

RESOLUTION NO. 1455

RESOLUTION APPROVING A LAND EXCHANGE AGREEMENT WITH CROELL REDI-MIX, INC.

WHEREAS, Croell Redi-Mix, Inc. ("Croell") is located adjacent to E. Main Street in the City; and

WHEREAS, Croell and the City were both interested in moving Croell's operations to an area of the City that would benefit Croell's operations and also open up property for redevelopment off of Main Street; and

WHEREAS, to that end, the City has negotiated a Purchase Agreement with Rummells Farms, Inc. to acquire an approximate 12-acre parcel off of Fawcett Drive; and

WHEREAS, the City Attorney has negotiated a Land Exchange Agreement whereby the City will convey 8 acres of the said parcel to Croell for the relocation and reconstruction of its Main Street operations; and

WHEREAS, in exchange for conveying said 8-acre to Croell, Croell will convey its Main Street property to the City of West Branch.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of West Branch, Cedar County, Iowa, that the aforementioned Land Exchange Agreement be and the same is hereby approved. Further, the Mayor and City Clerk are hereby directed to execute said Land Exchange Agreement on behalf of the City.

Passed and approved this 2nd day of May, 2016.



Roger Laughlin, Mayor

ATTEST:



Matt Muckler, City Administrator/Clerk

Prepared by: Kevin D. Olson, West Branch City Attorney, PO Box 5640, Coralville, Iowa 52241 (319) 351-2277
Return to: West Branch City Clerk, 110 N. Poplar Street, West Branch, Iowa 52358 (319) 643-5888

LAND EXCHANGE AGREEMENT

THIS LAND EXCHANGE AGREEMENT (the "Agreement") entered into by and between the City of West Branch, Iowa, 110 N. Poplar Street, West Branch, Iowa 52358, hereinafter referred to as the "City"; and Croell Redi-Mix, Inc., an Iowa corporation, 2010 Kenwood Avenue, New Hampton, Iowa 50659, hereafter referred to as "Croell."

WHEREAS, Croell is the owner of that certain real property generally referred to as 325 E. Green Street in West Branch, Iowa, where it operates a concrete batch plant, the legal description being shown on Exhibit "A" attached hereto (the "Croell Property"); and

WHEREAS, the City has under contract to purchase that approximate 12.11-acre parcel generally referred to as 145 Fawcett Drive, and legally described as Lot 4, Rummells Commercial Subdivision, West Branch, Iowa (the "City Property"); and

WHEREAS, the City desires to acquire the Croell Property for future redevelopment of the downtown area of the City; and

WHEREAS, to that end, Croell and the City have agreed to exchange the Croell Property for a portion of the City Property consisting of the rear or North eight (8) acres of the City Property, as shown on Exhibit "B" attached hereto (the "Croell Relocation Property");

WHEREAS and the City is acquiring the Croell Property for public purposes through the power of eminent domain and a Declaration of Value will not be required to be filed along with the deed of conveyance from Croell to the City; and

WHEREAS, the parties now desire to submit to writing the terms and conditions of this land exchange between the parties.

NOW, THEREFORE, for the parties' mutual consideration and agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

A. City Obligations.

1. The City shall enter into an agreement with Rummells Farms, Inc. or any successor in interest to Rummells Farms, Inc., to purchase the City Property and shall pay all expenses associated with said purchase.

2. At the City's expense, the City shall cause a licensed engineer to subdivide the City Property such that the Croell Relocation Property shall become a separate legal parcel with a separate legal description, capable of being legally conveyed from the City to Croell. The plat of survey of such subdivision will be reviewed and approved by both parties prior to its final approval and recording, and shall be prepared and approved in accordance with all legal requirements

3. That the City shall hold a public hearing for disposition of the Croell Relocation Property, pursuant to Section 364.7 of the Code of Iowa, to convey the Croell Relocation Property to Croell in accordance with the terms of this Agreement, Iowa law and the Iowa Land Title Standards.

4. That the City shall have the option, at its sole cost and expense, to cause a Phase I environmental analysis and, if deemed necessary, a Phase II environmental analysis to be completed on the Croell Property. The City shall provide Croell with copies of all reports resulting from said analyses. Croell shall execute any reasonable access agreements needed by the City's consultants to perform said Phase I and Phase II testing.

5. The City represents and warrants to Croell that the Croell Relocation Property will have the proper zoning classification and all other authorization necessary, excepting therefrom the provisions of B.3 and obtaining a building permit, from the City to permit Croell to construct and operate a ready mix plant thereon as well as any other operations and activities currently conducted by Croell on the Croell Property.

B. Croell Obligations.

1. Notwithstanding anything herein to the contrary, the City acknowledges and agrees that the City and the City's representatives have, or prior to conveyance of the Croell Property to the City will have, fully inspected the Property, or have been provided with an adequate opportunity to do so, and that upon such conveyance the City will accept the Croell Property and all improvements thereon in their "AS IS, WHERE IS" condition "WITH ALL FAULTS", subject to Croell's right to remove the exiting ready mix plant, conveyors, bins and aggregate material pursuant to Section B.2, below. Neither Croell nor any agent, employee, or any other party acting on behalf of Croell has made any representations or warranties whatsoever, whether written or oral, express or implied, regarding the Croell Property, its

condition or its habitability, merchantability or fitness for a particular purpose, including without limitation any representations or warranties relating to the value, nature or condition of the Croell Property or the subsurface of the Croell Property, suitability of the Croell Property for the City's purposes, zoning, title, structural integrity, utilities, adjoining properties, access, liens, encumbrances, rights or claims on or affecting or pertaining to the Croell Property or the presence of hazardous materials of any kind whatsoever on the Croell Property. The terms of this Section B.1. shall survive the closing and conveyance of the Croell Property to the City. Croell expressly agrees that it has no knowledge of the existence of any hazardous materials and/or underground storage tanks on the Croell Property.

2. Croell will remove the existing ready mix plant, conveyors, bins and aggregate material from the Croell Property no later than ninety (90) days after completing its new ready mix plant on the Croell Relocation Property.

3. Prior to the City's conveyance, Croell shall submit a Site Plan for the development of the Croell Relocation Property for review by the City as required by the West Branch Code of Ordinances.

C. Conveyance of the Croell Relocation Property to Croell/Relocation of Croell Operations.

1. The City shall obtain an abstract of title, at its sole cost, continued until at least the date of this Agreement, or any date approved by the parties, which will show marketable title to the Croell Relocation Property in the City in accordance with this Agreement, Iowa law and the Iowa Land Title Standards of the Iowa State Bar Association and deliver it to Croell's attorney for examination. All costs associated with delivering marketable title to Croell shall be borne by the City.

2. Prior to the conveyance of the Croell Relocation Property to Croell, the City shall grant to Croell, a temporary construction easement to enter upon the Property to begin grading, paving and construction activities in accordance with its approved Site Plan which is acceptable to both parties. Croell shall be fully located and operational on the Croell Relocation Property within twenty (20) months of the execution of this Agreement.

3. Upon issuance of an occupancy permit to move Croell's operations to the Croell Relocation Property, the City will convey the Croell Relocation Property to Croell via Warranty Deed at no cost to Croell.

4. The City shall pay any and all real estate taxes which have accrued to the date of closing on the Croell Relocation Property, including without limitation real estate taxes for fiscal year 2015 and prior years, and the fiscal year 2016 real estate taxes prorated to the date of said closing. The City shall also pay all special assessments, if any, affecting the Croell Relocation Property as of the date of such closing.

5. All recording costs associated with the conveyance of the Croell Relocation Property shall be borne by Croell, except for the recording of the Plat of Survey as described in Section (A)(2) above.

D. Conveyance of the Croell Property to the City.

1. Prior to the conveyance of the Croell Property to the City, Croell, at its sole cost and expense, shall deliver to the City an abstract of title continued at least through the date of the closing on the Croell Property, which will show marketable title in Croell in accordance with this Agreement, Iowa law and the Title Standards of the Iowa State Bar Association. All costs associated with delivering marketable title to the City shall be borne by Croell.

2. After the City's conveyance of the Croell Relocation Property to Croell and satisfaction of Croell's obligations in this Section D, above, Croell shall convey the Croell Property via Warranty Deed to the City, at no cost to the City. Croell expressly agrees that this conveyance shall occur no later than ninety (90) days from the date on which Croell's new ready mix plant becomes operational on the Croell Relocation Property.

3. Croell shall be responsible for the payment of any and all real estate taxes that have accrued as of the date of conveyance of the Croell Property to the City.

4. City shall pay all recording costs associated with the conveyance of the Croell Property to the City.

5. Notwithstanding anything herein to the contrary, except as may be reasonably necessary in connection with the City's work on the Croell Property pursuant to Sections A.2, B.1 and A.4, above, Croell's obligations pursuant to this Agreement are expressly contingent on the City completing the City's obligations in Sections A and C, above, to the satisfaction of Croell, in Croell's sole and uncontrolled discretion. Croell shall not have any obligation to take any action whatsoever pursuant to this Agreement unless and until the City has completed its obligations pursuant to Sections A and C, above.

E. Miscellaneous Provisions.

1. Time is of the essence in this contract.

2. Remedies of the parties.

- a. If City fails to perform this contract, Croell shall have the right to require specific performance of this Agreement by City.
- b. If Croell fails to timely perform this contract, City shall have the right to require specific performance of this Agreement by Croell.

- c. Croell and City also are entitled to utilize any and all other remedies or actions at law or in equity available to them and shall be entitled to obtain a judgment for costs and attorneys' fees as permitted by law.

3. This contract shall apply to and bind the successors in interest of the parties.

4. Words and phrases shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context.

5. Certification. Croell and City each certify that they are not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order of the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and are not engaged in this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. Each party hereby agrees to defend, indemnify, and hold harmless the other party from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to a breach of the foregoing certification.

6. Both parties acknowledge that this contract is not enforceable against the City until such time as it is approved by the West Branch City Council. If the West Branch City Council does not approve this Agreement by May 3, 2016, then this Agreement shall become null and void and neither party shall have any further obligations to the other party pursuant to this Agreement

7. Both parties agree that if this Agreement is not executed by Croell no later than 4:00 p.m. on April 30, 2016 and approved by the West Branch City Council by May 3, 2016, that this Agreement shall become null and void and each party is responsible for its costs associated in negotiating this transaction.

8. The person(s) executing this Agreement on behalf of both parties are hereby authorized to do so for each party.

9. The provisions of this Agreement shall be interpreted under the laws of the State of Iowa, and any suit brought to enforce the terms of this Agreement shall be brought before the Iowa District Court for Cedar County.

Dated this 31st day of MAY, 2016.

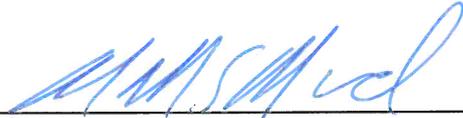
(Rest of this page is left intentionally blank)

CROELL:

CITY:

By: 
Kurt Croell, President


Roger Laughlin, Mayor
ATTEST:


Matt Muckler, City Administrator/Clerk

STATE OF IOWA, COUNTY OF CEDAR, ss:

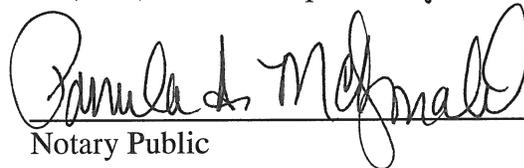
This instrument was acknowledged before me on this 31st day of May, 2016, by Roger Laughlin and Matt Muckler, as the Mayor and City Clerk respectively of the City of West Branch, Iowa, an Iowa municipal corporation.




Notary Public

STATE OF IOWA, COUNTY OF CHICKASAW, ss:

This instrument was acknowledged before me on this 2nd day of May, 2016, by Kurt Croell as President of Croell Redi-Mix, Inc., an Iowa corporation.


Notary Public

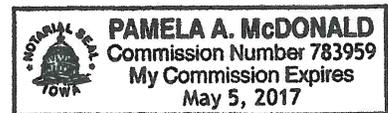


EXHIBIT "A"

Real estate identified in the records of the Cedar County, Iowa Assessor as follows:

Parcel No. 0500-13-05-356-003-0

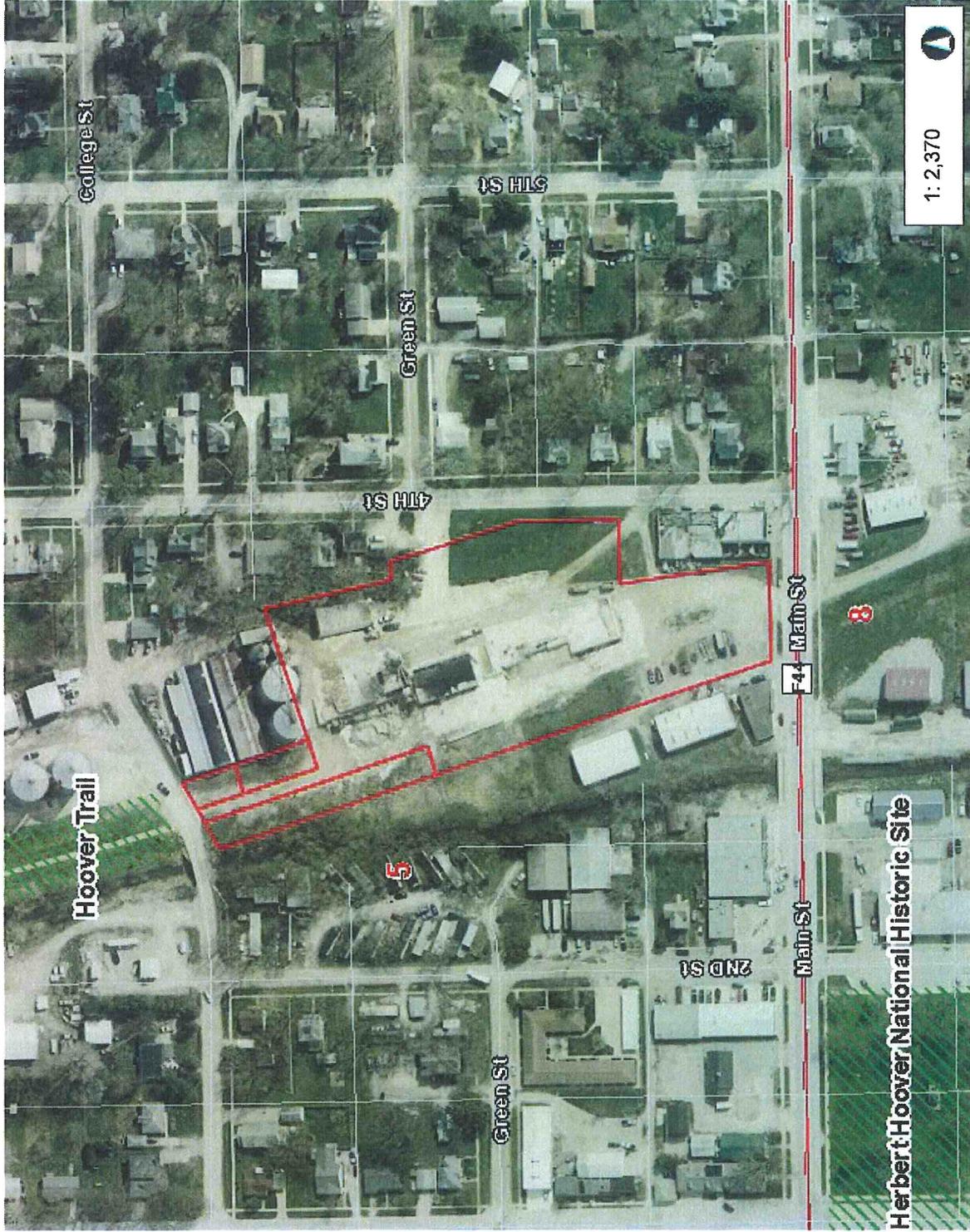
Parcel No. 0500-13-05-361-001-0

Parcel No. 0500-13-05-361-002-0

Parcel No. 0500-13-05-356-007-0

The exact legal descriptions of the foregoing parcels shall be determined by Croell within a reasonable time after execution of this Agreement.

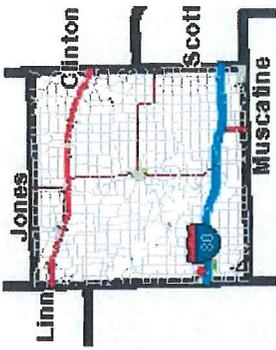
Cedar County, IA



1: 2,370

395.0 0 197.48 395.0 Feet

This map is a user generated static output from an internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.
THIS MAP IS NOT TO BE USED FOR NAVIGATION



Legend

- Road
 - County Roads / City Streets
 - INTERSTATE
 - STATE HIGHWAY
 - U.S. HIGHWAY
- Railroad
- Park
- Section
- County Boundary

Notes

EXHIBIT "B"

