

City Council Agenda

City Council Chambers, City Hall, 612 N. Main Street

April 5, 2019

Committee Meetings (if any) will be first; immediately followed by the City Council Meeting.

1. 1:00 PM Call To Order

2. Pledge Of Allegiance

3. Roll Call

4. Citizens Input

If you need to address the Mayor and members of the City Council on an item that was not on the agenda, excluding personnel items, please come forward to the podium and state your name and your concern. Presentations are limited to three minutes. Items will be considered but no action will be taken at this time.

5. Action To Approve Agreement #A2019-17, 115/117 North Main Nuisance Settlement Agreement

Documents:

[AGENDA ITEM- AGREEMENT A2019-17.PDF](#)

[SETTLEMENT AGREEMENT- MCPPEEK NUISANCE \(REVISED JJ 4-4-2019\).PDF](#)

6. Adjourn

Individuals with disabilities who require special assistance to take part in this meeting may contact one of the following at City Hall (605) 995-8420 at least 24 hours prior to the meeting with requests for assistance: Human Resources Officer, Finance Officer, Public Works Director, or City Administrator.

CITY OF MITCHELL

City Council Meeting
Agenda Item Request



The deadline for agenda items is Wednesday at noon, prior to the City Council Meeting

Meeting Date Requested: Requested By:

Desired Action of City Council: Authorization Approval Resolution
 Ordinance Citizen Request Discussion

Amount Budgeted in current fiscal year for this item (if applicable):

Agenda Item:

Explanation/Background of Agenda Item Requested:

NUISANCE SETTLEMENT AGREEMENT

This Agreement, made and effective as of the date subscribed below, by and between the City of Mitchell, a South Dakota municipal corporation, hereafter “City”, and Austin and Laretta McPeek, husband and wife, hereafter “McPeeks”, and AM & LM LLC, a South Dakota limited liability company, hereafter “LLC”, and collectively as the “parties”.

WHEREAS this Agreement relates to property at 115 and 117 N Main Street, Mitchell, SD 57301, hereafter “Property”, which is legally described as:

“Lot 4 and Lot 5 except W 88’ of Lot 5, Block 13, Original Town (now city) of Mitchell, Davison County, South Dakota.”; and

WHEREAS the City declared the Property a nuisance in violation of state law and city ordinance due to the condition of the structures thereon; and

WHEREAS McPeeks and LLC, by executions of this Agreement, make no admission as to the existence of past or ongoing alleged nuisance conditions at or on the Property and hereby fully deny the same; and

WHEREAS the parties have reached a mutual resolution to address the nuisance conditions and desire to memorialize said resolution via the execution of this Settlement Agreement.

FOR AND IN CONSIDERATION OF the mutual promises and obligations contained in this Agreement, the Recitals of which are a contractual part hereof, the City, McPeeks, and LLC agree as follows:

1. McPeeks will contract directly with a responsible demolition contractor in order to safely and legally demolish all nuisance structures on the Property. The parties understand that the estimated cost of the demolition project is expected to be \$81,632.80, however, all parties acknowledge that costs may exceed said projection. City shall have the right to review and approve costs exceeding the estimate. City will pay such contractor directly for such work and McPeeks will be responsible for the repayment of such funds to the City upon the further terms and conditions of this Agreement.

A. McPeeks will ensure that their selected demolition contractor submits a demolition and safety plan to acquire a demolition permit. While the City will review the submitted plans for plainly visible issues, and provide courtesy copies to adjacent owners, the City does not give any guarantee of any nature as to the safety, sufficiency, or prudence of such plan.

B. If any additional costs or damages arise due to damage of adjacent structures, City shall not be presumed to be financially responsible for such costs.

2. The payment by City of the demolition contractor expenses shall be deemed a loan whereby City is the Creditor and Austin McPeek and Laretta McPeek, in their individual capacities, are joint and several Debtors. The parties understand that actual expenses may exceed the estimate and all actual project expenses paid to McPeeks selected demolition contractor by the City will be included as part of the loan to comprise the Total Initial Balance.
3. McPeeks shall be responsible for repaying the loan's Total Initial Balance over a term of 20 years. McPeeks will make monthly payments beginning on July 1, 2019 and the first of each month thereafter until the Total Initial Balance is paid in full. The amount of each of the 240 monthly payments shall be equal in amount and based upon the total cost of the demolition project. The loan will not accrue any interest (0.00% APR). As payments are made, the Total Initial Balance shall be reduced by the amount of the payments made to create the Remaining Balance. The City may report the loan and payment history on the loan to one or more credit bureaus.
4. LLC does hereby GRANT to the City an Option to purchase the Property for \$1.00 in the event that McPeeks default on repayment of the loan. Such Option shall expire if the loan is repaid in full.
5. If McPeeks default on repayment of the loan and City exercises its Option to purchase the Property, McPeeks shall remain jointly and severally liable for the Remaining Balance of the loan and shall consent to a judgment being entered to that effect. However, the Remaining Balance shall be reduced by the Fair Market Value of the Property at the time City exercises its Option.
6. LLC shall not sell, transfer, or otherwise convey the Property without written consent of the City while the loan has any Remaining Balance.
7. This Agreement shall be recorded with the Davison County Register of Deeds and shall serve as notice against all future potential transferees of the City's interest in the Property and that the Property is subject to the City's interests herein described.
8. The City, McPeeks, and LLC will cooperate in exploring opportunities for redevelopment of the property. In connection with a redevelopment opportunity, the City may (i) provide consent for LLC to transfer the property to a third party; (ii) release City's Option on the property; (iii) forgive part or all of McPeeks' Remaining Balance; (iv) take such other action as the City may deem appropriate in connection with the redevelopment opportunity; or (v) disapprove of the redevelopment opportunity and take no action. The parties acknowledge that the City is the owner of land to the south of the Property and, at City's discretion and in compliance with applicable state law, City may consider the transfer of such land as part of a redevelopment opportunity.
9. The City will keep an account of the landfill dumping fees associated with the demolition contemplated herein. At the time that the Remaining Balance is reduced to the amount of the dumping fees, McPeeks may request that the City Council waive the Remaining Balance. Upon

receiving such request, the City Council will waive the Remaining Balance if the City Council determines, in its sole discretion, that McPeeks' payment history has been acceptable.

10. McPeeks, and LLC, their successors, officers, employees, agents, and assigns, do hereby agree to indemnify and hold harmless the City of Mitchell, its employees, directors, officers, agents, and assigns, from any and all debts, liabilities, claims, demands, damages, actions, causes of action, costs, expenses (including attorney's fees), and compensation, arising out of the abatement/demolition of the alleged nuisance conditions on the Property. McPeeks and LLC shall require their selected demolition contractor to similarly indemnify the City and list the City as an additional insured in relation to the project. Such indemnification shall not apply to the extent such debts, liabilities, claims, demands, damages, actions, causes of action, costs, expenses (including attorney's fees), or compensation arise out of a negligent act or omission of the City; but such indemnification shall still apply to City's approval, negligent or not negligent, of a demolition permit based on a plan from McPeeks, LLC, or McPeeks selected demolition contractor.

11. In the event that another property owner on Main Street enters into a more favorable agreement with the City for demolition of a nuisance building, McPeeks may request that the City Council forgive all or part of the Remaining Balance or renegotiate the terms of this Agreement. The City will have no obligation to take any action requested under this section.

12. Nothing in this Agreement shall be interpreted to create any special relationship between the parties except the Debtor/Creditor relationship explicitly stated herein. The parties will in all other aspects be considered independent contractors.

13. In the event the public invokes the public referendum process in relation to this Agreement, then this Agreement shall be deemed contingent upon the election results in relation to such referendum being in favor of proceeding with this Agreement.

14. This Agreement does not bestow any rights or interests upon any third party beneficiary and is for the sole benefit of the parties hereto.

15. This Agreement constitutes the full and final agreement of the parties and supersedes any prior agreement, verbal or written, in relation to the subject matter addressed herein.

16. If any provision or part of a provision of this Agreement shall be found to be unenforceable, then such provision or part of such provision shall be severed to the extent it is unenforceable and the remainder of the Agreement shall remain in full force and effect.

Dated this ____ day of _____, 2019.

[signature page to follow]

CITY OF MITCHELL, SD

(seal)

Attest: _____
Robert B. Everson, Jr., Mayor

Michelle Bathke, Finance Officer

AM & LM LLC

Austin James McPeek, authorized representative of AM & LM LLC

Austin James McPeek, in his individual capacity

Laretta Jean McPeek, in her individual capacity