

DATE 8-1, 11

DOCU-
MENT

ATTACH-
MENTS

REVIEWED BY

[Signature]

[Signature]

PREPARED BY

CITY ATTORNEYS OFFICE

AN ORDINANCE TO PROVIDE FOR THE DISPOSITION BY SALE OF PROPERTY LOCATED IN TECHPARK, ROCK HILL, SOUTH CAROLINA BY THE CITY OF ROCK HILL TO THE HUTTON COMPANY, LLC

BE IT ORDAINED by the Governing Body of the City of Rock Hill, in Council assembled:

SECTION 1. That this Ordinance is being adopted in order to effect proper compliance with the provisions of the Home Rule Act of 1975, now South Carolina Code of Laws for 1976, Section 5-7-30, Section 5-7-40 and Section 5-7-260, and Section 2-48 and Section 2-96 of the Code of the City of Rock Hill.

SECTION 2. That the City of Rock Hill, South Carolina, is the owner of property containing approximately 1.1 acres located in TechPark, in the City of Rock Hill, York County, South Carolina; that The Hutton Company, LLC has recently purchased a 1.643 acre tract of land in TechPark from the City of Rock Hill and has asked to purchase an additional 1.1 acre tract from the City of Rock Hill for a purchase price of Fifty Thousand Dollars (\$50,000.00) per gross acre.

SECTION 3. That sale of the above mentioned tract to The Hutton Company, LLC for the consideration set forth above, all as is more fully set forth in a Purchase and Sale Agreement, a copy of which is attached hereto and incorporated herein, is hereby approved, authorized, directed, ratified and confirmed in all respects.

SECTION 4. That all ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 5. That this Ordinance shall be and become finally binding immediately after same shall have received first and final readings, given in manner required by law.

DONE AND RATIFIED in Council assembled on this the ____ day of _____, 2011.

A. Douglas Echols, Jr., Mayor

Susie B. Hinton, Mayor Pro Tempore

John A. Black, III, Councilmember

Kathy S. Pender, Councilmember

James C. Reno, Jr., Councilmember

Osbey Roddey, Councilmember

Kevin H. Sutton, Councilmember

ATTEST:

Anne H. Poag
Municipal Clerk

97045.1
July 22, 2011

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into as of the latest date of Buyer's or Seller's execution set forth on the signature page hereto (the "Effective Date"), by and between **CITY OF ROCK HILL, S.C.**, a South Carolina municipal corporation, with an address of 155 Johnston Street, Rock Hill, South Carolina 29731-1706, Attention: City Manager, Telephone: (803) 329-7090, Facsimile: (803) 329-7007 ("Seller"), and **THE HUTTON COMPANY, LLC**, a Tennessee limited liability company, with an address of 736 Cherry Street, Chattanooga, Tennessee 37402 ("Buyer") (Seller and Buyer may be referred to in this Agreement individually as a "Party" and collectively as the "Parties").

Statement of Purpose

Seller owns a tract of land on Lakeshore Parkway in the City of Rock Hill, York County, South Carolina, with tax parcel number 628-04-01-001. Seller recently conveyed title to a 1.643 acre portion of such tax parcel, as shown on plat recorded in Plat Book E-87, Page 7, Office of the Clerk of Court for York County, South Carolina, to Buyer. Buyer has asked Seller to convey to Buyer an additional portion of tax parcel number 628-04-01-001 to facilitate Buyer's development of the 1.643 acre parcel.

NOW THEREFORE, FOR AND IN CONSIDERATION OF the mutual agreements and undertakings herein set forth and other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, the Property described in Section 1 herein on the terms and conditions hereinafter set forth:

1. **Property.** Seller agrees to sell, and Buyer agrees to buy, a parcel of land located in TechPark in the City of Rock Hill, York County, South Carolina, containing approximately 1.1 gross acres, being a part of tax parcel number 628-04-01-001, as approximately shown on Exhibit A attached hereto and incorporated herein by this reference (the "Property").

2. Purchase Price; Closing Costs.

(a) **Purchase Price.** The purchase price shall be \$50,000.00 per gross acre of the Property (the "Purchase Price"), as determined based on the gross acreage shown on the Subdivision Plat (defined in section 6 below). Buyer shall pay the Purchase Price to Seller in cash or by other immediately available funds at Closing (defined in Section 4 below).

(b) **Closing Costs: Taxes.** Seller shall pay the cost of preparation of the Deed (defined in Section 5 below), the South Carolina Deed Recording Fee (i.e., documentary stamp tax), the brokerage commission due Seller's Broker described in Section 11 of this Agreement, one-half (1/2) of the costs to have the Subdivision Plat prepared and approved for recording, and the fees of Seller's attorney. Buyer shall pay all other closing costs, including, without limitation, one-half (1/2) of the costs to have the Subdivision Plat prepared and approved for recording, the costs of having title to the Property examined ~~and obtaining title insurance, the costs of any inspections performed by Buyer, Escrow Agent's fees, if~~ any, and the fees of Buyer's attorney. Ad valorem real property taxes, public assessments and private assessments for the year in which Closing occurs shall be prorated between the Parties as of the date of Closing.

3. **Earnest Money.** No later than five (5) days after the Effective Date, Buyer shall pay \$10,000.00 in cash to Lawyers Title Insurance Corporation ("Escrow Agent"), c/o R. Chris Newman, Senior Commercial Title Officer, Virginia National Business Unit, 830 E. Main Street, Suite 1600, Richmond, VA 23219; Phone: (804) 521-5738 | Fax: (804) 521-5756 | Cell: (804) 240-0665, as non-refundable earnest money (the "Earnest Money"). The Earnest Money shall be applied as a credit against the Purchase Price at Closing, returned to Buyer, or paid to Seller, all in accordance with the terms of this Agreement.

Buyer acknowledges that in consideration of Seller's agreement with respect to the License and the Work, all of the Earnest Money is fully non-refundable to Buyer immediately upon payment to Escrow Agent and shall be paid to Seller if this Agreement is terminated for any reason, except as otherwise expressly provided in this Agreement.

4. **Closing.** The closing ("Closing") of the purchase and sale of the Property shall occur 30 days after (a) the Effective Date or (b) the date on which Rock Hill City Council has approved this Agreement, whichever is later, at a time and location in York County, South Carolina, mutually acceptable to Seller and Buyer, provided this Agreement will automatically terminate if Rock Hill City Council has not approved this Agreement by the date that is 90 days after the Effective Date.

5. **Delivery of Deed; Closing Documents; Easement Agreement.** At Closing, Seller shall deliver a limited warranty deed ("Deed") to Buyer, conveying fee simple title to the Property to Buyer free and clear of all liens, but subject to utility easements, rights-of-way for roads and streets, and other easements, restrictions, covenants, and other matters of record or apparent upon a reasonable inspection of the Property. The Property shall be described in the Deed with reference to the Subdivision Plat. At Closing, Seller shall also deliver the following closing documents to Buyer: (a) an I-295 South Carolina non-resident withholding tax affidavit; (b) a FIRPTA certificate; (c) a standard title insurance owner's affidavit required by Buyer's title insurance company (but deleting any indemnification language contained in any such affidavit); (d) a copy of the ordinance by which Seller's governing body has approved the sale contemplated by this Agreement; and (e) the Easement Agreement, which Buyer shall also execute.

Without limiting the foregoing, Buyer acknowledges that Seller will convey the Property to Buyer at Closing subject to the Protective Covenants for Area II of TechPark recorded September 1, 1988, in Deed Book 1046, Page 160, Office of the Clerk of Court for York County, South Carolina, as amended (the "Covenants"). If Buyer's title search reveals that the Property is not subject to the Covenants, Seller shall have the right to record a supplemental declaration at or before Closing to subject the Property to the Covenants. The supplemental declaration will be recorded prior to the Deed.

At Closing, Seller agrees to grant Buyer a perpetual, non-exclusive easement to install, repair and maintain a line or pipe for purposes of storm water drainage from the Property to a City of Rock Hill storm water drainage system (the "Easement"). The Easement will be in the location approximately shown as "20' Drainage Easement" on Exhibit A. The exact location of the Easement will be shown on the Subdivision Plat. The agreement granting the Easement ("Easement Agreement") will provide, among other things, that (a) Buyer will indemnify Seller for any damages, costs, expenses or claims related to the Easement, and (b) Buyer will install and maintain the lines, pipes and other equipment related to the Easement in accordance with plans and specifications approved in advance by Seller. The Easement Agreement must be in form and substance reasonably satisfactory to Buyer and Seller.

6. **Subdivision Plat.** The Property is currently part of a larger tract and must be subdivided prior to Closing. At least 10 days prior to Closing, Buyer shall have a plat of survey ("Subdivision Plat") of the Property prepared in accordance with the Minimum Standards Manual for the Practice of Land Surveying in South Carolina for a Class A survey. Buyer shall deliver a copy of the Subdivision Plat to Seller no later than five days after receipt thereof. The Subdivision Plat must be reasonably satisfactory to Seller. Seller must approve or disapprove the Subdivision Plat by delivering written notice to Buyer on or before Closing. Once Seller notifies Buyer that it has approved the Subdivision Plat, Buyer or its surveyor shall coordinate the applicable governing authority's review of the Subdivision Plat for subdivision approval. The approved Subdivision Plat shall be recorded at Closing.

7. **License to Grade Property and for Metal Building Storage.** To facilitate Buyer's development of the 1.643 acre parcel, Seller hereby grants Buyer a non-transferable, non-exclusive, and revocable license ("License") to (a) perform the following construction work and activities on the Property prior to Closing: site grading and site preparation; and (b) deliver to and temporarily store a metal building and/or steel components (collectively, "Metal Building") on part of the Property and part of tax parcel number 628-04-01-001 immediately north of the Property ("Seller's Adjacent Property"), in the area approximately shown as "Steel Building Storage Area" on Exhibit A hereto (collectively, the "Work"). All Work must be performed pursuant to plans and specifications approved by Seller in advance. All contractors and subcontractors performing the Work must be licensed and insured, with Seller named as an additional insured on their liability policies, as well as Buyer's liability policy, with coverages satisfactory to Seller. Buyer shall deliver insurance certificates to Seller prior to commencement of the Work evidencing that Buyer and its contractors have obtained the required liability insurance coverage. If Buyer terminates this Agreement as expressly permitted in this Agreement, or if Closing does not occur or the Agreement is otherwise terminated, Buyer shall, no later than five days after termination, remove the Metal Building and restore the Property (and Seller's Adjacent Property) to a condition satisfactory to Seller. If Closing occurs, Buyer shall, no later than 90 days after Closing, remove the Metal Building from Seller's Adjacent Property and restore such property to the condition which existed immediately prior to storage of the Metal Building. Buyer's License to store the Metal Building on part of Seller's Adjacent Property shall automatically terminate on the date that is 90 days after Closing. Buyer's covenants under this section shall survive Closing or termination of this Agreement for three years.

Buyer shall indemnify and hold harmless Seller, and Seller's officers, employees and agents (collectively, "Indemnified Parties"), from and against any and all claims, actions, lawsuits, damages, costs and expenses (including, without limitation, reasonable attorneys' fees), asserted against or incurred by any one or more of the Indemnified Parties as a result of or in any way related to the Work, the License, the Metal Building, Buyer's inspections, activities or any entry upon the Property (or Seller's Adjacent Property) by Buyer or Buyer's agents, contractors, employees and any other person acting on Buyer's behalf. This indemnification obligation shall survive Closing or the termination of this Agreement for a period of three years.

8. **"As-Is" Sale; No Representations by Seller.** At Closing, Buyer shall be deemed to have accepted the Property "AS-IS" in its existing condition. Buyer acknowledges that it is relying solely upon the results of its inspections to satisfy itself as to the condition of the Property and the Property's suitability for development, and that Seller makes no representations or warranties with respect thereto. In particular, Buyer agrees and acknowledges that neither Seller nor any person or party on behalf of Seller has made any representation, warranty or covenant (express or implied) of any nature whatsoever upon which Buyer has relied in entering into this Agreement or upon which Buyer shall rely in consummating the transaction contemplated by this Agreement, including, without limitation, as to the Property's suitability for development or the compliance of the Property with any federal, state, or local statutes, laws, rules, regulations or ordinances, including those pertaining to construction, building and health codes, land use (or permits issued in connection therewith), zoning, or environmental matters.

9. **Condemnation.** If any material portion of the Property is taken by condemnation, eminent domain or other governmental acquisition proceedings (collectively, "Taking") prior to Closing, then either Party may, within 15 days of the date such Party obtained knowledge of the Taking, terminate this Agreement, in which event the Earnest Money shall be returned to Buyer once Buyer has fulfilled its obligations with respect to the License and the Work, as determined by Seller in its sole discretion, and Seller and Buyer shall have no further rights or obligations hereunder, except as otherwise provided herein. If neither Party terminates this Agreement within such 15 day period, the Parties agree to reduce the Purchase Price by an amount equivalent to the condemnation proceeds or other award received by

Seller on account of such Taking, less any amount expended by Seller in connection with any governmental or judicial proceedings pertaining to such Taking.

10. **Conditions Precedent.** Buyer's and Seller's obligations under this Agreement are conditioned upon satisfaction of the conditions listed below as of Closing:

(a) Rock Hill City Council must have approved this Agreement and sale of the Property in accordance with applicable law; and

(b) The Subdivision Plat must have been approved for recording by the City of Rock Hill planning department in accordance with applicable law.

If all conditions have not been satisfied by the date of Closing, Buyer and Seller may terminate this Agreement by delivering written notice to the other at, or no more than 24 hours before, the date of Closing. Upon any such termination, and Buyer's fulfillment of its obligations with respect to the License and the Work as determined by Seller in its sole discretion, the Earnest Money shall be paid to Buyer and the Parties will have no further rights or obligations under this Agreement, except for those covenants that expressly survive termination.

11. **Brokerage.** Seller represents and warrants to Buyer that Seller has not dealt with any broker in connection with this transaction other than Red Rock Real Estate, LLC ("Seller's Broker"). Buyer represents and warrants to Seller that Buyer has not dealt with any broker in connection with this transaction. If the sale of the Property closes, Seller shall pay a commission to Seller's Broker at Closing pursuant to a separate agreement. Buyer and Seller shall indemnify each other from and against any liability arising due to the breach by the indemnifying party of the foregoing representation and warranty.

12. **Notices.** All notices, requests, demands or other communications given hereunder shall be delivered either (a) by hand, (b) by certified United States Mail, return receipt requested, (c) by facsimile with confirmation of receipt, or (d) by commercial overnight delivery service, in any event with postage, fees and delivery charges prepaid. Such notice shall be deemed to have been delivered on the earliest of the following: (i) the day that delivery is attempted by any means and refused or returned; (ii) the day mailed by commercial overnight delivery service or United States mail; or (iii) the date of delivery as set forth on the facsimile confirmation, the return receipt or affidavit of service. All notices shall be mailed or delivered to the Parties at their respective addresses set forth on the first page of this Agreement.

Each Party may change the address to which notice is to be delivered to it by notifying the other Party of the new address in the manner provided herein for giving notice, and each such change or address shall be effective 15 days after such notice of change is given. Notices may be given to or on behalf of the Parties by their respective attorneys.

~~13. **Default; Remedies.** If either Party defaults and does not cure such failure to perform within 10 days after receipt of written notice from the other, the defaulting Party shall be deemed in default under this Agreement, and the non-defaulting Party shall have all rights and remedies available at law or in equity including, without limitation, the right to (i) terminate this Agreement by delivering written notice to the defaulting Party, upon which this Agreement shall be void, except for any obligations under this Agreement which expressly survive termination, (ii) receive payment or a refund of the Earnest Money, and/or (iii) sue the defaulting Party for specific performance and/or damages.~~

The prevailing party in a lawsuit shall have the right to collect its reasonable attorneys' fees and court costs incurred in enforcing or interpreting this Agreement.

14. **Acknowledgements by Buyer.**

(a) Employees or agents of Rock Hill Economic Development Corporation ("RHEDC") may be providing certain real estate, incentives availability, architectural, information technology, and other services (excluding any which require licensure) to Buyer without charge. RHEDC is providing such services in order to further its corporate purpose of encouraging economic growth and development in Rock Hill, South Carolina. RHEDC does not represent Buyer with regard to any transaction involving the Property, and no RHEDC officer, director, employee or agent has any special, heightened or fiduciary duty to Buyer.

(b) None of the officers, directors, employees or agents of RHEDC is a licensed real estate broker or real estate agent. No officer, director, employee or agent of RHEDC is governed by any federal, state or local law with regards to the responsibilities and liabilities of real estate professionals.

(c) Except as expressly provided in this Agreement, neither RHEDC nor Seller makes any representations or warranties whatsoever with respect to the Property, and is under no obligation whatsoever to advise Buyer as to whether the Property is appropriate for Buyer's purposes. Neither RHEDC nor Seller is under any obligation whatsoever to perform or to suggest any tests, examinations or inspections with regards to the Property, including without limitation any environmental or soil testing, surveys, title examination, pest inspections or inspections to determine the condition of any improvements on the Property or the suitability of the Property for development. Buyer is solely responsible for deciding which examinations and tests are necessary to determine the suitability of the Property, for causing such tests and examination to be performed, and for interpreting the results of such tests and examinations.

(d) Neither RHEDC nor Seller is under any obligation to discover any conditions which may render the Property unsuitable for Buyer's purposes, including, without limitation any title defects, zoning or land use regulations, easements, rights of way, floodplains, soil conditions or wetlands. Without limiting the foregoing, RHEDC and Seller have (i) disclosed to Buyer the existence of floodplains, floodways, wetlands, and other riparian areas on or near the Property and (ii) made no representation or warranty to Buyer as to Buyer's ability to obtain federal, state or local permits for a bridge crossing or the feasibility of constructing a bridge crossing in or near any such areas.

(e) Neither Seller nor RHEDC makes any representation or warranty as to the availability of any federal, state or local financial or economic incentives that may be applicable to the Property or Buyer's proposed development thereof. Buyer acknowledges that (i) availability of incentives is subject to federal, state, and/or local laws, regulations, and requirements, as well as approvals by certain federal, state, and/or local agencies, and (ii) neither Seller nor RHEDC has made or makes any representation or warranty as to whether any such approvals will be obtained.

15. Miscellaneous.

(a) Assignment. This Agreement may be assigned by Buyer only with the prior written consent of Seller. Any permitted assignment hereunder shall not relieve Buyer from liability with respect to any breach of this Agreement by Buyer or its assignee.

(b) Time is of the Essence. Time is of the essence to all of the terms of this Agreement.

(c) Modification. No modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the Parties.

(d) Governing Law. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of South Carolina. The Parties consent to the jurisdiction of the courts of York County, South Carolina for resolution of any dispute under this Agreement.

(e) Severability. If any section or provision of this Agreement shall be finally adjudicated by a court of competent jurisdiction to be invalid or waived through non-enforcement, this Agreement shall be otherwise unaffected by such determination and all of the provisions of this Agreement shall otherwise remain in full force and effect as though such section or provision or any part thereof so adjudicated to be invalid or waived through non-enforcement had not been adjudicated at all. In the event of any such invalidity, Seller and Buyer shall promptly negotiate in good faith valid new provisions to restore this Agreement to its original intent and effect. If either Seller or Buyer decides not to enforce a provision of this Agreement, such decision in favor of non-enforcement shall not constitute a complete and full waiver of the right of the non-enforcing party in the future to enforce that provision in the event of any subsequent breach or failure to comply in full with that provision of the Agreement.

(f) Captions. Paragraphs, titles, headings and captions contained in this Agreement are inserted only for convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provisions hereof.

(g) Merger. This Agreement expresses the entire agreement between the Parties. All other agreements, oral or written, are merged herein.

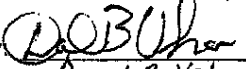
(h) Interpretation. Buyer and Seller have the intent, capacity and authority to execute and enter into this Agreement, have carefully reviewed this Agreement, have had an opportunity to review and discuss the terms with counsel, and agree to each and every term willfully and voluntarily. Wherever appropriate, all words herein in the male gender shall be deemed to include the female or neuter gender, all singular words shall include the plural, and all plural words shall include the singular. Buyer and Seller agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of any provision hereof.

(i) Binding Effect: Counterparts. This Agreement shall be binding upon, and inure to the benefit of, Seller and Buyer, and their respective permitted successors and assigns, as may be applicable. This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one instrument. Facsimile signatures shall be deemed originals.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Buyer and Seller, by and through their respective duly-authorized undersigned officers, have executed and delivered this Agreement as of the Effective Date.

CITY OF ROCK HILL, S.C.

By:  (Seal)

Name: David B. Vehaun

Title: City Manager

Date: July 18, 2011

THE HUTTON COMPANY

By:  (Seal)

Name: Karen J. Hutton

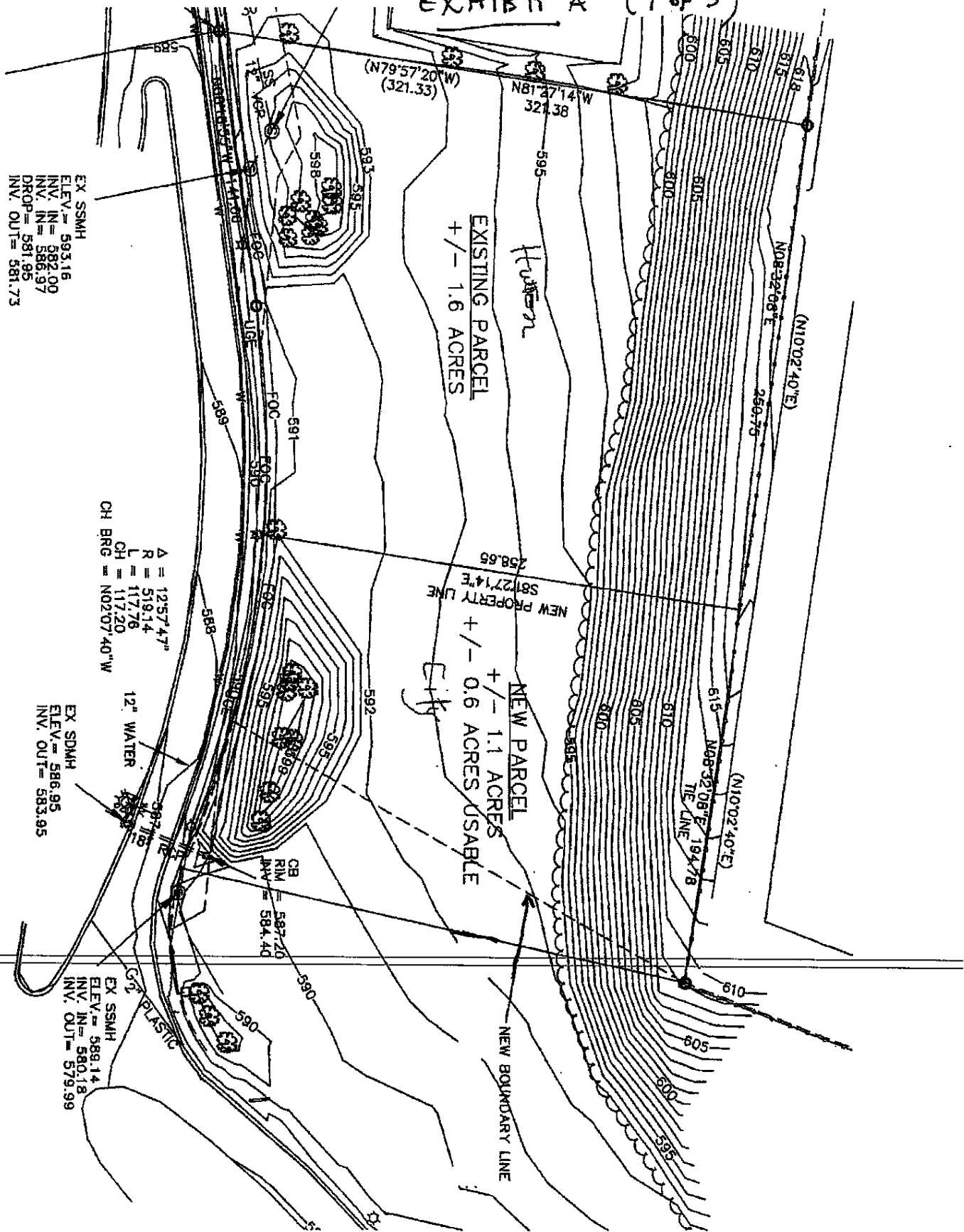
Title: Chief Manager

Date: July 18, 2011

EXHIBIT A

[Attach description of Property]

EXHIBIT A (1 of 3)



EX SSMH
 ELEV. = 593.18
 INV. IN = 382.00
 INV. IN = 386.97
 DROP = 581.95
 INV. OUT = 581.73

$\Delta = 12^{\circ}57'47''$
 R = 519.14
 L = 117.76
 CH = 117.20
 CH BRG = N02^{\circ}07'40"W

EX SDMH
 ELEV. = 586.95
 INV. OUT = 583.95

EX SSMH
 ELEV. = 589.14
 INV. IN = 580.18
 INV. OUT = 579.99

(N79^{\circ}57'20"W)
 (321.33)

N81^{\circ}27'14"W
 321.38

NEW PROPERTY LINE
 S81^{\circ}27'14"E
 258.65

(N10^{\circ}02'40"E)
 260.75

(N10^{\circ}02'40"E)
 N88^{\circ}32'08"E 194.78
 TIE LINE

CB
 RIM = 587.20
 INV = 584.40

12" WATER

PLASTIC

EXISTING PARCEL
 +/- 1.6 ACRES

NEW PARCEL
 +/- 1.1 ACRES
 +/- 0.6 ACRES USABLE

NEW BOUNDARY LINE

HUBER

City

