

Agenda
Finance / Safety Committee Meeting
City Hall – Council Chambers

Tuesday, January 2, 2018
Call to Order

5:30 PM

1. Approval of Agenda
2. Consideration of Memorandum of Understanding for financing construction of improvements to 26th Street E in the US 212 ROW
3. Old Business
4. New Business
5. Executive Session pursuant to SDCL 1-25-2
6. Adjourn

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("Memorandum") between the City of Watertown, South Dakota ("City"), CO-HO, Inc. ("CO-HO"), and Glacial Lakes Capital, LLC ("GLC"), is made to memorialize the terms and understanding of process agreed by the parties through mediation held December 20, 2017.

WHEREAS, all parties desire the expedient construction within the City of Watertown, of that part of 26th Street East from the current pavement on US Highway 212, North to 8th Avenue South;

WHEREAS there are disputes as to ordinance responsibility for costs, contractual responsibility for costs, and for damages in tort by actions of entities;

WHEREAS there exists potential responsibility for costs and damages by entities outside of this Memorandum;

WHEREAS in an effort to resolve said disputes, but with the primary goal of achieving a solution that would allow for the 26th Street East construction to occur in the most expedient fashion, a mediation between the parties occurred. The mediation concerned who should pay for the construction to occur in the 212 right of way. CO-HO estimates the costs in the right of way to be about \$145,000, and GLC and City estimate the costs at about \$171,000. All parties hope the actual costs will be less than their estimates.

NOW THEREFOR, pursuant to the mediated settlement, the parties agree in principal as follows:

1. The parties agree that CO-HO shall be responsible for the completion of the construction of 26th Street East from the pavement on 212 to Eight Avenue North

according to the engineering and design requirements now completed, or hereafter amended as required by professional standards.

2. In contracting or subcontracting the actual construction CO-HO will treat the construction as one project, but CO-HO and the contractors shall separate out the costs in the right of way from the costs North of the right of way on a true basis. City and GLC shall be consulted in that regard.
3. The City shall contribute 100% of the construction costs in the 212 right of way, but said contribution shall not exceed \$100,000.
4. GLC will reimburse CO-HO 100% of its construction costs in excess of \$100,000 in the 212 right of way, but not to exceed \$5,000.
5. CO-HO will bear all costs of construction incurred from this date forward in the 212 right of way in excess of \$105,000.
6. CO-HO shall convey to the City Lot H2 and GLC shall convey to the City Lot H1, and shall sign such documents as may be reasonably required dedicating said property to the public as a right-of-way.
7. GLC will reimburse CO-HO one half of the costs of constructing that part of 26th Street North of the right of way and abutting GLC's property.
8. GLC and CO-HO dispute ownership of approximately 33 Feet on the North. Whichever of them is finally determined to own the disputed tract will pay the costs of constructing the West half of 26th Street abutting the tract, unless in their resolution of the ownership they come to a different agreement.

9. The City agrees with GLC that it will not seek payment from GLC for any infrastructure presently constructed or placed in 26th Street abutting GLC property or the disputed 33 Feet previous to the date of this Agreement.
10. This agreement is contingent upon there being none but de minimus changes to the engineering and design requirements now completed.
11. CO-HO and the City shall cause to be amended in conformity with this Memorandum the presently executed Development Agreement for the 26th Street East approach which purports to require CO-HO to pay the entire costs of the work on said approach.