

BILL NO. 2675

ORDINANCE NO. 2489

AN ORDINANCE TO EXCHANGE A 5.85 ACRE TRACT OF LAND LOCATED AT 18750, 18770 AND 18774 OLIVE STREET ROAD CURRENTLY OWNED BY THE CITY FOR A 5.85 ACRE TRACT OF LAND LOCATED AT 18772 OLIVE STREET ROAD OWNED BY CROWN DIVERSIFIED INDUSTRIES CORPORATION

WHEREAS, the City of Chesterfield owns 5.85 acres of land that was purchased for the construction of a stormwater reservoir; and

WHEREAS, the City needs to exchange the land it currently owns for 5.85 acres owned by Crown Diversified Industries Corporation for a reservoir, temporary storm water pump station and a permanent sanitary sewer lift station; and

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Section 1. The City Administrator of the City of Chesterfield is authorized to exchange the City's 5.85 acre tract for the 5.85 acre tract owned by Crown Diversified Industries Corporation and to sign all such deeds, agreements and other documents as are reasonably necessary to complete the exchange.

Section 2. Said Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this 6th day of OCTOBER, 2008.


MAYOR

ATTEST:


CITY CLERK

FIRST READING HELD: 10/6/08

EXCHANGE CONTRACT

THIS EXCHANGE CONTRACT made and entered into as of this ____ day of _____, 2008, by and between Crown Diversified Industries Corp., a Missouri corporation (hereinafter "Crown"), and the CITY OF CHESTERFIELD, a Missouri municipal corporation, (hereinafter "Chesterfield")

WHEREAS, Chesterfield owns a certain tract of land (hereinafter "Chesterfield's Property"), as further described on Exhibit A, within the City of Chesterfield, Missouri. The Property consists of approximately 254,637 Square Feet of land;

WHEREAS, Crown owns a certain tract of land (hereinafter "Crown's Property"), as further described on Exhibit B, within the City of Chesterfield, Missouri. The Property consists of approximately 254,637 Square Feet of land;

WHEREAS, Crown agrees to exchange Crown's Property for the Chesterfield's Property and Chesterfield agrees to exchange the Chesterfield's Property for Crown's Property;

WHEREAS, Crown will grant, as directed by Chesterfield, a Permanent Drainage Easement, as shown on Exhibit D.

NOW THEREFORE, for and in consideration of the foregoing and the mutual covenants hereof, the parties hereto stipulate, covenant, and agree as follows:

1. Crown agrees to exchange Crown's property with Chesterfield and Chesterfield agrees to exchange Chesterfield's property with Crown.
2. Closing shall be at the offices of US Title, 14422 S. Outer Forty Road, St. Louis, Missouri 63017 ("US Title"). The "Closing Date" shall be a date designated by Chesterfield in written notice to Crown confirming that the contingencies specified in

paragraphs 6 and 7 hereof have been fulfilled or waived by Chesterfield and Crown, which date must be within fifteen (15) days after such notice from Chesterfield and Crown.

3. On Closing Date, Crown shall execute and deliver to Chesterfield a Quit Claim Deed conveying marketable fee simple title to Crown's Property to Chesterfield subject only to general taxes (if any) due and payable as of Closing Date and special assessments, zoning, subdivision and land use laws, and covenants, restrictions, rights of way, easements and other restrictions now of record and satisfactory to Chesterfield in Chesterfield's sole judgment and discretion. On Closing Date, Chesterfield shall execute and deliver to Crown a Quit Claim Deed conveying marketable fee simple title to Chesterfield's Property to Crown subject only to general taxes (if any) due and payable as of Closing Date and special assessments, zoning, subdivision and land use laws, and covenants, restrictions, rights of way, easements and other restrictions now of record and satisfactory to Crown in Crown's sole judgment and discretion. Chesterfield and Crown will sign all other documents needed to complete this transaction including a boundary adjustment plan, Exhibit C.

General taxes and, if any, the current installment for special assessments shall be adjusted as of Closing Date based upon the respective periods of ownership of Chesterfield and Crown during the relevant taxing period.

4. On Closing Date, Crown shall execute and deliver to Chesterfield, as directed by Chesterfield, a Permanent Drainage Easement shown on Exhibit D.

5. Crown and Chesterfield agree that the value of the land they are exchanging is \$ 509,274.00.

6. The obligation of Chesterfield to close under this Exchange Contract is expressly contingent upon compliance with each of the following conditions and occurrence of each of the following events on or before the respective Contingency Date shown hereinafter for each contingency. In the event that on or before the Contingency Dates shown hereinafter, there has not been compliance with any of the following conditions or any of the following events have not occurred, then Chesterfield may, at its option, terminate this Exchange Contract or waive the unfulfilled contingencies. On or before each Contingency Date, Chesterfield shall notify Crown in writing (i) that the contingencies in question have been fulfilled or waived, or (ii) that this Exchange Contract is terminated by reason of unfulfilled contingencies. Failure to give notice within the times set forth herein shall be deemed an election to terminate this Exchange Contract because of contingencies. In the event Chesterfield exercises said option to terminate this Exchange Contract, this Exchange Contract shall be of no further force and effect, neither party shall have any further rights, obligations, or liability hereunder:

(a) Chesterfield, at Chesterfield's expense, shall have obtained from US Title a Commitment for an ALTA Owner's Policy of Title Insurance on the Property with exception only for such items as are satisfactory to Chesterfield in Chesterfield's sole judgment and discretion. Crown shall furnish such reasonable affidavits and evidence of payment of bills for labor and materials as may be necessary for Chesterfield to obtain an ALTA Owner's Policy of Title Insurance in accordance with said Commitment and with the standard exceptions for mechanics' liens and parties in possession deleted. (Contingency Date: 1 months after the Acceptance Date.)

(b) Chesterfield shall have obtained, at Chesterfield's expense, written

environmental reports, satisfactory to Chesterfield in Chesterfield's sole judgment and discretion, confirming that the Property and adjacent properties are free of all hazardous materials which might cause the Property to be in violation of any applicable environmental laws or governmental regulations. (Contingency Date: 1 months after the Acceptance Date.)

7. The obligation of Crown to close under this Exchange Contract is expressly contingent upon compliance with each of the following conditions and occurrence of each of the following events on or before the respective Contingency Date shown hereinafter for each contingency. In the event that on or before the Contingency Dates shown hereinafter, there has not been compliance with any of the following conditions or any of the following events have not occurred, then Crown may, at its option, terminate this Exchange Contract or waive the unfulfilled contingencies. On or before each Contingency Date, Crown shall notify Chesterfield in writing (i) that the contingencies in question have been fulfilled or waived, or (ii) that this Exchange Contract is terminated by reason of unfulfilled contingencies. Failure to give notice within the times set forth herein shall be deemed an election to terminate this Exchange Contract because of contingencies. In the event Crown exercises said option to terminate this Exchange Contract, this Exchange Contract shall be of no further force and effect, neither party shall have any further rights, obligations, or liability hereunder:

(a) Crown, at Crown's expense, shall have obtained from US Title a Commitment for an ALTA Owner's Policy of Title Insurance on the Property with exception only for such items as are satisfactory to Crown in Crown's sole judgment and discretion. Chesterfield shall furnish such reasonable affidavits and evidence of payment

of bills for labor and materials as may be necessary for Crown to obtain an ALTA Owner's Policy of Title Insurance in accordance with said Commitment and with the standard exceptions for mechanics' liens and parties in possession deleted. (Contingency Date: 1 months after the Acceptance Date.)

(b) Crown shall have obtained, at Crown's expense, written environmental reports, satisfactory to Crown in Crown's sole judgment and discretion, confirming that the Property and adjacent properties are free of all hazardous materials which might cause the Property to be in violation of any applicable environmental laws or governmental regulations. (Contingency Date: 1 months after the Acceptance Date.)

8. Each party hereto hereby represents to the other that said party has dealt with no real estate broker or other person, in such a manner as to give rise to a claim for real estate commission, or finders' fees, against the other party. Each party hereto agrees to indemnify and hold harmless the other against all claims for real estate commission, and/or finders' fees arising from this transaction and the conduct of the indemnifying party. The indemnifications herein contained shall survive Closing hereunder.

9. Notwithstanding the fulfillment or waiver of the contingencies specified in paragraph 6 and 7 hereof, Chesterfield and Crown shall not be obligated to close hereunder unless:

(a) Chesterfield and Crown can obtain from US Title on Closing Date, at Chesterfield's cost, for the applicable premium, an Owner's Policy of Title Insurance in ALTA form in accordance with the Commitment obtained pursuant to paragraph 6(a) hereof and with no additional exceptions, and with the standard exceptions for mechanics' liens, survey, and parties in possession deleted.

(b) None of the Property shall have been materially and adversely affected in any way between date hereof and Closing Date as a result of any legislative or regulatory change, or evidence of noncompliance with environmental laws and regulations.

(c) No legal action (including judicial or administrative actions) pertaining to the Property shall be pending, including but not limited to any action challenging the zoning of the Property or the approval of Crown or Chesterfield's site plan or the availability to Chesterfield or Crown of any required governmental permits.

10. Any notice or other communication required or which may be given hereunder shall be in writing and either delivered personally to Crown or to Chesterfield, mailed certified or registered mail, return receipt requested, postage prepaid, or delivered by messenger service, and shall be deemed given when so delivered personally, or if mailed or delivered, upon receipt (except that the failure of either party to accept delivery of notice shall cause the date of mailing or attempted personal delivery to be the date or receipt). The addresses of the parties are:

To Chesterfield: Mr. Michael G. Herring
City Administrator
City of Chesterfield
690 Chesterfield Parkway Road
Chesterfield, Missouri 63017

To Crown: Mr. Joe H. Scott, Sr.
1065 Executive Parkway. Ste. 300
St. Louis, Missouri 63141

Any party may change the persons and addresses to which notices or other communications are to be sent by giving written notice thereof in the manner provided herein for giving notice.

11. In order to induce Crown and Chesterfield to exchange the Properties,

Crown and Chesterfield make to each other the following representations and warranties, which representations and warranties shall survive Closing hereunder and shall be considered made as of the date hereof and as of Closing Date Crown and Chesterfield hereby agrees to advise the other party promptly upon obtaining knowledge of any facts that would result in a change to the representations and warranties contained in subparagraphs (b) and (c) below prior to Closing, provided that any party shall have the right to terminate this Exchange Contract upon receiving such notice:

(a) That, Crown and Chesterfield have no knowledge of any actions or proceedings pending in any court or before any governmental agency affecting the Property.

(b) That, to the best of Crown's and Chesterfield's actual knowledge and belief there are no pollutants, contaminants, or other substances, whether hazardous or not, on or beneath the surface of the Properties, which Crown or Chesterfield or any other person or entity has placed or caused or allowed to be placed upon the Properties, and which have caused or which may cause any investigation by any agency or instrumentality of government, which are or may be on the Property in violation of any law or regulation of any local, State, or Federal government.

(c) That, the undersigned is duly authorized to enter into this Sale Contract and to take all such action as may be necessary and proper to implement the same.

12. Crown and Chesterfield agree that after date hereof Crown and Chesterfield will not cause (i) any liens, whether voluntary or involuntary, any deeds of trust or mortgages, leases, or occupancy agreements to be placed on the Properties which

will not be released at Closing; or (ii) any easements, conditions, or restrictions to be placed on the Property without the prior written consent of Chesterfield or Crown, which consent Chesterfield and Crown will not unreasonably withhold. If any lien, voluntary or involuntary, exists at Closing, Chesterfield or Crown may cause that lien to be discharged and the cost to be deducted from the purchase price.

13. This Exchange Contract shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns and personal representatives.

14. This Exchange Contract contains the entire agreement of the parties with respect to the subject matter hereof, and all prior written and oral agreements, representations, undertakings and the like are merged into, and shall be superseded by, the provisions of this Exchange Contract.

15. Chesterfield has executed and delivered four (4) counterparts of this Exchange Contract to Crown. This Exchange Contract shall be null and void and of no force or effect unless Crown has delivered a fully executed counterpart hereof to Chesterfield on or before November 15, 2008, or such later date to which Chesterfield may extend said time in writing.

IN WITNESS WHEREOF, the undersigned have executed this Sale Contract as of the day and year first above written.

Crown Diversified Industries Corp.


By: Joe H. Scott, Sr.

CITY OF CHESTERFIELD
(a Missouri municipal corporation)

By: Michael G. Herring
City Administrator
Chesterfield