

2010 Legal and Public Notices

BASE BID

Removal of sand bars, bank sluffs, beaver dams and tree debris and seeding and clearing from an approximate three mile segment of the stream, as more fully described and enumerated in the BIDDING DOCUMENTS.

ALTERNATE BID

Removal of sand bars, bank sluffs, beaver dams and tree debris and seeding and clearing from an approximate four mile segment of the stream, as more fully described and enumerated in the BIDDING DOCUMENTS.

The Clay Creek Ditch Board will receive and consider bids on the basis of a unit price contract for the work. If awarded, the contract will be awarded to the responsible Bidder submitting the lowest responsive Total Base Bid or Total Alternate Bid, at the Owner's discretion, subject to provisions of the BIDDING DOCUMENTS.

All work shall be in strict compliance with CONTRACT DOCUMENTS prepared by Johnson Engineering Co., Yankton, South Dakota. Copies of the Bidding Documents are on file and may be examined at the following locations:

- Clay County Auditor, 211 West Main Street, Vermillion, SD
- Johnson Engineering Co., 1800 Broadway, Ste. 3, P.O. Box 672, Yankton, SD
- Plains Builders Exchange, 220 N. Kiwanis Ave., Sioux Falls, SD
- Sioux City Construction League, 3900 Stadium Drive, Sioux City, IA
- Omaha Builders Exchange, 4255 S. 94th St., Omaha, NE
- Sioux Falls Builders Exchange, 1418 "C" Avenue, Sioux Falls, SD

Copies of the Bidding Documents may be obtained from the office of Johnson Engineering Co., 1800 Broadway Avenue, Suite 3, Yankton, SD, 57078 (phone number: (605) 665-5571) upon payment of a deposit of \$25.00 for the set. In accordance with SDCL 5-18B-1, these documents, upon request therefore, will be furnished without charge to each contractor resident in South Dakota who intends, in good faith, to submit a Bid.

Any Bidder, upon returning the Bidding Documents promptly and in good condition will be refunded the deposit. Deposits of Non-Bidders will not be refunded.

The attention of prospective bidders is directed to the following contract provisions:

1. Bid Guarantee

Pursuant to SDCL 5-18B-2, each Bid shall be accompanied by Bid security made payable to the owner, which shall be a certified check, cashier's check, or draft, said check or draft certified or issued by a state or national bank domiciled within the State of South Dakota for 5 percent of the amount of the Bid, or in lieu thereof a bid bond on the form bound herewith, issued by a surety authorized to do business in South Dakota for 10 percent of the amount of the Bid.

2. Contract Bonds

Separate payment and performance bonds guaranteeing faithful performance of the Contract and payment of all labor, materials, rentals, etc., will be required for an amount equal to one hundred percent (100%) of the amount of the contract.

3. Commencement and Completion

The Engineer will set the beginning date in a written "Notice to Proceed." The Contractor shall begin the work within ten (10) days of the date set forth in the written "Notice to Proceed" and shall complete the Work on or before the date for completion shown in the Agreement.

4. Award of Contract

The right is reserved, as the interest of Clay Creek Ditch Board may require, to reject any and all bids, to waive informality in bids received, and to accept or reject any items of any bid.

Date

Travis Mockler, Chairman
Clay Creek Ditch Board

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Unapproved Minutes Council Special Session

August 18, 2014
Monday 12:00 noon

The special session of the City Council, City of Vermillion, South Dakota was held on Monday, August 18, 2014 at 12:00 noon at the City Hall large conference room.

1. Roll Call

Present: Collier-Wise, Erickson, Holland, Clarene Meins, Holly Meins, Price, Ward, Willson, Mayor Powell

2. Water Main replacement project - Cottage Avenue from W. Cherry Street to W. Duke Street - Jason Anderson

Jason Anderson, Assistant City Engineer, reported that in the last two months there have been two breaks in the sixteen inch water main on Cottage Street between Cherry and Duke Street. Jason stated that similar age pipe from Duke Street north is being replaced this year. Jason stated that the last break was the evening of budget hearings and, as such, this replacement was not included in the 2015 proposed budget. Jason stated that the estimated cost is \$165 to \$230 thousand depending on final quantities. Jason stated that replacement options are still being reviewed and that it will be a spring 2015 project at the earliest. Jason asked the City Council if they wanted staff to move forward with the design of the project. Jason answered questions of the City Council on the proposed project. The consensus of the City Council was for staff to move forward with the plans and specifications for bidding in the spring of 2015.

3. Landfill update - Bob Iverson

Bob Iverson, Solid Waste Director, reviewed pictures of the cell 5 construction, baler building and baler. Bob stated that the baler was put into use two weeks ago for training and has been in use since. John Prescott, City Manager, reviewed Joint Powers Agreement between the Counties of Yankton and Clay and Cities of Yankton and Vermillion. John reviewed the members of the Joint Powers Board as well as the area serviced. John noted that the large projects being completed have depleted the reserves for both Vermillion and Yankton. As such, members of the two cities will be meeting later this week to review options available that may include a rate increase.

Alderman Ward stated that he has met with Harlow Hatle and inspected the apartments with the improper sized egress windows and wanted to know if the City Council would consider an extension of time to replace the windows.

John Prescott, City Manager, stated that the City Council adopted the building codes earlier this year that called for all egress windows less than 3 square feet in area or smaller than 18 inches in width or height to be replaced by September 1, 2014 and all other non compliant egress windows need to be replaced by July 1, 2019. Discussion followed on the window size and the code requirements for fire safety. Farrel Christensen, Building Official, noted that the current code provides that the property owner can apply for an extension of the implementation date. Discussion followed on the amount of extension with the consensus that a phased plan whereby some windows are installed each year would be acceptable. Farrel stated that he would be willing to work with property owners on extensions.

Alderman Ward requested to be excused at 12:43 p.m.

4. Briefing on the August 18, 2014 City Council Regular Meeting

Council reviewed items on the agenda with city staff. No action was taken.

5. Adjourn

291-14

Alderman Willson moved to adjourn the Council special session at 12:50 p.m. Alderman Holland seconded the motion. Motion carried 8 to 0. Mayor Powell declared the motion adopted.

Dated at Vermillion, South Dakota this 18th day of August, 2014.

THE GOVERNING BODY OF THE CITY OF VERMILLION, SOUTH DAKOTA
BY _____
John E. (Jack) Powell, Mayor
ATTEST:
BY _____
Michael D. Carlson, Finance

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Officer

Unapproved Minutes
City Council Regular Session
August 18, 2014
Monday 7:00 p.m.

The regular session of the City Council, City of Vermillion, South Dakota was called to order on August 18, 2014 at 7:00 p.m. by Mayor Powell.

1. Roll Call

Present: Collier-Wise, Erickson, Holland, Clarene Meins, Holly Meins, Price, Ward, Willson, Mayor Powell, Student Representative Tordsen

2. Pledge of Allegiance

3. Minutes

A. Minutes of August 4, 2014 Special Session; August 4, 2014 Regular Session, August 11, 2014 Budget Session, and August 14, 2014 Budget Session.

292-14

Alderman Holland moved approval of the August 4, 2014 Special Session, August 4, 2014 Regular Session, August 11, 2014 Budget Session, and August 14, 2014 Budget Session minutes. Alderman Clarene Meins seconded the motion. Motion carried 9 to 0. Mayor Powell declared the motion adopted.

4. Adoption of Agenda

293-14

Alderman Willson moved approval of the agenda. Alderman Collier-Wise seconded the motion. Motion carried 9 to 0. Mayor Powell declared the motion adopted.

5. Visitors to be Heard

A. Proclamation-Log School House Dedication

Alderman Clarene Meins read the proclamation recognizing the first permanent school house in Dakota Territory built September 3, 1864 with the replica being built to celebrate the sesquicentennial. Mayor Powell presented the proclamation to Dan Christopherson. Dan stated that he was representing the Clay County Historical Society and thanked the City for their assistance on the project. Dan invited the City Council and community to the log school house dedication on Wednesday, September 3rd from 4:00 p.m. to 7:00 p.m. at the Austin-Whittemore property.

6. Public Hearings

A. Appeal to Notice and Order requiring "hard wired" Smoke Alarms per Chapter 94, Rental Housing Code, Section 94.02, Responsibilities of Owners and Occupants of Rental Units, of the 2008 Revised Ordinances of the City of Vermillion, South Dakota

Farrel Christensen, Building Official, reported on June 10, 2014 that the City Rental Inspector completed an inspection of the rental structure located at 112 E Cherry. Farrel noted that several items were found in violation of the City's rental housing. While inspecting the units, it came to the attention of the inspector that hard wired smoke detectors were not installed as required by the Rental Housing Code adopted in 2011. City Code requires that all registered rental units shall be provided with smoke detectors that are hardwired into the electrical system with battery backup. Farrel stated that smoke detectors must be installed in each sleeping room, outside each separate sleeping area in the immediate vicinity of the bedrooms, on each additional story of the dwelling, including basements and habitable attics but not including crawl spaces and uninhabitable attics. Farrel noted that when the inspector asked the manager about the non hard wired smoke detectors he responded that the sealed battery powered units in place had been approved by the City.

Farrel noted that the inspector confirmed that no such approval had been made for the 10 year sealed battery smoke detectors installed. Farrel stated that the potential of using 10-year sealed battery powered units without connection to electricity had been discussed several times with the multi-housing association in meetings with staff and City Council. Farrel reported that the City Manager confirmed with Dan Siefken of the SD Multi-housing Association that use of the sealed battery units that are not connected to the electrical system was not conveyed to the membership as an option. Farrel stated that an inspection report was sent to the owner informing him that hard wired smoke detectors were required and in order to continue to rent the units he must provide the City with the name of the

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electrical contractor that would be installing the required hard wired smoke detectors and would complete the work no later than September 1, 2014.

Farrel stated that a short time after the inspection letter was sent the owner came into City Hall and proposed that the battery powered units be installed be allowed. Farrel stated that the owner was informed that the ordinance specifically requires hard wired smoke detectors and no provisions for battery power units have been made. Farrel reported that shortly after this discussion the property owner, Woody Houser, applied for an appeal.

Farrel reported that the requirement for hard wired smoke detectors was first presented to the City Council on July 18, 2011 and became effective September 1, 2011. The ordinance gave owners until January 1, 2014 to provide all registered rental units with smoke alarms that receive their primary power from the building wiring and when primary power is interrupted shall receive power from a battery.

Farrel stated that without the correct smoke alarms in place the unit becomes substandard and if not for the owner applying for an appeal to stay the enforcement, the units would have been posted as unlawful to occupy and the tenants ordered to vacate.

Farrel reported that prior to the requirement for hard wired smoke alarms nearly 90% of the rental units inspected had smoke alarms that were not working and last month nearly 90% of the rental units inspected had working smoke alarms. Farrel noted that in two years the improvement in fire safety in registered rental units has been remarkable.

Farrel stated that the City Council, acting as the board of appeals, now has to consider the issue and determine: 1) If the true intent of this code or the rules legally adopted there under have been incorrectly interpreted, 2) If the provisions of this code do not fully apply, 3) If the requirements of this code are adequately satisfied by other means.

Farrel stated that section 94.02 appears to be very clear that primary power must be provided (hard wired) from the building wiring and that battery power may only be used for backup power if the primary power is interrupted.

Farrel stated that the second question is whether the provision for hard wired smoke alarms applies. Farrel stated that the provisions of this code would apply as all registered rental units shall be provided with smoke alarms that operate on building wiring and must be installed by January 1, 2014.

Farrel noted that the only remaining question is whether the requirements of the code can adequately be satisfied by other means.

Farrel stated that the answer to this question is no. The installed battery power smoke alarms are not as good as the required hard wired smoke alarms. Farrel noted that hard wired smoke alarms are the only type allowed by the International Building Code in new construction. The first copies of the 2015 International Building Code came out in July and the only style allowed are hard wired. This decision was made after three years of research, hearings and testimony by the foremost experts in fire and life safety. Hard wired smoke detectors have been required since 1988 and have been proven to be the best system available. So much so that in 2006 the International Residential Code required battery powered systems be replaced with hard wired smoke alarms whenever a building permit for alteration or additions is issued.

Farrel noted that the 10 year sealed battery power units are relatively new and, as such, have only just been issued a UL listing. Farrel noted that the ten year life span is also a problem. The units must be replaced before the battery runs out and it would be difficult for inspectors to know when that time is or to have an inspection that is always timed with battery expiration. Farrel stated that hard wired smoke alarms do not rely on batteries for their primary power so if the unit tests good the inspector knows the occupants are protected. The Code requires a smoke detector with a primary and backup source of power. The installed units have only a single source of power with no backup power.

Farrel stated that there may come a time when sealed units are proven and accepted by the International Code Council but that event has not yet occurred. It is correct that a few states are allowing the use of 10-year sealed units. South Dakota is not one of

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the two or three states. Mr. Houser knew what the deadline was and how the installed unit was to be powered. Farrel noted that allowing the installation of a non-approved type of unit after the fact would appear to be contrary to adopted code and would likely cause other landlords who complied with code to question the City's intent. Farrel stated that he recommended the denial of the appeal.

Janet Olson, attorney representing Woody Houser, stated that she sent a packet of information on Friday to the City for each Council member and also apologized that the appeal form and letter indicated a Cottage address when the correct location was 112 East Cherry Street. Janet stated that her client is concerned about the safety of the tenants in his rental units. She stated that the adoption of the 2012 building code has imposed many costs onto her client as a landlord. Janet stated that the cost of hard wired battery backup smoke detectors for this property is estimated at \$9,500 while the 10 year sealed battery smoke detectors cost \$2,950. She stated that in existing buildings there are obstacles to installing hard wired smoke detectors that are not present in new construction. She stated that when the battery backup in the hard wired smoke detectors reaches the end of its useful life it chirps and the tenants remove the smoke detector to keep it from chirping. Janet stated that the 10 year sealed battery smoke detectors will not chirp until the end of their life thus it remains in service much longer. She stated that the supporting documentation she provided stated that 78% of the 10 year life detectors were still functioning. Janet noted that one tenant had a problem with false alarms and since the battery could not be removed had called the manager who relocated the detector to a better location in the unit instead of just taking the battery out or removing the unit. Janet reported that other states have allowed use of the 10 year sealed battery smoke detectors. Janet also noted that the City requirement for hard wired smoke detectors with battery backup for rental units is not being applied to owner occupied structures.

Janet stated that the landlords want to protect their tenants and feel the 10 year sealed battery smoke detector units will remain in service longer than the units required by the City. The cost of the 10 year sealed battery smoke detectors is one third of the hard wired required by the City. Janet stated that the 10 year sealed battery smoke detectors are a viable option for existing structures and requested consideration of the appeal.

Mayor Powell noted that the information provided included the National Association of State Fire Marshals Science Advisory Committee report that on page three reported that according to a 2009 American Housing Survey the death rate per 100 reported fires is twice as high in fires with smoke alarms powered by batteries compared to fires with hard wired smoke alarms.

Alderman Erickson asked City Attorney McCulloch for his opinion of the code adopted by the City. Jim McCulloch, City Attorney, reported that, in his opinion, the intention of the City Council was for the health and safety of rental housing tenants in the community. Jim stated that over the years smoke detectors had been discussed noting that the battery powered detectors were found not working in many cases and the 2011 update to hard wired detectors with battery backup improved the percentage to be found working as Farrel stated. Jim noted that the City Council provided until December 31, 2013 for rental properties to become compliant with the implementation of the updated code. Jim stated that safety issues cannot be grandfathered as a general rule in multi unit rental property. Jim stated that advances in technology in safety areas and upgrades as time goes on will require landlords to make their property compliant with these advancements.

There was discussion on a requirement for interconnections of smoke detectors with Farrel noting that there is an exception for this in existing units.

Alderman Erickson requested to allow Woody to address the City Council. Mayor Powell upon hearing no objection from the Council allowed Woody to address the Council.

Woody stated that he has hard wired smoke detectors with battery backup in other units in Vermillion and Sioux Falls but noted that, when the battery backups chirp to note the need for a new battery, the tenants are removing the units. He stated that with the 10 year sealed unit smoke detectors there is no need

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to change the battery, thus the tenants leave the units in place.

Upon request, Farrel stated that he has not found a study that reports the 10 year sealed battery smoke detectors are equivalent to the hard wired smoke detectors with a battery backup.

Mayor Powell asked the Council if they had any objections to allowing Janet Olson to address the Council. Upon hearing none, Janet was allowed to address the council.

Janet Olson stated that no other community has this requirement for hard wired smoke detectors for all rental units, but only requires this of new construction.

Discussion followed on the required compliance date noting that it was January 1, 2014 with Farrel noting that extensions were given when it could be shown that the owner had contracted to have the work done.

294-14

Alderman Ward moved to deny the appeal of Mr. Woody Houser for the property at 112 East Cherry to use 10 year lithium battery sealed smoke detectors in the rental units as an equally good or better form of compliance then required by ordinance section 94.02 G for hard wired smoke detectors with battery backup and to provide a reasonable time to bring the property into compliance with the City ordinance. Alderman Willson seconded the motion. Motion carried 8 to 1. Mayor Powell declared the motion adopted.

7. Old Business - None

8. New Business

A. 2013 Audited Comprehensive Annual Report

Mike Carlson, Finance Officer, reported that the 2013 Audited Comprehensive Financial Report is included in the packet. The firm of Williams & Company completed the audit. Also included in the packet is a letter to the Mayor and Council from Williams & Company. The Department of Legislative Audit has reviewed and accepted the audit report with their letter included in the packet. Mike noted that the City Council will need to accept the report. Discussion followed.

295-14

Alderman Collier-Wise moved approval of the acceptance of the 2013 Audited Comprehensive Financial Report. Alderman Ward seconded the motion. Motion carried 9 to 0. Mayor Powell declared the motion adopted.

B. Resolution for Comprehensive Funding Agreement for the West Main Street Mill and Overlay Project

Jose Dominguez, City Engineer reported that West Main Street from High Street to Stanford Street is scheduled to be milled and overlaid during the 2015 construction season. Jose reported that prior to the work taking place the DOT requires that the City sign a funding agreement. Jose stated that the funding agreement stipulates how the funding of the project will be made and also sets the criteria that need to be followed during the construction and future maintenance of the street that is similar to agreements with the DOT for the Cherry Street Project, Crawford Road Project and Stanford Street Projects. Jose stated that the project is to be funded with \$300,000 STEP funds through the State and \$140,000 from the City second penny sales tax fund. Jose recommended approval of the resolution for funding. Discussion followed.

296-14

After reading the same once, Alderman Willson moved adoption of the following:

Resolution
Accepting the Funding Agreement between the Department of Transportation and the City of Vermillion for Letting and Construction of Project P 5708(05), PCN 04AF

Whereas, the City of Vermillion wishes to mill and overlay West Main Street from High Street to Stanford Street utilizing a combination of Local, State and Federal funds; and

Whereas, the Governing Body of the City of Vermillion is asked by the South Dakota Department of Transportation to approve the above mentioned funding agreement by resolution.

Now, therefore, be it resolved, that the Governing Body of the City of Vermillion accepts the Funding Agreement between the Department of Transportation and