

Brookings City Council
May 5, 2014

The Brookings City Council held a special meeting on Tuesday, May 5, 2014 at 4:30 p.m., at City Hall with the following members present: Mayor Tim Reed, Council Members Keith Corbett, John Kubal, Dan Hansen, Tom Bezdichek and Jael Thorpe. Council Member Ope Niemeyer was absent. City Attorney Steve Britzman, City Manager Jeffrey Weldon and City Clerk Shari Thornes were also present. Council Member Hansen was sworn in prior to the meeting.

Revised Memorandum of Understanding. A motion was made by Hansen, seconded by Corbett, to approve the revised Memorandum of Understanding between the City of Brookings and Oakwood Equity. All present voted yes; motion carried.

MEMORANDUM OF UNDERSTANDING

By and Between the City of Brookings (City) and Oakwood Equity (Developer)
For the construction of the westerly portion of 26th Street South (Project)

WHEREAS, the City and the Developer mutually desire to see the completion of the Project (Contract 2014-02STA Schedule B and alternate B-1) for the overall benefit of the community, the school district, and benefiting residential subdivisions that may exist now and into the future in the immediate vicinity of the Project; and

WHEREAS, both parties acknowledge the Project is the responsibility of the Developer pursuant to usual and customary subdivision regulations of the City governing infrastructure development; and

WHEREAS, the City has secured competitive bids for the construction of the Project.

NOW, THEREFORE, BE IT AGREED THAT:

CITY shall construct the Project in conjunction with another project involving the easterly portion of 26th Street South and South Main Avenue for the necessary streets and utility improvements. Specifications of the Project shall be determined exclusively by the City pursuant to usual and customary construction standards.

DEVELOPER agrees to pay all construction and utility costs for the project as described below from the terminus point of Schedule A in 2014-02STA to the intersection of Western Avenue, with the right-of-way consisting of a width of 70 feet (the entire width of the right-of-way), for the entire length of the Project as described immediately above, all to be constructed in accordance with the specifications provided in Contract 2014-02STA Schedule B and alternate B-1.

CITY and its construction contractor and engineers shall maintain itemized costs of the Project for subsequent billing to the Developer.

DEVELOPER agrees to dedicate the necessary right-of-way for the north one-half of the Project to the City by executing a dedication of the right-of-way for street and utility purposes with the right-of-way defined as the future 26th Street, from the terminus point of Schedule A in 2014-02STA to the intersection of Western Avenue, with the north one-half of the right-of-way consisting of a width of 35 feet for the entire length of the Project as described immediately above, together with a temporary construction easement thereto. The north half is included in the Christie Heights preliminary plat.

CITY agrees not to assess or otherwise charge the Developer for the acquisition costs incurred by the City for the south 35 feet of right-of-way for said Project.

CITY shall submit a billing statement to the Developer as soon as possible after the Project has been completed. The statement shall contain all of the construction costs to be billed to the Developer associated with the Project including but not limited to contract labor, material, engineering & design, construction administration, approved change orders, and surveying/staking associated with street and utility construction for said Project.

CITY shall bill the Developer five (5) annual installments of the total Project costs, together with zero (0) percent interest per annum on the unpaid balance. Interest at ten percent (10%) per annum and penalties applicable to any unpaid or delinquent installments shall be payable by Developer in the event of default. The first annual payment of the Project costs shall be due December 31, 2015, with subsequent annual payments due on December 31.

CITY shall submit the unpaid balance to the County for assessment and collection on property taxes in accordance with the procedure for Plan One in SDCL 9-43-102 in the event any payments are delinquent pursuant to the payment schedule as described in the preceding paragraph. Such delinquencies shall have an interest rate of ten percent per annum (10%) from the due date of the payment. Exhibit "A" attached hereto sets forth the real property which is subject to assessment pursuant to this Agreement.

Developer and its successors and assigns shall remain obligated to pay the outstanding unpaid balance of this Contract (this MOU), and any amounts which are past due will be assessed to Developer's property and levied against the property owned by Developer which adjoins the right-of-way described herein and its successors and assigns.

This Memorandum of Understanding (MOU) shall replace the MOU approved by the CITY and DEVELOPER dated April 9, 2014 which shall be null and void.

Dated: May 5, 2014
City of Brookings

Tim Reed, Mayor

Dated: May 5, 2014
Oakwood Equity

Tim Burns, Manager

ATTEST:

Shari Thornes, City Clerk

Exhibit "A"

The W½ Of The Nw¼ Of Section 2, Township 109 North, Range 50 West Of The 5th P.M., Brookings County, South Dakota, Except The North 1550.0 Feet And Except Christie Third Addition. Subject to Public Road Right-Of-Way and Easements of Record.

Tract contains 25.5 Acres more or less of which 0.8 Acre more or less is Public Road Right-Of-Way.

Adjourn. A motion was made by Corbett, seconded by Hansen, to adjourn. All present voted yes; motion carried. Meeting adjourned 4:36 p.m.

CITY OF BROOKINGS

Tim Reed, Mayor

ATTEST:

Shari Thornes, City Clerk