIONS:

Resolution No. 2013-07 (City of Redfield) was read by City Attorney Paul Gillette.

RESOLUTION 2013-07  
RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF REDFIELD

WHEREAS, the City of Redfield adopted a Resolution on August 5, 2013, in which it declared that Quam Construction Co., Inc. (Quam) is in default under its Contract with the City of Redfield for the construction of the Shar-Winn Estates Storm and Sanitary Sewer Improvements Project; and

WHEREAS, the City of Redfield declared in the Resolution that Quam is in material breach of the Contract with the City, that Quam has abandoned the Project, that Quam has willfully violated the conditions and covenants of the Contract, and has executed the same in bad faith; and

WHEREAS, the City directed its counsel to notify Quam; and

WHEREAS, such Notice was sent to Quam by letter dated August 6, 2013, notifying Quam to discontinue all work under the Contract, providing Quam an opportunity to cure and resume work under the Contract and correct or remedy together with notice and material breach, abandonment of the Contract by the contractor, notice of default under the Contract, and notice of intent to terminate the Contractor's rights under the Contract; and

WHEREAS, Quam received that notification by certified mail, return receipt requested on August 8, 2013; and  
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WHEREAS, Quam had five (5) days after receiving such Notice in which to resume work under the Contract; and

WHEREAS, Quam has failed and refused to resume work under the Contract, and has removed its equipment from the worksite; and

NOW MAY IT HEREBY BE RESOLVED that the City of Redfield ratifies the prior Resolution and Notice given to Quam dated August 6, 2013, together with all attachments sent to Quam, and does hereby again declare that Quam is in default and in material breach of the Contract with the City, that Quam has abandoned the project, that Quam has willfully violated the conditions and covenants of the Contract and has executed the same in bad faith;

FURTHER, because Quam is in default under the Contract, has failed and refused to cure its material breach or remedy its default, the City does hereby declare and ratify that Quam's rights under the Contract are terminated, that Quam shall discontinue all work under the Contract, that Quam shall not be entitled to anything on account of the Contract or account of any claimed damages, and the City hereby reserves all of its claims for damages against Quam and the performance bonding company, Liberty Mutual Insurance Company, and does hereby officially demand that the bonding company, Liberty Mutual Insurance Company, faithfully perform and complete the work under §47 of the General Conditions of the Contract, consistent with the guarantee made by Liberty Mutual under §19 of the Contract which reads as follows:

The Contractor and any sureties under the Performance Bond guarantee to complete the project as specified and agree that loss as a result of any occurrence, including acts of God, shall not relieve them of their obligation.

General Conditions, §19.

AND IT IS HEREBY FURTHER RESOLVED that counsel for the City is directed to provide the appropriate notice to Quam and Liberty Mutual and take whatever steps are necessary to protect the interests of the City of Redfield and its rights under the Contract and the performance bond.

Dated this 15<sup>th</sup> Day of August, 2013.

CITY OF REDFIELD

BY: \_\_\_\_\_

Jayne Akin  
Mayor

ATTEST: \_\_\_\_\_

Adam L. Hansen  
Finance Officer

Motion by Siebrecht, seconded by Morrissette to approve Resolution No. 2013-07 (City of Redfield). Motion carried on a roll call vote with all members voting "Yes."

There being no further business, meeting was adjourned at 5:22 p.m.

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Jayne Akin  
Mayor

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Adam L. Hansen  
Finance Officer

Recorder: Adam L. Hansen