



Special City Council Meeting Agenda
City Council Chambers, City Hall, 612 N. Main Street
December 27, 2023

- 1. 5:00 PM Call to Order**
- 2. Pledge Of Allegiance**
- 3. Roll Call**
- 4. Action to Approve Agreement #A2023-64, Real Estate Purchase Agreement-Ground Storage Tank Area**
- 5. Motion to Enter into Executive Session According to SDCL 1-25-2 (3) Legal**
- 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 or the 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:	December 27, 2023	Requested By:	Justin Johnson
Desired Action of City Council:			
Amount Budgeted in current fiscal year for this item (if applicable):	Not Budgeted (\$10,000 from water fund)		
Agenda Item:	Action to Approve Agreement #A2023-64, Real Estate Purchase Agreement-Ground Storage Tank Area		
Explanation/Background of Agenda Item Requested:	The City Council previously approved a resolution setting this matter for hearing and appointing an appraisal board for the property. The land swap as proposed includes the City transferring about 4 acres of land north of the new ground storage tank and \$10,000 in exchange for about 6.7 acres of land west of the railroad tracks in the same general area. The transfer will help facilitate future water projects in the area.		

REAL ESTATE EXCHANGE AGREEMENT (A2023-64)

This Real Estate Exchange Agreement (“Agreement”), made and entered into this ____ day of December, 2023, by and between Mitchell Properties HL2, LLC, hereinafter referred to as “LLC,” and the City of Mitchell, South Dakota, hereinafter referred to as “the City.”

WITNESSETH:

WHEREAS, the City of Mitchell owns a parcel of land where the ground storage tank is being constructed which land is legally defined as:

Tract 1, Mitchell Waterworks 1st Addition in the SW ¼ of the SW ¼ of Section 35, Township 103 North, Range 60, West of the 5th P.M., Davison County, South Dakota.; and

WHEREAS Mitchell Properties HL2 LLC (LLC) is the owner of certain property in the area of the ground storage tank which is legally defined as:

Southwest Quarter (SW ¼) Ex H1 & RY and Ex Tract 1, Mitchell Waterworks 1st Addition in the Southwest Quarter (SW ¼) of the Southwest Quarter (SW ¼) of Section 35, Township 103 North, Range 60, West of the 5th P.M., Davison County, South Dakota.

WHEREAS the City of Mitchell and LLC desire to exchange certain portions of the above-described properties; and

WHEREAS the exchange involves the City of Mitchell transferring to LLC a sum of \$10,000.00 and the portion of land described as follows:

North Two Hundred Sixty-six feet (266’) of Tract 1, Mitchell Waterworks 1st Addition in the SW ¼ of the SW ¼ of Section 35, Township 103 North, Range 60, West of the 5th P.M., Davison County, South Dakota. (hereinafter “City Property”)

WHEREAS the proposed exchange involves LLC transferring to the City of Mitchell the portion of land described as follows:

That portion of the Southwest Quarter (SW ¼) lying West of RY and Ex H1 of Section 35, Township 103 North, Range 60, West of the 5th P.M., Davison County, South Dakota. (hereinafter “LLC Property”)

NOW, THEREFORE, in consideration of the mutual representations, warranties, and covenants set forth herein, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do agree as follows:

1. Conveyance.

On the terms and subject to the conditions set forth in this Agreement, LLC shall sell, convey, transfer, warrant, and assign to City, and City shall purchase, acquire, and assume from

LLC, the above-described LLC Property, together with all improvements thereon and all appurtenances attached thereto.

On the terms and subject to the conditions set forth in this Agreement, City shall sell, convey, transfer, warrant, and assign to LLC, and LLC shall purchase, acquire, and assume from LLC, the above-described City Property, together with all improvements thereon and all appurtenances attached thereto.

2. Purchase Price. In addition to the above-described exchange of real properties between City and LLC, the City shall also pay to LLC the amount of \$10,000.00.

3. Closing. The “Closing” or “Closing Date” shall be held On December 28, 2023 or as soon as possible following approval of this agreement. At Closing, each party shall transfer their respective Lots to the other party by good and sufficient Warranty Deed.

4. Special Terms of Transfer. The parties agree that the following additional terms shall apply to the transfer and will survive the closing:

- a. City will maintain an easement upon the west 66’ of the City Property for purposes of the construction and installation, and thereafter to use, operate, inspect, maintain, repair and replace a large volume water transmission line, including connections, valves, and all other devices in connection therewith for water transmission purposes, over, across, and through the above described west 66’ of the City Property.

5. Conditions Precedent to Closing.

- a. Each party shall be responsible for their own costs in relation to this transfer. For recording fees, each party shall be responsible for the costs of recording the deed for the property which it is acquiring.

6. Due Diligence. Each party’s obligation to exchange the lots is specifically subject to a satisfactory inspection, test, and review of the lots, including but not limited to, any feasibility studies, environmental assessments (including but not limited to a Phase I and/or Phase II or other environmental tests, studies or reports), zoning review, examinations, appraisals, boring, or other surveys or tests, and any other test, review or inspection deemed necessary by a party. The costs and expenses incurred in the due diligence review performed by a party shall be the requesting party’s obligation. Such party shall complete the due diligence review prior to December 27, 2023 and agrees to promptly commence its due diligence review. Each party shall have reasonable access to the lots to conduct its inspections, tests, and due diligence review. To the extent the due diligence review is not acceptable to a party, then such party shall have the option to terminate this Agreement. In such event, the parties hereto shall have no further rights, duties or obligations under this Agreement.

7. Representations and Warranties. The parties represent and warrant the following to each other, each of which representation and warranty shall be true and effective as of the date of Closing:

- a. Ownership. LLC has good and marketable fee simple title to the LLC Property. At Closing, LLC shall sell, transfer, convey and assign to City fee simple ownership in the LLC Property free and clear of any and all liens, mortgages, encumbrances, security interests, pledges and restrictions or other interest or obligations of whatever kind and nature, except as permitted pursuant to this Agreement. City has good and marketable fee simple title to the City Property. At Closing, City shall sell, transfer, convey and assign to LLC fee simple ownership in the City Property free and clear of any and all liens, mortgages, encumbrances, security interests, pledges and restrictions or other interest or obligations of whatever kind and nature, except as permitted pursuant to this Agreement.
 - b. Ability to Contract. Each party has the full right, power and authority to enter into this Agreement to sell and convey the respective lots to the other party and this Agreement shall be a valid and binding obligation of both parties, subject to the terms and conditions contained herein.
 - c. Proceedings. To the best of each party's knowledge, there is no action, litigation, investigation, condemnation proceeding, judgment, executions, bankruptcies, zoning changes or any other proceeding of any kind outstanding, pending, or threatened, against either party or any portion of the lots.
 - d. Liens. No work has been performed or is in the process of being performed by either party or at the direction of either party, and no materials have been furnished to any of the lots or any portion thereof, which might give rise to mechanic's, materialman's or other liens against the lots.
 - e. Familiarity with the Property. Subject to the completion of their due diligence investigations, each party is familiar with the physical condition of the lots, has inspected the same, and is taking the same in its "AS IS" condition without any warranty or guaranty by the other party.
8. Obligations at Closing. At Closing, the following shall occur:
- a. LLC shall deliver to City, or its assigns, the following executed documents:
 - (i) A good and sufficient Warranty Deed(s) for the LLC Property;
 - (ii) Certificate(s) of Real Estate Value;
 - (iii) Such other documents as deemed necessary by City or its counsel to transfer the Property to City or as may be required pursuant to this Agreement.
 - b. City shall deliver to LLC:
 - (i) A good and sufficient Warranty Deed(s) for the City Property;
 - (ii) Certificate(s) of Real Estate Value;
 - (iii) Such other documents as deemed necessary by City or its counsel to transfer

the Property to City or as may be required pursuant to this Agreement.

9. Miscellaneous.

- a. Possession. City shall be entitled to sole, exclusive and immediate possession and the right to occupy the Property upon the Closing, except as may be provided herein.
- b. Governing Law. This Agreement is subject to and shall be governed by and construed and enforced in accordance with the laws of the State of South Dakota without regard to conflict of laws principles.
- c. Survival of Representations and Warranties. The representations and warranties contained herein shall survive Closing and are and shall be deemed to be continuing representations and warranties.
- d. Counterparts/Facsimile/Electronic Signature. This Agreement may be executed by electronic signature, facsimile and in any number of counterparts as deemed appropriate by the parties, all of which taken together shall constitute one and the same instrument. Reproductions of original signature via pdf/scanned signatures shall be deemed an original for purposes of execution of this instrument.
- e. Time is of the Essence. It is expressly understood and agreed by the parties that time is of the essence in this Agreement.
- f. Benefit. This Agreement shall inure to the benefit of and be binding upon the parties hereto and also upon their respective heirs, representatives, successors and assigns.
- g. Severability. Should any provision in this Agreement be deemed unenforceable as to a particular circumstance or set of facts, the unenforceability shall be limited to such circumstance or set of facts and all remaining provisions of this Agreement shall remain fully binding and enforceable as between LLC and City.
- h. Further Assurances. Each party, upon the request of the other, agrees to perform any further acts, and to execute and deliver any other documents, which are reasonably necessary to carry out the provisions of this Agreement.
- i. Entire Agreement; Waiver. This Agreement contains the entire agreement of the parties. It may not be changed orally but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension, or discharge is sought. A waiver of any term or provision shall not be construed as waiver of any other term or provisions or as waiver of subsequent performance of the same provision of this Agreement.
- j. Drafting Presumption. City and LLC agree that they participated in the drafting of this Agreement and, in the event that any dispute arises in the interpretation or construction of this Agreement, no presumption shall arise that either one party or the other drafted this Agreement.

- k. Notices. All notices or demands given or required to be given hereunder shall be in writing and sent by United States registered or certified mail, postage prepaid, to the last known address of the parties, or at any other address to which the parties designate notices shall be sent.

IN WITNESS WHEREOF, City and LLC have hereunto executed this Agreement on the date and year first above written.

MITCHELL PROPERTIES HL2, LLC:

Mitchell Properties HL2, LLC

By: _____

Its: _____

STATE OF _____)
:SS

COUNTY OF _____)

On this _____ day of December, 2023, before me, the undersigned officer, personally appeared Jarrid Herrmann, who acknowledged himself to be a member of Mitchell Properties HL2, LLC, and that in his official capacity, being authorized to do so, executed the foregoing instrument for the purposes stated therein.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public – State of _____
My Commission Expires: _____

(seal)

CITY:

CITY OF MITCHELL, SOUTH DAKOTA

Robert B. Everson, Jr., Mayor

Attest:

Michelle Bathke, Finance Officer

(seal)

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF DAVISON)

On this _____ day of December, 2023, before me, the undersigned officer, personally appeared Robert B. Everson, Jr. and Michelle Bathke, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Mitchell, a South Dakota municipal corporation, and that in their official capacities, being authorized to do so, executed the foregoing instrument for the purposes stated therein.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public – South Dakota
My Commission Expires: _____

(seal)

RESOLUTION #R2023-90

A RESOLUTION SETTING A HEARING AND APPOINTING APPRAISERS FOR THE EXCHANGE OF REAL PROPERTY IN THE AREA OF THE GROUND STORAGE TANK

WHEREAS, the City of Mitchell owns a parcel of land where the ground storage tank is being constructed which land is legally defined as:

Tract 1, Mitchell Waterworks 1st Addition in the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 35, Township 103 North, Range 60, West of the 5th P.M., Davison County, South Dakota.; and

WHEREAS Mitchell Properties HL2 LLC (LLC) is the owner of certain property in the area of the ground storage tank which is legally defined as:

Southwest Quarter (SW $\frac{1}{4}$) Ex H1 & RY and Ex Tract 1, Mitchell Waterworks 1st Addition in the Southwest Quarter (SW $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section 35, Township 103 North, Range 60, West of the 5th P.M., Davison County, South Dakota.

WHEREAS the City of Mitchell and LLC desire to exchange certain portions of the above-described properties; and

WHEREAS the proposed exchange would involve the City of Mitchell transferring to LLC a sum of \$10,000.00 and the portion of land described as follows:

North Two Hundred Sixty-six feet (266') of Tract 1, Mitchell Waterworks 1st Addition in the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 35, Township 103 North, Range 60, West of the 5th P.M., Davison County, South Dakota.

WHEREAS the proposed exchange would involve LLC transferring to the City of Mitchell the portion of land described as follows:

That portion of the Southwest Quarter (SW $\frac{1}{4}$) lying West of RY and Ex H1 of Section 35, Township 103 North, Range 60, West of the 5th P.M., Davison County, South Dakota.

THEREFORE, BE IT RESOLVED by the City Council of the City of Mitchell, SD that, pursuant to SDCL 9-27-34.1, the following individuals shall be appointed to the appraisal board for the purpose of appraising the above-described City land to be transferred: Kevin Genzlinger, Jacob Sonne, JP Schmitz.

BE IT FURTHER RESOLVED, that the City Council shall hold a hearing relative to the above-described exchange on December 27th, 2023 at 5:00 PM in City Hall Council Chambers. Notice of hearing has been published at least 10 days in advance of the hearing in the local

newspaper as required by law. Following the hearing, the City shall take such action as it deems appropriate relative to this proposed land exchange.

Adopted by the Mitchell, South Dakota City Council in regular session this _____ day of December, 2023, with:

_____ votes cast in favor of adoption,
_____ votes cast against adoption, and
_____ votes abstaining.

Robert B. Everson, Jr. – Mayor

Attest:

(seal)

Michelle Bathke – City Finance Officer

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN to the general public and all interested parties that the City Council for the City of Mitchell will conduct a public hearing in the City Hall Council Chambers at 612 North Main Street, Mitchell, South Dakota at 5:00 PM on December 27, 2023 in regards to a proposed exchange of property described below pursuant to SDCL 9-27-34.1.

The City real property to be exchanged is legally described as follows:

North Two Hundred Sixty-six feet (266') of Tract 1, Mitchell Waterworks 1st Addition in the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 35, Township 103 North, Range 60, West of the 5th P.M., Davison County, South Dakota.

The real property to be received is legally described as follows:

That portion of the Southwest Quarter (SW $\frac{1}{4}$) lying West of RY and Ex H1 of Section 35, Township 103 North, Range 60, West of the 5th P.M., Davison County, South Dakota.

At the above stated time and place, all interested parties will be afforded a reasonable opportunity to express their views on the proposed exchange. Following such hearing, the City Council may take such action regarding said Lease as the Council deems appropriate.

Dated this ____ day of December, 2023.

Michelle Bathke – Finance Officer

Published once on: _____

Approximate publication cost: _____

Exhibit A

