

**PURCHASE COLLEGE ADVANCEMENT CORPORATION (PCAC)  
REQUEST FOR QUALIFICATIONS (RFQ) PCAC-091014**

RFQ Number  
PCAC-091014

Dated  
November 21, 2014

Description  
Civil Engineering, Geotechnical Study/Engineering,  
Environmental Study/Engineering, Surveying,  
and Landscape Architecture Consulting Services  
for a Senior Learning Community  
at Purchase College, State University of New York

Contract Term  
Up to five years, beginning on or about February 1, 2015

Calendar of Events - Procurement Timetable  
Release of RFQ ..... November 21, 2014  
Pre-submission Conference ..... December 10, 2014  
Question Period..... December 10, 2014 – December 17, 2014  
Answers to Questions ..... December 19, 2014  
Statement of Qualifications Due Date/Time: Dec.23, 2014/2:00 pm  
Short List Identified ..... January 2, 2015  
Presentations and Interviews..... Jan. 13, 2015 – Jan. 15, 2015  
Anticipated Awardee Notification ..... January 23, 2015  
Vendor De-Briefing ..... upon request after notice of award

Location of Service  
Purchase College  
State University of New York  
735 Anderson Hill Road  
Purchase, New York 10577

Designated Contacts  
For New York State/SUNY administrative policy/procedure:  
Nikolaus D. Lentner  
Director of Purchasing & Accounts Payable  
telephone 914-251-6070  
fax 914-251-6075  
email [L@purchase.edu](mailto:L@purchase.edu)

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For technical information & clarification of detailed specifications:  
Wayne M. Rush, P.E.  
Project Manager  
telephone 914-251-6138  
email [wayne.rush@purchase.edu](mailto:wayne.rush@purchase.edu)

**PART I: GENERAL STANDARD INFORMATION AND INSTRUCTIONS**

- A. Purchase College Advancement Corporation (PCAC) is dedicated to environmentally sustainable practices. In an effort to conserve resources and reduce waste, the RFQ will only be available electronically in PDF format at the following website:<http://www.purchase.edu/purchasemeansbusiness> (and click Current Procurement Opportunities).
- B. Qualifications Submission (hereafter, “Qualifications”) When submitting Qualifications, you must:
1. Prepare a clearly readable document. Attach all required information.
  2. Indicate any deviations from the specifications and if necessary attach separate documents and/or explanation.
  3. **Sign the Qualifications document.** By signing you indicate full knowledge and acceptance of this RFQ including Exhibits A and A-1. The Qualifications must be completed in the name of the proposer, corporate or otherwise, and must be fully and properly executed by an authorized person.
  4. **Submit six (6) complete bound Qualifications, one of which must have original signatures. Additionally, submit one electronic version of the Qualifications on a portable “USB flash drive.”** Qualifications should be sealed and submitted as specified in Part II. Qualifications are to be addressed to:  
Nikolaus D. Lentner, Director  
Purchasing & Accounts Payable Office  
State University of New York  
Purchase College  
735 Anderson Hill Road  
Purchase, NY 10577-1402

5. Qualifications must be received in the Purchasing & Accounts Payable Office by the due date and time. Offerers mailing their Qualifications must allow sufficient time to ensure receipt of their Qualifications by the time specified. Offerers are cautioned that, although using a trackable mailing/courier/messenger service, Qualifications must be received in the Purchasing & Accounts Payable Office by the due date and time for consideration by the selection committee. While Qualifications may be signed for by Purchase College Mail Operations personnel prior to the due date and time, this does not guarantee that the Purchasing & Accounts Payable Office will receive the Qualifications by the Qualifications due time. No Qualification will be considered that is not physically received in the Purchasing & Accounts Payable Office by the Qualification due date and time. Electronically transmitted Qualifications will **NOT** be accepted.

C. Pre-submission Conference

There will be a non-mandatory pre-submission conference on the date and time indicated on page 1 in the Calendar of Events - Procurement Timetable in the Student Services Building, Conference Room 0129 (the “Red Room”) at Purchase College, State University of New York, 735 Anderson Hill Road, Purchase, New York 10577.

For directions to Purchase College, see <http://www.purchase.edu/AboutPurchase/VisitorsGuide/Directions/>

For a campus map, see <http://www.purchase.edu/sharedmedia/admissions/campus%20map.pdf>

D. Open Question Period

The PCAC will allow for a question/answer period as indicated in the Calendar of Events– Procurement Timetable on page 1. All questions must be submitted in writing, citing the particular RFQ page, section and paragraph numbers where applicable. All questions must be EMAILED to arrive no later than the Close of Business on the date indicated, and should be directed to email address [wayne.rush@purchase.edu](mailto:wayne.rush@purchase.edu). Questions received after the closing date for inquiries will not be answered. Only written answers are official. All questions and answers will be issued as addenda to this RFQ, and will be posted to <http://www.purchase.edu/purchasemeansbusiness> by the date indicated on page 1.

E. Vendor De-Briefing Meeting

Upon notification of the selection and award of a contract, unsuccessful vendors are entitled to, and shall receive, upon request, a debriefing of the results of their response to this Request for Qualifications. Request for debriefing by an unsuccessful bidder should be made within thirty (30) days after the award of the contract.

F. Contract Award Protest Procedure

Upon notification of the selection and award of the contract, the Offered whose proposal was not selected as the successful proposal is entitled to submit a Bid Protest in accordance with SUNY’s Contracts Award Procedure (Document # 7561). The SUNY’s Protest Procedure is available at [http://www.suny.edu/sunypd/documents.cfm?doc\\_id=699](http://www.suny.edu/sunypd/documents.cfm?doc_id=699). Please note that the Protest Officer is Nikolaus D. Lentner; contact information is located on page 1 of this RFQ.

G. Standard Contract Clauses

Any contract resulting from this RFQ shall include Exhibit A (Standard Contract Clauses, State University of New York) and Exhibit A-1 (Affirmative Action Clauses, State University of New York), the provisions of which shall take precedence over any provision in the RFQ. These clauses relate to, among other things, assignment of the contract, availability of funds, non-discrimination, affirmative action, non-collusion, worker’s compensation.

H. Affirmative Action Policy

New York State Executive Order No. 6, regarding equal employment opportunities states:

*It is the policy of the State of New York that equal opportunity be assured in the State's personnel system and affirmative action provided in its administration in accordance with the requirement of the State's Human Rights Law and the mandate of Title VII of the Federal Civil Rights Act, as amended. Accordingly, it is the responsibility of the State's Department of Civil Service to enforce the State's policy of ensuring full and equal opportunity for minorities, women, disabled persons and Vietnam era veterans' at all occupational levels of state government.*

In keeping with this policy, PCAC mandates compliance internally and for all organizations with which it conducts business. The determination of contract award will include a review of evidence supplied by each Offerer regarding compliance with the State's Affirmative Action policy. Accordingly, an Offerer's Proposal must include its organization's affirmative action policy, and agree that all presentations and materials will be free from racial, religious, or sexual bias.

I. Minority and Women-owned Business Enterprises

It is the policy of the State University of New York to take affirmative action to ensure that minority and women-owned business enterprises are given the opportunity to demonstrate their ability to provide goods and services at competitive prices.

**GOALS FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION:** For all State Contracts in excess of \$25,000.00 whereby each SUNY campus is committed to expend or does expend funds in return for labor, services

including but not limited to legal, financial and other professional services, supplies, equipment, materials or a combination of the foregoing or all State Contracts in excess of \$100,000.00 whereby Purchase College is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, Contractor shall exert good faith efforts to achieve a participation goal of **fourteen percent (14%)** for certified Minority-Owned Business Enterprises and **twelve percent (12%)** for certified Women-Owned Business Enterprises.

J. Gramm-Leach-Bliley Act

In performing this contract contractor will receive, maintain process or otherwise will have access to confidential information on students and/or customers of Purchase College. Pursuant to the Gramm-Leach-Bliley Act (P.L. 106-102) and the Federal Trade Commission's Safeguards Rule (16 CFR Part 314.2), you must implement and maintain a written Information Security Program in order to protect such customer information. Customer information is defined in relevant part under the Safeguards Rule as "any record containing nonpublic personal information as defined in 16 CFR §313(n)" (the FTC's Privacy Rule) "about a customer of a financial institution, whether in paper, electronic or other form" (16 CFR §314.2). Examples of nonpublic personal customer information include, but are not limited to, name, address, phone number, social security number, bank and credit card account numbers and student identification numbers.

The safeguards that contractor implements under the Program must comply with the elements set forth in 16 CFR §314.4 and must achieve the objectives enunciated in 16 CFR §314.3, namely to: 1) insure the security and confidentiality of student and/or campus customer records and information; 2) protect against any anticipated threats or hazards to the security or integrity of such records; and 3) protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any student and/or campus customer.

K. Qualifications Confidentiality

All Qualifications submitted for Purchase College Advancement Corporation consideration will be held in confidence. However, the resulting contract is subject to the New York State Freedom of Information Law (FOIL). Therefore, if an Offerer believes that any information in its Qualifications constitutes a trade secret or should otherwise be treated as confidential and wishes such information not to be disclosed if requested, pursuant to FOIL, (Article 6 of the Public Officers' Law), the Offerer shall submit with its Qualifications and Proposal a separate letter addressed to: Nikolaus D. Lentner, *Records Access Officer, Purchase College, State University of New York, 735 Anderson Hill Road, Purchase, NY 10577-1402*, specifically identifying the page number(s), line(s) or other appropriate designation(s) containing such information, explaining in detail why such information is a trade secret and formally requesting that such information be kept confidential. Failure by an Offerer to submit such a letter with its Qualifications identifying trade secrets will constitute a waiver by the Offerer of any rights it may have under Section 89(5) of the Public Officers' Law relating to protection of trade secrets. The proprietary nature of the information designated confidential by the Offerer may be subject to disclosure if ordered by a court of competent jurisdiction. A request that an entire Qualification be kept confidential is not advisable since a Qualification cannot reasonably consist of all data subject to FOIL proprietary status.

L. Sustainable Procurement

It is expected that Contractor will support the purchase of products that will minimize any negative environmental impacts of the contract. In order to facilitate a healthy market in sustainable products, all parties involved in the procurement and utilization of materials must engage in both waste recycling and the initial purchase of products containing recycled content. It is in the interest of public health, safety and welfare and the conservation of energy and natural resources to use and promote environmentally responsible products, including packaging and transportation products and methods.

The successful vendor shall comply, when applicable, with the policy of the State of New York and the State University of New York that all purchases shall incorporate sustainable procurement policies and practices.

In accordance with the provisions of Section 165(3) of the State Finance Law:

The State University of New York is required to purchase recycled products, if available, made with recycled content in accordance with rules and regulations established by the State Department of Environmental Conservation in development of that agency's Recycling Emblems Program. If the cost of a recycled product does not exceed the cost of a product made without recycled content by 10% (or 15% if over 50% of the recycled materials are generated from the New York State waste stream), the recycled product must be purchased.

M. Omnibus Procurement Act of 1992

It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as Bidders, subcontractors and suppliers on its procurement contracts. Information on the availability of New York State subcontractors and suppliers and a directory of minority and women-owned business enterprises is available from: NYS Empire State Development, 625 Broadway, Albany, New York 12207, email [esd@empire.state.ny.us](mailto:esd@empire.state.ny.us), website <http://www.empire.state.ny.us/>.

N. Restrictions on the Activities of Current and Former State Officers and Employees

Contractors and their employees are cautioned that the hiring of former state employees may violate the Ethics Law. The governing provisions are set forth in Paragraphs 73 and 74 of the Public Officers Law, and the underlying principle of the law is to prevent conflicts of interest, and encourage ethical behavior. The law may be found on the following web site: <http://www.jcope.ny.gov/law/ethics.html>.

While the two most relevant paragraphs of law are contained below, any questions relating to interpretation of the Public Officers Law should be directed to the Ethics Commission at (518) 432-8207 or (800) 873-8442 {(800) 87-ETHIC}.

Public Officers Law Paragraph 73(8)(a)(i) and (ii):

73. 8. (a) (i) No person who has served as a state officer or employee shall within a period of two years after the termination of such service or employment appear or practice before such state agency or receive compensation for any services rendered by such former officer or employee on behalf of any person, firm, corporation or association in relation to any case, proceeding or application or other matter before such agency.

73. 8. (a) (ii) No person who has served as a state officer or employee shall after the termination of such service or employment appear, practice, communicate or otherwise render services before any state agency or receive compensation for any such services rendered by such former officer or employee on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction with respect to which such person was directly concerned and in which he or she personally participated during the period of his or her service or employment, or which was under his or her active consideration. Former State employees may be retained by a Contractor under contract with a state agency, after he or she leaves State service, provided that they are not placed back at their former agency during their two year postemployment period or engaged in any other activities that would violate the lifetime bar provision of Public Officers Law Paragraph 73(8)(a)(ii). An individual who, following a hearing, is found to have knowingly and intentionally violated the provisions of Public Officers Law Paragraph 73(8)(a)(i) may be subject to a civil penalty in an amount not to exceed ten thousand dollars (\$10,000.00) for each violation.

O. Determination of Vendor Responsibility

New York State procurement law requires that State agencies award contracts only to responsible contractors. Additionally, the Comptroller must be satisfied that a proposed contractor is responsible before approving a contract award under Section 112 of the State Finance Law. Section 163 of the State Finance Law (SFL) requires that contracts for services and commodities be awarded on the basis of lowest price or best value “to a responsive and responsible Offerer.” Section 163 (9) f of the SFL requires that prior to making a contract award, each contracting agency shall make a determination of responsibility of the proposed contractor.

- a) In accordance with these procurement laws, the PCAC will conduct an affirmative review of vendor responsibility for all organizations or firms with which it conducts business. In doing so, Offerers are required to file the Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the VendRep System, see the VendRep System Instructions available at <http://www.osc.state.ny.us/vendrep/index.htm> or go directly to the VendRep System online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at [helpdesk@osc.state.ny.us](mailto:helpdesk@osc.state.ny.us). Offerers opting to file a paper questionnaire may obtain the appropriate questionnaire from the VendRep website [http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm) or may contact SUNY System Administration for a copy of the paper form.
- b) The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the PCAC, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- c) PCAC, at its sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when it discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as PCAC issues a written notice authorizing a resumption of performance of the Contract.
- d) Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate officials or staff, the Contract may be terminated by PCAC at the Contractor’s expense where the Contractor is determined by the PCAC to be non-responsible. In such event, PCAC may complete the contractual requirements in any manner it deems advisable and pursue available or equitable remedies for breach.

P. Sales and Compensating Use Tax Documentation

Pursuant to New York State Tax Law Section 5-a (Chapter 60, Part N, Laws of 2004, and amended Chapter 62, Part L, Laws of 2006), for procurements of \$100,000 and greater, a completed Contractor Certification form ST-220-CA must be collected from Contractors. (Contractors must also forward a completed form ST-220-TD to the NYS Tax Department.) The link to obtain the blank form ST-220-CA is: [http://www.tax.state.ny.us/pdf/2006/fillin/st/st220ca\\_606\\_fill\\_in.pdf](http://www.tax.state.ny.us/pdf/2006/fillin/st/st220ca_606_fill_in.pdf)



Q. State Finance Law §§ 139-j and 139-k

1. a. Prior to the final approval by the Office of the State Comptroller, of the contract for which this solicitation has been issued, an Offerer shall not communicate with PCAC or Purchase College other than with the persons identified in this solicitation as Designated Contacts, or with a person who a Designated Contact has advised the Offerer is also a Designated Contact.
- b. The **Designated Contacts for this RFQ are identified on page 1 of this RFQ.**
- i. Policy and Procedure of the State University of New York  
State Finance Law §§ 139-j and 139-k, enacted by Ch. 1 L. 2005, as amended by Ch. 596 L. 2005, effective January 1, 2011, regulate lobbying on government procurement, including procurements by State University to obtain commodities and services and to undertake real estate transactions.

Generally, the law restricts communications between a potential vendor or a person acting on behalf of the vendor, including its lobbyist, to communications with the officers and employees of the procuring agency designated in each solicitation to receive such communications. Further, the law prohibits a communication (a "Contact") which a reasonable person would infer as an attempt to unduly influence the award, denial, or amendment of a contract. These restrictions apply to each contract in excess of \$15,000 during the "restricted period" (the time commencing with the earliest written notice of the proposed procurement and ending with the later of approval of the final contract by the agency, or, if applicable, the State Comptroller). The agency must record all Contacts, and, generally, must deny an award of contract to a vendor involved in a knowing and willful Contact. Each agency must develop guidelines and procedures regarding Contacts and procedures for the reporting and investigation of Contacts. The agency's procurement record must demonstrate compliance with these new requirements.

Accordingly, neither a potential vendor nor a person acting on behalf of the vendor should contact any individual at State University other than the person designated in this solicitation as State University's Designated Contact, nor attempt to unduly influence award of the contract. State University will make a record of all Contacts, and such records of Contact will become part of the procurement record for this solicitation. A determination that a vendor or a person acting on behalf of the vendor has intentionally made a Contact or provided inaccurate or incomplete information as to its past compliance with State Finance Law §§ 139-j and 139-k is likely to result in denial of the award of contract under this solicitation. Additional sanctions may apply.

A complete copy of the State University of New York Procurement Lobbying Policy and Procedure is available for review at <http://www.suny.edu/sunypp/>.

2. Each Offerer shall submit with its Qualifications a written affirmation of its understanding of the State University's procurement lobbying procedures and agreement to comply with such procedures. Please see form B: [http://www.suny.edu/sunypp/documents.cfm?doc\\_id=282](http://www.suny.edu/sunypp/documents.cfm?doc_id=282)
3. Each Offerer shall submit with its Qualifications written disclosure as to whether the Offerer has been determined to be non-responsible within the previous four years by reason of having violated NY State Finance Law § 139-j or having intentionally provided false or incomplete information to a Governmental Entity with respect to its compliance with NY State Finance Law § 139-j; and certification that the Offerer has provided accurate and complete information with respect to the Offerer's compliance with NY State Finance Law §§ 139-j and 139-k within the previous four years. Please see form C: [http://www.suny.edu/sunypp/documents.cfm?doc\\_id=283](http://www.suny.edu/sunypp/documents.cfm?doc_id=283)

R. Diesel Emissions Reduction Act of 2006 (the "Act")

The Contractor certifies and warrants that all heavy duty vehicles, as defined in New York State Environmental Conservation Law (ECL) section 19-0323, to be used by the Contractor, its Agents or Subcontractors under this Contract, will comply with the specifications and provisions of ECL section 19-0323 and any regulations promulgated pursuant thereto, which requires the use of Best Available Retrofit Technology ("BART") and Ultra Low Sulfur Fuel ("ULSD"), unless specifically waived by DEC. Qualification for a waiver under this law will be the responsibility of the Contractor. Annually, but no later than March 1st, the Contractor shall complete and submit directly to the State University of New York ("SUNY"), via electronic mail, the Regulated Entity Vehicle Inventory Form and Regulated Entity and Contractors Annual Report forms at the Department of Environmental Conservation ("DEC") website: <http://www.dec.ny.gov/chemical/4754.html> for heavy duty vehicles used in the performance of this Contract for the preceding calendar year. The Contractor shall certify to SUNY, and submit with each application for payment, the Contractor, and Subcontractor Certifications form, which states that the Contractor will comply with the provisions of Section 20.23."

S. Payment Terms

Payments under the resulting contract award shall be made to the Contractor, upon receipt of goods/services and properly approved and completed invoice/s submitted to the attention of PCAC. The Contractor shall provide complete and accurate

billing invoices in order to receive payment for its services. Billing invoices to be submitted must contain all information and supporting documentation required by PCAC.

Payment shall be made net 30 days from receipt of an acceptable invoice. Interest for any unpaid balance will accrue at a rate of 1.5% per month.

T. Information Security Breach and Notification Act

Contractor shall comply with the provision of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa and State Technology Law, Section 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Contractor's agents, officers, employees, or subcontractors.

U. Iranian Divestment Act of 2012

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) is charged with developing a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act's effective date, at which time it will be posted on the OGS website.

The successful Offerer (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on the contract to be awarded pursuant to this RFQ any subcontractor that is identified on the prohibited entities list. Additionally, the successful Offerer agrees that after the list is posted on the OGS website, should it seek to renew the Contract, it will be required to certify at the time the Contract is renewed or assigned that it or its assignee is not included on the prohibited entities list.

During the term of the Contract to be awarded pursuant this RFP, should PCAC receive information that the successful Offerer is in violation of the above-referenced certification, PCAC will offer the successful Offerer an opportunity to respond. If the successful Offerer fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then PCAC shall take such action as may be appropriate including, but not limited to, seeking compliance, recovering damages, or declaring the successful Offerer to be in default.

PCAC reserves the right to reject any request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

V. Additional Terms and/or Conditions:

1. The following items will be incorporated into, and made part of, the formal agreement: (1) This RFQ; (2) the Successful Offerer's Proposal; (3) Exhibit A, Standard Contract Clauses; (4) Exhibit A-1, Affirmative Action Clauses.
2. In the event of any inconsistency in or conflict among the document elements of the agreement described above, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order: (1) Exhibits A and A-1; (2) the Agreement; (3) this RFQ; and (4) the Successful Offerer's Proposal.
3. Any terms that are attached or referenced with a submission shall not be considered part of the bid or proposal, but shall be deemed included for informational purposes only.
4. The resulting agreement shall be binding upon its execution by both parties and, upon the approval of the Division of the Budget, Attorney General, and the Office of the State Comptroller.
5. The agreement may be revised at any time upon mutual consent of the parties in writing. Such written consent will not be effective until signed by both parties and, if required, by New York State law, approved by the Division of the Budget, Attorney General, and the Office of the State Comptroller.
6. The relationship of the Successful Offerer to PCAC shall be that of independent prime contractor.
7. Compliance with the post-employment restrictions of the Ethics in Government Act is required.
8. Proposed prices should reflect all discounts including educational discounts. Price reductions are encouraged and acceptable at any time during the contract period.

9. The submission of a Proposal constitutes a binding offer to perform and provide said services. Such binding offer shall be firm and not revocable for a period of 180 days after the deadline for Proposal submission and will continue thereafter until the Successful Offerer notifies PCAC otherwise, in writing. Such deadline may be further extended by mutual agreement.
10. In the event Successful Offerer uses partners, subcontracts, or subcontractors, the Successful Offerer will remain responsible for compliance with all specifications and performance of all obligations under the contract resulting from this RFQ. For the resulting agreement, the Successful Offerer will be the prime contractor.
11. PCAC will not be liable for any costs associated with the preparation, transmittal, or presentation of any Qualifications or Proposals or materials submitted in response to this RFQ or the costs of any services performed prior to receiving approval of the agreement from New York State. All Qualifications and materials submitted in conjunction with Qualifications and subsequent Proposals shall become the property of PCAC for use as deemed appropriate, respecting all copyrights.
12. PCAC will be the interpreter of all contract documents and make the final determination of the intent and meaning of all contract documents including the vendor's bid proposal. PCAC shall be the determinant and make the final determination.
13. This RFQ and the resulting contract shall be governed by the Laws of the State of New York.
14. Public announcements or news releases regarding this RFQ or any subsequent award of a contract must not be made by any Offerer without the prior written approval of PCAC.
15. The Successful Offerer(s) is responsible for compliance with all applicable rules and regulations pertaining to cities, towns, counties and State where the services are provided, and all other laws applicable to the performance of the resulting contract. The Successful Offerer shall provide all necessary safeguards for safety and protection as set forth by the United States Department of Labor, Occupational Safety and Health Administration.
16. Indemnification - The Successful Offerer shall hold harmless and indemnify PCAC, Purchase College, the State University of New York and the State of New York, their officers and employees from and against any injury, damage, loss or liability to persons or property resulting from or arising out of (a) the agreement, and (b) the acts, omissions, liabilities, or obligations of the Successful Offerer, any affiliate, or any person or entity engaged by the Successful Offerer as an expert, consultant, independent contractor, subcontractor, employee or agent.
17. Liability - The Successful Offerer will be responsible for the work, direction, and compensation of its employees, consultants, agents, and contractors. Nothing in the resulting agreement or the performance thereof by the Successful Offerer will impose any liability or duty whatsoever on PCAC, Purchase College and/or the State University of New York including, but not limited to, any liability for taxes, compensation, commissions, Workers' Compensation, disability benefits, Social Security, or other employee benefits for any person or entity.
18. Liability Insurance –Prior to the commencement of work, the Successful Offerer will provide, at its sole cost and expense, Certificates of Insurance which shall remain in force throughout the term of the agreement, or any extension thereof, from an insurance company authorized to do business in the State of New York with a combined liability insurance policy with limits no less than Three Million Dollars (\$3,000,000) per individual for bodily injury and no less than Five Million Dollars (\$5,000,000) for property damage. Such policies shall name PURCHASE COLLEGE ADVANCEMENT CORPORATION, and co-name PURCHASE COLLEGE, the STATE UNIVERSITY OF NEW YORK and the STATE OF NEW YORK as additional insured (in the case of fire insurance, as its insurable interest may appear). Such policy shall designate PCAC, as the loss payee and shall contain a provision that PCAC shall receive at least thirty (30) days' notice prior to material change, cancellation, or expiration of any such policy. The certificates of such insurance should be delivered to: *Director of Purchasing & Accounts Payable, Purchase College, State University of New York, 735 Anderson Hill Road, Purchase, NY 10577-1402*. Contractor will be responsible to submit updated certificates throughout the duration of the contract term. When possible please send certificates electronically or via fax. Each Certificate must include the specific Contract number and the name of the Contract Officer. Contractor is required to obtain any permits, insurance, bonds, etc., normally required for his/her business and employees.

Each insurance carrier must be rated at least "A-"Class "VII" in the most recently published Best's Insurance Report. If during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to The State University of New York and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. The Contractor shall require that any subcontractors hired, carry insurance with the same limits and provisions provided herein.

19. Workers Compensation Insurance & Disability Benefits Coverage - All employees in the hire of the Successful Bidder shall be adequately and properly covered by Workers' Compensation Insurance and Disability Benefits coverage in all work

concerned in and about the Purchase College premises. Prior to commencement of work, proof of coverage of Workers Compensation Insurance and of Disability Benefits Coverage will be required to be submitted. For further information, see <http://www.wcb.ny.gov/content/main/Employers/busPermits.jsp>

20. Professional Liability Insurance requirements are included in the Form of Agreement included as Attachment 8.
21. Any firm or individual that participated in the development or preparation of this RFQ is not eligible for award of the resulting contract.

X. PCAC has the right to:

1. Reject any and all Qualifications received in response to this RFQ in part or entirely.
2. To terminate any resulting contract in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law § 139-j and 139-k was intentionally false or intentionally incomplete. Upon such finding, PCAC may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the contract.
3. Request certified audited financial statements for the past three (3) completed fiscal years and/or other appropriate supplementation including, but not limited to, interim financial statements and credit reports.
4. Request references and to contact any or all references.
5. Waive requirements or amend this RFQ upon notification to all Offerers. Mandatory requirements may be eliminated if unmet by all Offerers.
6. Adjust or correct cost or cost figures with the concurrence of the Offerer if mathematical or typographical errors exist.
7. Negotiate with Offerers responding to this RFQ within the requirements necessary to serve the best interests of PCAC.
8. Change any dates specified for the review and selection process.
9. Begin contract negotiations with another Offerer in order to serve the best interests of PCAC, should PCAC be unsuccessful in negotiating a contract with the Successful Offerer within an acceptable time frame.
10. Request clarifications from Offerers for purposes of assuring a full understanding of responsiveness, and further to permit revisions from all Offerers determined to be susceptible to being selected for contract award, prior to award.
11. Waive minor irregularities.
12. PCAC reserves the right to modify or amend the requirements of this RFQ after its release. All vendors will receive written notification of any modifications to the requirements of this RFQ. If any modifications make compliance with the original Procurement Timetable impractical, the PCAC will adjust the timetable accordingly.
13. The successful vendor will be notified by PCAC by telephone and confirmed by letter.
14. By submitting Qualifications, the vendor agrees that she/he will not make any claims for or have any right to damages because of any misinterpretation or misunderstanding of the specifications or because of any misinformation or lack of information.
15. Along with the Qualifications, Vendors will provide evidence that the award of an Agreement will not result in a conflict of interest with regard either to other work performed by the vendor or to potential conflict of interest among vendor staff and sub-consultants.
16. Omissions, inaccuracy or misstatements may be sufficient cause for rejection of the Qualifications.
17. PCAC reserves the right to reject any or all portions of any offer, to negotiate terms and conditions consistent with the solicitation, and to make an award for any or all remaining portions.



18. Subcontractors

- Except for vendors designated by the PCAC, the vendor must, in their Qualifications response, indicate the name and address of all proposed subcontractors. This statement must contain a description of the portion of the work which the proposed subcontractors are to perform/provide and any information tending to prove that the proposed subcontractors have the necessary skill, experience, and financial resources to provide the service in accordance with the RFQ.
- The vendor shall have sole responsibility to the PCAC for the acts or defaults of said subcontractors, of such subcontractor's officers, agents and employees, each of whom shall for this purpose, be deemed to be the agent or employee of the vendor to the extent of its subcontract.
- The vendor shall execute with each of its subcontracts and shall require all subcontracts to execute a written agreement which shall bind the latter to the terms and provisions of this RFQ and final contract and insofar as such terms and provisions are applicable to the work to be performed by such subcontractors.

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### 1. Introduction and Overview

- 1.1. A unique opportunity exists to create a vibrant senior learning community on the campus of Purchase College, State University of New York. The residents of this community will be able to enjoy the many amenities of the college including the renowned Neuberger Museum of Art and the Performing Arts Center, the athletic facilities and the park-like campus. Additionally, residents will be able to avail themselves of many of the varied educational opportunities. They will be able to enjoy all of these benefits while living on the campus in a village designed specifically for their needs and lifestyle.
- 1.2. Purchase College, a public four-year college of arts and liberal arts and sciences, was founded in 1967 and is one of the thirteen comprehensive colleges of the State University of New York (SUNY) system. Purchase College accepted its first continuing education students in 1968, its first matriculated students as Juniors in 1971, and held its first commencement in 1973.

The campus, located on more than 500 acres in Westchester County, just 25 miles north of New York City, includes the Neuberger Museum of Art and the Performing Arts Center. The College currently enrolls approximately 4200 students, with 65% of the students in liberal arts and sciences programs and 35% in conservatory programs in the arts. Purchase College has seen a dramatic increase in the number of students living on campus, with approximately 92% of the entering freshmen and 67% of all matriculated undergraduate students residing on campus.

Purchase College is unusual among public institutions as it combines both renowned and highly selective professional and conservatory arts programs with distinguished liberal arts and sciences programs on a single campus and in one college, in accordance with its mission statement. The largest programs are in Visual Arts, Music, Liberal Studies, Psychology, Dance, Biology, Journalism, and New Media. Recent initiatives have led to significant increases in programs such as Sociology and Graphic Design and to new programs including Bachelors of Arts in Arts Management, Playwriting and Screenwriting, and Theatre and Performance, and a Bachelor of Science in Visual Arts. With the exception of Liberal Studies, where seniors complete a one-semester capstone project, all students complete a two-semester senior project in which they work one-on-one with a member of the faculty in their major area of study.

Purchase College has a large and diverse continuing education program. In addition to administering a Bachelor of Arts degree completion program in Liberal Studies designed for adults and transfer students, the School of Liberal Studies and Continuing Education (LCSE) serves over 200 non-matriculated students each semester and administers the college's summer sessions. LCSE also provides non-credit classes for the students and the neighboring community. Additionally, Purchase College offers fully accredited Masters Programs in select fields.

Purchase College promotes life-long learning for students of all ages, backgrounds, and incomes, and makes many of its resources available to the broader community. Purchase College presents the visual and performing arts through exhibitions and performances at the Neuberger Museum of Art and at the Performing Arts Center, as well as in other performance and exhibition spaces around the campus, and offers opportunities for intellectual growth through numerous free lecture series.

Finally, Purchase College provides a broad range of opportunities for senior citizens, including an auditing program in the academic sector, a trained docent program at the Neuberger Museum of Art, and opportunities for volunteering in the educational outreach program of the Performing Arts Center.

- 1.3. Purchase College Advancement Corporation, a New York State not-for-profit corporation (“PCAC”), desires to contract for certain services related to the design, development, construction, operation, management and financing of a senior learning community (“SLC”) on a 40.05 acre parcel of land within the existing campus of Purchase College, State University of New York, in the Town/Village of Harrison, Westchester County, New York (the “College”). The purpose of this Request for Qualifications (the “RFQ”) is to identify the most qualified respondent to enter into negotiations, and to eventually execute a contract for civil engineering, geotechnical study/engineering, environmental study/engineering, surveying, and landscape architecture consulting services including planning, design and construction period services.(hereafter referred to as the “Engineer”)
- 1.4. PCAC is a not-for-profit corporation formed specifically for this project. The corporation is governed by a Board of Directors (the “Board”).
- 1.5. PCAC has been granted the right to lease the subject 40.05 acre parcel (the “Parcel”) for an initial term of 40 years by the New York State Legislature in Bill No. A00340A, made effective on August 18, 2011 (Chapter 405 of the Laws of 2011), for the purposes described (the “Bill”), included herein as Attachment 2.
- 1.6. The Bill allows for the development, construction, operation, and management of a senior learning community, comprised of up to 385 dwelling units and related facilities, on the parcel. Of these units, 20% must be made available for occupancy of residents whose income is less than or equal to 80% of the median income of Westchester County, New York.
- 1.7. There are other provisions within the Bill, some of which are enumerated in more detail within this RFQ. Respondents should carefully review the Bill to be certain of their willingness and ability to comply with all of its terms.
- 1.8. PCAC has researched similar projects, has contracted for a preliminary market study, has contracted for the completion of certain preliminary due diligence, and has discussed at length with personnel of the College, the desired scope and nature of the proposed facility.
- 1.9. It is the opinion of PCAC that the preliminary market study shows that the project is highly feasible and that there is a substantial depth of market, particularly among seniors within the younger, more active cohorts. Further studies will likely be required by other contractors to PCAC.
- 1.10. The PCAC intends to provide a facility in which its residents will actively participate in many aspects of the college experience. It envisions a vibrant, active senior population with a strong desire to become an integral part of the college’s life and culture. Residents will be expected to participate as members of the Neuberger Museum and/or subscribers to the Performing Arts Center.
- 1.11. The net proceeds from the project will be used, in accordance with the requirements of the Bill, to provide for additional student scholarships and for the acquisition of new, full-time college faculty.
- 1.12. PCAC has contracted with LCSD/SCD Partners, LLC as development consultant to provide for certain services related to the project including management of the development and initial marketing of the project (hereafter referred to as the “Development Consultant”). LCSD/SCD Partners, LLC is a corporation, newly formed specifically for this project, consisting of the nationally acclaimed and respected firms of Life Care Services Development, LLC and Senior Care Development, LLC.
- 1.13. PCAC has retained the law firm of DelBello Donnellan Weingarten Wise & Wiederkehr, LLP as special counsel for the development of the project (hereafter referred to as the “Law Firm”).
- 1.14. PCAC has also contracted with H.J. Sims & Company, Inc. to provide services related to the initial, intermediate, and long-term financing of the project (hereafter referred to as the “Investment Banker”).
- 1.15. PCAC also intends to enter into a contract with Life Care Services, LLC to provide services related to the management of the operations of the facility (hereafter referred to as the “Operator”).
- 1.16. Other services, such as architectural consulting services (“**Architect**”) and construction services (“**Contractor**”), will be contracted directly with PCAC, pursuant to separate RFP’s and/or RFQ’s and with the guidance and input of the team members.

#### **End of Section 1**

## **Pre-submission Conference**

2.1. There will be a non-mandatory Pre-qualifications conference from 1:00 pm until 3:00 pm on the date indicated on page 1 in the Calendar of Events - Procurement Timetable in the Student Services Building, Conference Room 0129 (the “Red Room”) at Purchase College, State University of New York, 735 Anderson Hill Road, Purchase, New York 10577. The intended purpose of this conference is to allow potential respondents an opportunity to present questions, to obtain clarification relative to any facet of this solicitation, and to tour both the project site and the college facilities. Attendees wishing to walk the mostly wooded project site should dress appropriately. Respondents should refer to the Calendar of Events - Procurement Timetable for additional scheduling information. Please email [wayne.rush@purchase.edu](mailto:wayne.rush@purchase.edu) with your intentions to attend this meeting by Friday, December 5, 2014.

2.2. There will be no ability to attend the conference via teleconference or any other electronic means.

## **End of Section 2**



### 3. Project Vision, Components, and Marketing and Operational Requirements

- 3.1. **Vision.** As stated in the Introduction and Overview, PCAC desires to enter into a series of contracts with experienced and reputable firms for the management of the design, project approvals, construction, marketing, operations, and financing of a senior learning community consisting of up to 385 units of senior housing and related facilities.
- 3.1.1. The project should be developed and operated in a manner consistent with cutting edge examples of other “college related retirement communities” in which the senior living component has been successfully integrated into the life and culture of the college campus.
- 3.1.2. Purchase College and PCAC wish to provide a facility in which the residents are actively engaged in many aspects of the college. They envision residents participating in activities of the renowned Performing Arts Center and Neuberger Museum of Art and will expect residents to be active members of at least one of these organizations. The College also anticipates residents participating in many of the academic activities. The College may deliver some academic courses at the facility. It also envisions residents utilizing the other facilities of the college including its athletic facilities, walking paths and the extensive campus grounds. The College also desires that the senior population will provide support to the younger students in the form of mentoring, tutoring, guest lecturing, and other activities.
- 3.1.3. The College and PCAC envision a vibrant, active senior population with a strong desire to become an integral part of the college’s life and culture. Every aspect of the design, development, operation and management of the facility should seek to achieve this vision. Consideration should be given during the design of the project to provide for easy and inviting access to campus facilities and activities. Provisions should also be made for students to access the SLC for student/resident interaction. The marketing program for the project will target those individuals that will be most likely to participate in college activities. In addition, the operational program will clearly and purposely encourage participation in college activities. These aspects of the project are discussed in more detail in the Design and Performance Criteria section of the Detailed Specifications.
- 3.2. **Components.** The successful respondent will be expected to provide all of the resources and expertise necessary to execute and manage the civil engineering, geotechnical study/engineering, environmental study/engineering, surveying, and landscape architecture, planning, design, and permitting of the project, actively participate in securing all required project approvals, and to provide customary construction period services for the project to realize these goals.
- 3.2.1. The SLC facility will consist of up to 385 units of senior housing. These units may be in the form of apartments and/or single-family attached or detached homes designed and intended for occupancy by seniors. The inclusion of units intended for higher levels of health care for residents such as assisted living, memory care and/or skilled nursing may also be included. The final program will be determined after further market study and input from the project team members. The project will be phased in order to anticipate an expected absorption rate.
- 3.2.2. In accordance with the Bill, a minimum of 20% of these units shall be available for, and occupied by individuals or families whose income is at or below 80% of the current median income in Westchester County, New York. Priority for the occupancy of 50% of these affordable units shall be given to existing residents of the county.
- 3.2.3. The SLC facility will also include common areas for use by the residents including, but not limited to, dining facilities, lounge areas, fitness facilities, retail facilities, classrooms, carrels, crafts rooms, and beauty and spa facilities. These common areas may also be made available to students, faculty, and staff of the College.
- 3.2.4. The SLC facility will also include all of the site work and infrastructure improvements necessary to service the facility.
- 3.2.5. As a component of the site work and infrastructure improvements, the project will need to satisfy all of the requirements of the New York Department of Environmental Conservation (NYDEC) related to the mitigation and closure of an unlicensed construction debris area within the bounds of the lease parcel, further detailed in Section 4. This area shall be successfully integrated into the design of the facility including, but not limited to, the creation of passive and active recreation areas and pedestrian and vehicular circulation.
- 3.2.6. The SLC facility will be expected to be designed and constructed utilizing high quality materials and workmanship by well-qualified and reputable design professionals and contractors.
- 3.2.7. PCAC will enforce strict adherence to a set of Design and Performance Criteria.

- 3.2.8. Access easements, utility easements, utility sharing agreements, covenants and restrictions, licensing agreements, shared services agreements and other documents necessary for the development and operation of the facility may be necessary as a part of the series of contracts contemplated for the project.
- 3.3. **Marketing and Operational Requirements.** PCAC, Development Consultant, and Architect will program and design the project to allow for marketing and operational programs intended to realize the described vision of the project.
- 3.3.1. The College enjoys an excellent reputation for providing a high quality liberal arts education centered on the arts and sciences. The College attracts talented students aspiring to pursue studies in music, performing and creative arts, visual arts, and other traditional liberal arts studies. The Performing Arts Center and the Neuberger Museum of Art further enhance this reputation and are coveted assets in the local and regional community.
- 3.3.2. PCAC intends to leverage the reputation and assets of the College so that the proposed SLC will attract and retain residents with similar affinities and interests.
- 3.3.3. The Architect will assist the Development Consultant and the Operator such that they can create and refine, from time to time, a marketing program designed to attract senior residents who will embrace and participate in the academic and artistic environment of the College.
- 3.3.4. Similarly, the Architect will consider elements of the operations and management of the community that will encourage participation by the residents in the college's academic and cultural activities.

**End of Section 3**

#### 4. Site Characteristics and Conceptual Plans

- 4.1. **Site Characteristics.** The site consists of a 40.05-acre tract of land within the Purchase College, SUNY campus in Purchase, New York. The campus is located at 735 Anderson Hill Road, approximately two miles north of I-287 in southeastern Westchester County. To the south of the campus, on the opposite side of Anderson Hill Road is the world headquarters for PepsiCo. The Old Oaks Country Club is to the west of the campus. The campus is bordered to the east by residential housing and by the Doral Arrowwood Resort. The Westchester County Airport is directly north of the campus. A vicinity map is included as Attachment 3.
- 4.1.1. Refer to Attachment 4 for aerial maps and topographic surveys of the parcel. Some planning work has been completed and is included in Attachment 7. This planning work should be considered only for its intended purpose of proofing the site for its ability to yield the maximum allowable program and to suggest one design idea. The 40.05-acre parcel is bordered by Brigid Flanigan Drive to the west and south, by the college administration and human resources offices to the north and by a narrow strip of land adjacent to Lincoln Avenue to the east. Within the 40.05-acre parcel, there are three distinct areas. The northernmost section is approximately 12 acres, slopes gently from north to south, and is mostly wooded. The next section of the property to the south is approximately 15 acres. It contains approximately 300,000 cubic yards of construction and demolition debris ("C & D") that was placed there by an outside contractor over a several year period from 1999 through 2004. This area is considered by the NYDEC to be an unlicensed C & D landfill. More description of this area is included later in this section. The southernmost section of the property is approximately 13 acres, slopes gently from north to south, and is entirely wooded. There are no building structures within the lease area. There may be underground utilities that will need to be preserved and/or relocated. There are several art sculptures within the lease area that will need to be incorporated into the design or relocated to a location acceptable to the College.
- 4.1.2. The unlicensed C & D landfill has been the subject of action by NYDEC. In April 2001, an Order of Consent was executed by NYDEC, Purchase College and the original contractor that prescribed specific requirements for the proper closure of the landfill by the contractor. Further correspondence between the College and NYDEC occurred in 2004 that sought to amend the original order. Respondents should refer to the Preliminary Geotechnical and Environmental Engineering Report prepared by SESI Consulting Engineers, PC and dated December 14, 2012, included herein as Attachment 6. Additional documentation is available upon request.
- 4.1.3. PCAC has retained consultants to perform certain due diligence related to the development of the project. The initial due diligence included investigations regarding the availability and capacity of utilities, the location of wetlands and other site constraints, and the identification of requirements such as storm water management facilities. A memorandum from Divney Tung Schwalbe, LLP, dated December 19, 2012, included herein as Attachment 5, discusses utility availability for the project and other engineering related criteria. Additional due diligence will be required.
- 4.1.4. PCAC intends to prepare and process the Draft Environmental Impact Statement (DEIS) in accordance with the requirements of the State Environmental Quality Review Act (SEQRA) immediately upon completion of an approved master plan. Purchase College, SUNY, will act in the capacity of Lead Agency in the processing of this requirement.
- 4.1.5. PCAC anticipates cooperation from NYDEC in resolving issues pertaining to the unlicensed C & D landfill. Resolution of the issues will include entering into a revised Order of Consent that will detail the measures necessary for proper landfill closure. The landfill area shall be integrated into the development in a meaningful and useful manner. The use of this area as passive and active open space for the residents is encouraged.
- 4.1.6. As previously stated, it is intended that the SLC will be integrated into the activities and culture of the college. The Engineer will be expected to work cooperatively with the PCAC, the College and the other members of the development and operating teams to develop a comprehensive program for the physical and operational integration of the SLC with the college. This will include provisions for improvements for pedestrian access to the facilities of the college and for the development and execution of programmatic elements that will create incentives for the senior population to avail themselves of educational and cultural opportunities of the college.

#### End of Section 4

## 5. Design Criteria

- 5.1. **Design.** An initial set of design and performance criteria, some of which are set forth below, are included in the Owner's Program
- 5.1.1. The design and use of materials should be compatible with the vernacular of the existing campus and with the surrounding area.
  - 5.1.2. The proposed form of agreement (the "Agreement") (Attachment 8) includes a program summary (Exhibit D) showing the anticipated building areas and site utilization requirements for the project. There will be a variety of unit types and sizes including one and two bedroom apartment-style dwellings and detached or semi-detached "villa" style dwellings. Additional market study is required prior to the determination of the types and scope of higher levels of healthcare, such as assisted living, memory care, and/or skilled nursing.
  - 5.1.3. The facility should be designed with a strong sense of community and a "village" feel.
  - 5.1.4. The maximum height of any building shall be four stories plus one partially buried level of parking underneath.
  - 5.1.5. Buildings should be set back from Brigid Flanigan Drive a minimum of thirty feet from the curb line for buildings two stories in height or less. Buildings over two stories should be set back a minimum of fifty feet. Parking areas should be set back a minimum of twenty feet from the buildings and roads, and should be adequately screened with landscape material.
  - 5.1.6. Consideration should be given to maintaining a wooded buffer along Brigid Flanigan Drive.
  - 5.1.7. The main entrance area should be appropriately designed with plentiful landscape material and a strong sense of arrival. The existing natural stone walls should be preserved and enhanced, to the extent practical.
  - 5.1.8. The existing East-West Road is not a public road. It is not necessary or desirable to retain this roadway within the proposed development.
  - 5.1.9. Exterior materials of buildings shall be brick, stone (natural or cultured) and/or cementitious siding (Hardi-Plank or equal), unless other materials are approved by PCAC.
  - 5.1.10. Landscaping shall be substantial and consistent with the high quality of the building architecture. Sufficient screening of foundations, parking and loading areas shall be included.
  - 5.1.11. The project shall be designed, permitted, and constructed consistent with applicable SUNY Program Directives, including appropriate environmental and sustainability initiatives. Technical review of construction plans and specifications will be conducted by a third party reviewer on behalf of the College. Construction permits and certificates of occupancy will be issued by the College, upon recommendation of third party reviewers and inspectors. Because this is a project furthering the mission of the college, municipal construction officials will not have jurisdiction over the design or construction of the project and the project will not be required to obtain local zoning and site plan approvals. Other approvals, such as compliance with SEQRA, discussed in Section 4.1.4, will be required.

### End of Section 5



## 6. Structures of Contracts and Scopes of Services

- 6.1. **PCAC.** Pursuant to the RFQ, PCAC intends to enter into a contract with the successful respondent for planning, engineering, design, and surveying services for the initial phase of the SLC as described in Section 5.1.2.
- 6.1.1. PCAC will contract directly with the Engineer.
- 6.1.2. The SLC will be developed in multiple phases. **The initial phase will be as described in Section 5.1.2. Responses should reflect this scope of work**, with some discussion regarding how future phases could be accommodated through the extension of contracts.
- 6.1.3. The fees earned for the project will be based on negotiated hourly rates for each professional and, where appropriate, an amount not to be exceeded without prior authorization will be established. There may be certain portions of the project in which a lump sum fee can be established. The proposed Form of Agreement (Attachment 8) includes Exhibits for (1) the Design Program pending approval by PCAC; (2) a proposed Construction Cost Budget which is prepared, reviewed, adjusted, and agreed upon by the parties to the contract; and (3) a proposed Project Schedule which is prepared, reviewed, adjusted and agreed upon by the parties to the contract.
- 6.2. **Development Consultant.** Pursuant to a previous RFP, PCAC has retained LCS/SCD Partners, LLC as the Development Consultant for the Project. The Development Consultant will be responsible for the overall management of the design, approvals, development period marketing, construction, and project turnover. Additionally, the Development Consultant will closely coordinate with the Operator and the Investment Banker.
- 6.2.1. The Development Consultant is responsible for the sourcing and management of contracts with design professionals such as the Architect(s), interior design consultants, engineers, planners, landscape architects, and marketing consultants. PCAC will contract directly with each professional necessary to properly develop the project. The Development Consultant will assist PCAC in the selection and contract negotiations of these professionals and coordinate and manage their work efforts.
- 6.2.2. The Development Consultant, together with the other project professionals, will manage all applications necessary for project approvals including those approvals, licenses, and certificates of need or authority necessary to operate the SLC. The Development Consultant will conduct market research to determine, with input from the Investment Banker, Operator, Architect, and PCAC, the best unit types, designs, and service offerings for the project and to determine the optimal initial pricing of products and services. The Development Consultant is responsible for the sales and marketing of the project from initial project announcement, through pre-construction and until stabilization of the first phase of the project.
- 6.2.3. The Development Consultant, with input from PCAC, the Operator, and Architect, will create and refine the project's design program (the "Design Program") for approval by PCAC.
- 6.2.4. The Development Consultant will manage the design team in the preparation of drawings and specifications suitable for construction of the buildings and site work; and the procurement of furniture, fixtures, and equipment of the facility.
- 6.2.5. The project will be constructed by a reputable general contractor or construction management firm, contracted directly with PCAC. The Development Consultant will assist PCAC in the selection and contract negotiations for the construction of the project. The Development Consultant will act in the capacity of the "Owner's Representative" during the construction period of the project and will be responsible for the orderly and successful turnover of the completed project.
- 6.2.6. The Development Consultant will create and refine, from time to time, a detailed project pro forma and project budgets.
- 6.3. **Scope of Services.** The successful respondent will be expected to provide all of the resources and expertise necessary to execute and manage the civil and environmental engineering and landscape architecture, planning and design of the project, actively participate in securing all required project approvals, and to provide customary construction period services for the project.
- 6.3.1. The successful respondent will be required to perform all of the tasks required to plan and design the infrastructure, grading and landscaping for the project site, including any required off-site improvements. The successful respondent

will also be required to provide all of the anticipated professional services to address the proper closure of the unlicensed construction and demolition debris landfill described in Section 4.1. The successful respondent will also be required to provide all of the professional services necessary to prepare the Draft Environmental Impact Statement (DEIS) and the Final Environmental Impact Statement (FEIS) in accordance with the State Environmental Quality Review Act (SEQRA). The respondent may retain sub-consultants to perform certain of the required functions including, but not limited to, traffic impact analysis and planning, analysis related to possible Federal Aviation Administration (FAA) restrictions, investigations and analyses relating to impacts to wetlands, soils, air, water, noise, light, threatened and endangered species, and utility and infrastructure capacities, and engineering, environmental sciences and regulatory compliance related to landfill closures.

- 6.4. **Architect.** Contemporaneously with this RFQ, PCAC has issued an RFQ for architectural services. PCAC anticipates selecting the Architect within the same timeframe as the selection of the Engineer. The Architect will be the lead design consultant for the project. The Architect will work with the other consultants to develop formatting protocols and will manage the efforts of ensuring that all drawings are coordinated.
- 6.5. **Operator.** Pursuant to a previous RFP, PCAC intends to retain Life Care Services, LLC as the Operator in a long term, renewable contract to manage the community. The Operator will have overall responsibility for the management of the SLC and for the provision of goods and services related to the health, welfare, and daily living needs of its residents.
- 6.6. **Investment Banker.** PCAC has retained H.J. Sims & Co., Inc. as the Investment Banker to provide investment banking services for the procurement of short term and permanent tax-exempt bond financing for the project.
- 6.7. **Contract Agreements.** PCAC, upon selection of the successful respondent, will issue a letter of intent to the firm intended to be awarded the contract. The preferred form of Agreement is included as Attachment 8. PCAC and the firm will then negotiate, in good faith, mutually agreeable contract terms. If delays occur in the progress toward the execution of satisfactory contract agreements, PCAC reserves the right to initiate and/or continue discussions and negotiations with other respondents.

#### **End of Section 6**

## 7. Submission Requirements

7.1. **Requirements for Submissions of Qualifications.** The following requirements apply to all Qualifications submissions:

- 7.1.1. **Executive Summary.** Provide an Executive Summary of the submission.
- 7.1.2. **Overview of the Proposed Project Team.** Provide an overview of the proposed project team. The project team should include those members of the respondent's firm, as well as the sub-consultants, that will be required to perform the scope of services described in Section 6.3. Include a detailed description of the organization of the firm and of the proposed team, including identification and curriculum vitae for the key members of the team. Identify proposed sub-consultants and provide curriculum vitae for each key member. Provide details of professional licensure for the key members in each discipline.
- 7.1.3. **Vision Statement.** Briefly describe the methods proposed for the achievement of the vision and mission of the project and for the integration of the SLC with the culture of Purchase College. Describe any characteristics that make the respondent uniquely qualified to provide the services proposed.
- 7.1.4. **Experience.** Respondent's qualifications should demonstrate expertise, capacity and proven experience in senior living, multi-family and mixed income/affordable residential design. Respondents should provide informative details of projects comparable in size, scope and character to the Project in which the respondent or its sub-consultants have acted as the principal engineering, environmental and/or landscape consultant within the last ten (10) years. Respondents should also specifically list and describe all recent relevant experience in Westchester County, New York, whether or not the project was comparable in size or scope, experience with the SEQRA approval process, and experience working with the New York DEC on landfill closures. Examples of prior experience should include (as applicable):
  - 7.1.4.1. Name and location of project;
  - 7.1.4.2. Project descriptions including land area and unit and parking counts;
  - 7.1.4.3. Development team members including lead developer, architect and general contractor;
  - 7.1.4.4. References including telephone numbers, email addresses and a letters authorizing each reference to respond to inquiries;
  - 7.1.4.5. Site plans, photographs, renderings or other collateral materials that provide further understanding of the nature and character of the project;
  - 7.1.4.6. Project timeline with milestones achieved from initial planning through construction completion;
  - 7.1.4.7. Challenges associated with the project;
  - 7.1.4.8. Any factual measures of success, such as initial budget versus final cost or satisfaction of concerns of public entities and of the general public.
- 7.1.5. **Vendor Responsibility.** Complete and file the Vendor Responsibility Questionnaire, included as Attachment 1, in accordance with the requirements in Part I, paragraph O. of this RFQ.
- 7.1.6. **Conflicts of Interest.** Provide details of any potential conflicts of interest including existing business or personal relationships with any member of the Purchase College team or of the Board.
- 7.1.7. **Financial Capacity and Qualifications.** Provide detailed information regarding the financial capacity to complete the services proposed. Information may include certified financial statements of the company and/or correspondence from reputable financial institutions indicating financial capacity. Provide the names and addresses of at least three (3) commercial or institutional credit references and a letter authorizing each credit reference to respond to inquiries.
- 7.1.8. **Form of Agreement.** Provide a written statement that the Agreement included as Attachment 8 has been reviewed and is materially acceptable to sign as drafted. Or, in the event that there are material issues or concerns with the Agreement as drafted, generally state the nature of each concern and the proposed solutions. It is the intent of this requirement of the submission to identify any potential material issues, only, and not to negotiate the legal terms of an agreement.
- 7.1.9. **MBE-WBE-MWBE Status.** Provide status relative to MBE, WBE, and/or MWBE, where:

MBE = New York State certified Minority Business Enterprise;

WBE = New York State certified Woman Business Enterprise; and

MWBE = New York State certified Minority+Woman Business Enterprise.

7.1.10. Complete and submit Attachment 1, the Submission Form – Bid Proposer Info.

7.2. **Interview.** If selected to the Short List pursuant to Section 8.2 of this RFQ, the respondent will be scheduled for a comprehensive interview with the Selection Advisory Committee (as defined in Section 8.1). The respondent should plan to have in attendance at the interview those members of the proposed team who it proposes will have significant roles in the fulfillment of the contract obligations, including key members of any sub-consulting firms. The respondent should be prepared to discuss their vision of the project, their strategy for realizing that vision and to discuss, in general and specifically, the firm's capabilities.

**End of Section 7**



## 8. Qualification Evaluation Criteria and Selection Process

- 8.1. Prior to the deadline for proposal submissions, PCAC will form a Selection Advisory Committee (the “Committee”) consisting of three to seven members knowledgeable of the goals of the project. These committee members may include members of the Board, members of the consulting team, including the Development Consultant, and/or persons with special expertise in the field of senior housing and services and/or special knowledge of the operations and goals of the College.
- 8.2. Each member of the Committee will study and evaluate each properly submitted Qualifications proposal. Each member will rank each firm and will assign a numerical score as follows:

1 point	Firm should not be considered for this contract
2 points	Firm may merit further consideration for this contract
3 points	Firm merits further consideration for this contract

The scores will be totaled for each firm and the four firms that receive the highest point totals will be placed on a short list (the “Short List”). In the event there is a tie for the number four spot, a fifth firm will be added to the Short List.

- 8.3. Those firms selected to the Short List will be scheduled for an interview in accordance with Section 7.2.
- 8.4. Each member of the Committee will evaluate each proposal of the firms on the Short List based on the following criteria. Each component will be weighted as indicated for the purpose of scoring the proposals.
  - 8.4.1. **Experience.** The experience of the proposed team in executing similar projects will be evaluated. Included in the evaluation of this element will be an assessment of the number and quality of successfully completed projects of similar scope, size, and complexity. This component will be **weighted at 30%**
  - 8.4.2. **Experience of Key Personnel.** The experience and success of the key personnel of the team will also be evaluated. This component will be **weighted at 25%.**
  - 8.4.3. **Presentations and Interviews.** The Committee will evaluate the respondents’ demonstration of knowledge of senior housing and multi-family housing design, its demonstration of competence in completing projects in Westchester County, New York and/or for New York State agencies, as well as the respondent’s demonstration of the understanding of the project’s scope and mission. This component will be **weighted at 25%.**
  - 8.4.4. **Project Approach and Capability.** Respondents will be evaluated on their approach to the specific challenges of the project and on their capabilities, including the demonstration of adequate capacity to complete the Project within an acceptable timeframe, given the firm’s current and anticipated workload. This component will be **weighted at 15%.**
  - 8.4.5. **MBE-WBE-MWBE Status.** Certified status as a New York State MBE, WBE, or MWBE will be **weighted at 5%.**
- 8.5. Upon selection by the Committee of the successful respondent, PCAC and the Development Consultant will negotiate in good faith with the successful respondent the terms of an agreement. In the event the terms of an agreement cannot be agreed upon, PCAC reserves the right to negotiate with other respondents.
- 8.6. Upon mutual acceptance of the terms of an agreement, the Committee will make a formal recommendation to the PCAC Board of Directors. The Board may accept and act on the recommendation, or may choose to take no action at all. The terms of the agreement will include an agreed upon schedule of hourly fees for each member of the consultant’s and any sub-consultant’s firm. There may also be certain elements of the scope of services that could be performed for a lump sum fee.
- 8.7. All respondents submitting properly completed Qualifications will be notified in writing of the Board’s decisions.

### End of Section 8

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a Contractor, licensor, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. PROHIBITION AGAINST ASSIGNMENT** Except for the assignment of its right to receive payments subject to Article 5-A of the State Finance Law, the Contractor selected to perform the services herein are prohibited in accordance with Section 138 of the State Finance Law from assigning, transferring, conveying, subletting or otherwise disposing of its rights, title or interest in the contract without the prior written consent of SUNY and attempts to do so are null and void. Notwithstanding the foregoing, SUNY may, with the concurrence of the New York Office of State Comptroller, waive prior written consent of the assignment, transfer, conveyance, sublease or other disposition of a contract let pursuant to Article XI of the State Finance Law if the assignment, transfer, conveyance, sublease or other disposition is due to a reorganization, merger or consolidation of Contractor's its business entity or enterprise and Contractor so certifies to SUNY. SUNY retains the right, as provided in Section 138 of the State Finance Law, to accept or reject an assignment, transfer, conveyance, sublease or other disposition of the contract, and to require that any Contractor demonstrate its responsibility to do business with SUNY.

**3. COMPTROLLER'S APPROVAL.** (a) In accordance with Section 112 of the State Finance Law, Section 355 of New York State Education Law, and 8 NYCRR 316, Comptroller's approval is not required for the following contracts: (i) materials; (ii) equipment and supplies, including computer equipment; (iii) motor vehicles; (iv) construction; (v) construction-related services; (vi) printing; and (vii) goods for State University health care facilities, including contracts for goods made with joint or group purchasing arrangements.

(b) Comptroller's approval is required for the following contracts: (i) contracts for services not listed in Paragraph (3)(a) above made by a State University campus or health care facility certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$250,000; (ii) contracts for services not listed in Paragraph (3)(a) above made by a State University campus not certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$50,000; (iii) contracts for services not listed in Paragraph (3)(a) above made by health care facilities not certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$75,000; (iv) contracts whereby the State University agrees to give something other than money, when the value or reasonably estimated value of such consideration exceeds \$10,000; (v) contracts for real property transactions if the contract value exceeds \$50,000; (vi) all other contracts not listed in Paragraph 3(a) above, if the contract value exceeds \$50,000, e.g. SUNY acquisition of a business and New York State Finance Article 11-B contracts and (vii) amendments for any amount to contracts not listed in Paragraph (3)(a) above, when as so amended, the contract exceeds the threshold amounts stated in Paragraph (b) herein. However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

(c) Any contract that requires Comptroller approval shall not be valid, effective or binding upon the State University until it has been approved by the Comptroller and filed in the Comptroller's office.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by SUNY of any SUNY-approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based on the submission of competitive bids, Contractor affirms, under penalty of perjury, and each person signing on behalf of Contractor, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered it to SUNY a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 *et seq.*) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as SUNY and its representatives and entities involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. SUNY shall take reasonable steps to protect from

public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate SUNY official, in writing, that said Records should not be disclosed; and (ii) said Records shall be sufficiently identified; and (iii) designation of said Records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, SUNY's or the State's right to discovery in any pending or future litigation.

#### 11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

Identification Number(s). Every invoice or New York State Claim for Payment submitted to the State University of New York by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State University of New York is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the State University of New York contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

#### 12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

(a) In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(1) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(2) At SUNY's request, Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(3) Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(b) Contractor will include the provisions of "1", "2" and "3", above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a Contractor or sub-contractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. SUNY shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, SUNY shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. **CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Exhibit A, the terms of this Exhibit A shall control.

14. **GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. **LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. **NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. **SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30)

calendar days after service hereunder is complete in which to respond.

18. **PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State. In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with the approval of the State, otherwise, the bid may not be considered responsive. Under bidder certification, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. **MacBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that Contractor and any individual or legal entity in which the Contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165(5) of the State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. **OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers in its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St., 7th Floor  
Albany, NY 12245  
Tel: 518-292-5100  
Fax: 518-292-5884  
email: opa@esd.ny.gov  
A directory of certified minority and women-owned business enterprises is available from:  
NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414

email: mwbecertification@esd.ny.gov

<http://esd.ny.gov/MWBE/directorySearch.html>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to SUNY;

(b) The Contractor has complied with the Federal Equal Employment Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Search Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that SUNY may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with SUNY in these efforts.

**21. RECIPROCITY AND SANCTIONS**

**PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act of 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. Contact the NYS Department of Economic Development, Division for Small Business, 30 South Pearl Street, Albany, New York 12245, for a current list of jurisdictions subject to this provision.

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal or similar services, then in accordance with Section 163(4-g) of the State Finance Law, the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to SUNY, the Department of Civil Service and the State Comptroller.

**24. PURCHASES OF APPAREL AND SPORTS EQUIPMENT.** In accordance with State Finance Law Section 165(7), SUNY may determine that a bidder on a contract for the purchase of apparel or sports equipment is not a responsible bidder as defined in State Finance Law Section 163 based on (a) the labor standards applicable to the manufacture of the apparel or sports equipment, including employee compensation, working conditions, employee rights to form unions and the use of child labor; or (b) bidder's failure to provide information sufficient

for SUNY to determine the labor conditions applicable to the manufacture of the apparel or sports equipment.

**25. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**26. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.** To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the Contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or SUNY discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if SUNY determines that such action is in the best interests of the State.

**THE FOLLOWING PROVISIONS SHALL APPLY ONLY TO THOSE CONTRACTS TO WHICH A HOSPITAL OR OTHER HEALTH SERVICE FACILITY IS A PARTY**

27. Notwithstanding any other provision in this contract, the hospital or other health service facility remains responsible for insuring that any service provided pursuant to this contract complies with all pertinent provisions of Federal, state and local statutes, rules and regulations. In the foregoing sentence, the word "service" shall be construed to refer to the health care service rendered by the hospital or other health service facility.

28. (a) In accordance with the 1980 Omnibus Reconciliation Act (Public Law 96-499), Contractor hereby agrees that until the expiration of four years after the furnishing of services under this agreement, Contractor shall make available upon written request to the Secretary of Health and Human Services, or upon request, to the Comptroller General of the United States or any of their duly authorized representatives, copies of this contract, books, documents and records of the Contractor that are necessary to certify the nature and extent of the costs hereunder.

(b) If Contractor carries out any of the duties of the contract hereunder, through a subcontract having a value or cost of \$10,000 or more over a twelve-month period, such subcontract shall contain a clause to the effect that, until the expiration of four years after the furnishing of such services pursuant to such subcontract, the subcontractor shall make available upon written request to the Secretary of Health and Human Services or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, copies of the subcontract and books, documents and records of the subcontractor that are necessary to verify the nature and extent of the costs of such subcontract.

(c) The provisions of this section shall apply only to such contracts as are within the definition established by the Health Care Financing Administration, as may be amended or modified from time to time.

**1. DEFINITIONS.** The following terms shall be defined in accordance with Section 310 of the Executive Law:

**STATE CONTRACT** herein referred to as "State Contract", shall mean: (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000.00), whereby the State University of New York ("University") is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or a combination of the foregoing, to be performed for, or rendered or furnished to the University; (b) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; and (c) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University as an owner of a state assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project.

**SUBCONTRACT** herein referred to as "Subcontract", shall mean any agreement for a total expenditure in excess of \$25,000 providing for services, including non-staffing expenditures, supplies or materials of any kind between a State agency and a prime contractor, in which a portion of the prime contractor's obligation under the State contract is undertaken or assumed by a business enterprise not controlled by the prime contractor.

**WOMEN-OWNED BUSINESS ENTERPRISE** herein referred to as "WBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more United States citizens or permanent resident aliens who are women; (b) an enterprise in which the ownership interest of such women is real, substantial and continuing; (c) an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars (\$3,500,000), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

A firm owned by a minority group member who is also a woman may be certified as a minority-owned business enterprise, a women-owned business enterprise, or both, and may be counted towards either a minority-owned business enterprise goal or a women-owned business enterprise goal, in regard to any Contract or any goal, set by an agency or authority, but such participation may not be counted towards both such goals. Such an enterprise's participation in a Contract may not be divided between the minority-owned business enterprise goal and the women-owned business enterprise goal.

**MINORITY-OWNED BUSINESS ENTERPRISE** herein referred to as "MBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more minority group members; (b) an enterprise in which such minority ownership is real, substantial and continuing; (c) an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars (\$3,500,000.00), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

**MINORITY GROUP MEMBER** shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (a) Black persons having origins in any of the Black African racial groups; (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race; (c) Native American or Alaskan native persons having origins in any of the original peoples of North America. (d) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian Subcontinent or Pacific Islands.

**CERTIFIED ENTERPRISE OR BUSINESS** shall mean a business verified as a minority or women-owned business enterprise pursuant to section 314 of the Executive Law. A business enterprise which has been approved by the New York Division of Minority & Women Business Development ("DMWBD") for minority or women-owned enterprise status subsequent to verification that the business enterprise is owned, operated, and controlled by minority group members or women, and that also meets the financial requirements set forth in the regulations.

**2. TERMS.** The parties to the attached State Contract agree to be bound by the following provisions which are made a part hereof (the

word "Contractor" herein refers to any party other than the University:

1(a) Contractor and its Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(b) Prior to the award of a State Contract, the Contractor shall submit an equal employment opportunity (EEO) policy statement to the University within the time frame established by the University.

(c) As part of the Contractor's EEO policy statement, the Contractor, as a precondition to entering into a valid and binding State Contract, shall agree to the following in the performance of the State Contract: (i) The Contractor will not discriminate against any employee or applicant for employment, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State Contracts; (ii) The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the State Contract, all qualified applicants will be afforded equal employment opportunities without discrimination; (iii) At the request of the University the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

(d) Except for construction contracts, prior to an award of a State Contract, the Contractor shall submit to the contracting agency a staffing plan of the anticipated work force to be utilized on the State Contract or, where required, information on the Contractor's total work force, including apprentices, broken down by specified ethnic background, gender, and Federal occupational categories or other appropriate categories specified by the contracting agency. The form of the staffing plan shall be supplied by the contracting agency. If Contractor fails to provide a staffing plan, or in the alternative, a description of its entire work force, the University may reject Contractor's bid, unless Contractor either commits to provide such information at a later date or provides a reasonable justification in writing for its failure to provide the same.

(e) After an award of a State Contract, the Contractor shall submit to the University a workforce utilization report, in a form and

manner required by the agency, of the work force actually utilized on the State Contract, broken down by specified ethnic background, gender, and Federal occupational categories or other appropriate categories specified by the University.

(f) The Contractor shall include the provisions of this section in every Subcontract in such a manner that the requirements of the provisions will be binding upon each Subcontractor as to work in connection with the State Contract, including the requirement that Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and, when requested, provide to the Contractor information on the ethnic background, gender, and Federal occupational categories of the employees to be utilized on the State Contract.

(g) To ensure compliance with the requirements of this paragraph, the University shall inquire of a Contractor whether the work force to be utilized in the performance of the State Contract can be separated out from the Contractor's and/or Subcontractors' total work force and where the work of the State Contract is to be performed. For Contractors who are unable to separate the portion of their work force which will be utilized for the performance of this State Contract, Contractor shall provide reports describing its entire work force by the specified ethnic background, gender, and Federal Occupational Categories, or other appropriate categories which the agency may specify.

(h) The University may require the Contractor and any Subcontractor to submit compliance reports, pursuant to the regulations relating to their operations and implementation of their affirmative action or equal employment opportunity program in effect as of the date the State Contract is executed.

(i) If a Contractor or Subcontractor does not have an existing affirmative action program, the University may provide to the Contractor or Subcontractor a model plan of an affirmative action program. Upon request, the Director of DMWBD shall provide a contracting agency with a model plan of an affirmative action program.

(j) Upon request, DMWBD shall provide the University with information on specific recruitment sources for minority group members and woman, and contracting agencies shall make such information available to Contractors

2. Contractor must provide the names, addresses and federal identification numbers of certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State Contract and a description of the Contract scope of work which the Contractor intends to structure to increase the participation by Certified minority-and/or women-owned business enterprises on the State Contract, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State Contract which the Contractor intends to be performed by a certified minority- or woman-owned business enterprise. In the event the Contractor responding to University solicitation is joint venture, teaming agreement,

or other similar arrangement that includes a minority-and women owned business enterprise, the Contractor must submit for review and approval: i. the name, address, telephone number and federal identification of each partner or party to the agreement; ii. the federal identification number of the joint venture or entity established to respond to the solicitation, if applicable; iii. A copy of the joint venture, teaming or other similar arrangement which describes the percentage of interest owned by each party to the agreement and the value added by each party; iv. A copy of the mentor-protégé agreement between the parties, if applicable, and if not described in the joint venture, teaming agreement, or other similar arrangement.

**3. PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN.** The University shall determine whether Contractor has made conscientious and active efforts to employ and utilize minority group members and women to perform this State Contract based upon an analysis of the following factors:

(a) Whether Contractor established and maintained a current list of recruitment sources for minority group members and women, and whether Contractor provided written notification to such recruitment sources that contractor had employment opportunities at the time such opportunities became available.

(b) Whether Contractor sent letters to recruiting sources, labor unions, or authorized representatives of workers with which contractor has a collective bargaining or other agreement or understanding requesting assistance in locating minority group members and women for employment.

(c) Whether Contractor disseminated its EEO policy by including it in any advertising in the news media, and in particular, in minority and women news media.

(d) Whether Contractor has attempted to provide information concerning its EEO policy to Subcontractors with which it does business or had anticipated doing business.

(e) Whether internal procedures exist for, at a minimum, annual dissemination of the EEO policy to employees, specifically to employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions. Such dissemination may occur through distribution of employee policy manuals and handbooks, annual reports, staff meetings and public postings.

(f) Whether Contractor encourages and utilizes minority group members and women employees to assist in recruiting other employees.

(g) Whether Contractor has apprentice training programs approved by the N.Y.S. Department of Labor which provides for training and hiring of minority group members and women.

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor.

**4. PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES.** Based upon an analysis of the following factors, the University shall determine whether Contractor has made good faith efforts to provide for meaningful

participation by minority-owned and women-owned business enterprises which have been certified by DMWBD:

(a) Whether Contractor has actively solicited bids for Subcontracts from qualified M/WBEs, including those firms listed on the Directory of Certified Minority and Women-Owned Business Enterprises, and has documented its good faith efforts towards meeting minority and women owned business enterprise utilization plans by providing, copies of solicitations, copies of any advertisements for participation by certified minority- and women-owned business enterprises timely published in appropriate general circulation, trade and minority- or women-oriented publications, together with the listing(s) and date(s) of the publications of such advertisements; dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the University, with certified minority- and women-owned business enterprises, and the reasons why any such firm was not selected to participate on the project.

(b) Whether Contractor has attempted to make project plans and specifications available to firms who are not members of associations with plan rooms and reduce fees for firms who are disadvantaged.

(c) Whether Contractor has utilized the services of organizations which provide technical assistance in connection with M/WBE participation.

(d) Whether Contractor has structured its Subcontracts so that opportunities exist to complete smaller portions of work.

(e) Whether Contractor has encouraged the formation of joint ventures, partnerships, or other similar arrangements among Subcontractors.

(f) Whether Contractor has requested the services of the Department of Economic Development (DED) to assist Subcontractors' efforts to satisfy bonding requirement.

(g) Whether Contractor has made progress payments promptly to its Subcontractors.

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor. It shall be the responsibility of Contractor to ensure compliance by every Subcontractor with these provisions.

## **5. GOALS. (a) GOALS FOR MINORITY AND WOMEN WORK FORCE PARTICIPATION.**

(i) The University shall include relevant work force availability data, which is provided by the DMWBD, in all documents which solicit bids for State Contracts and shall make efforts to assist Contractors in utilizing such data to determine expected levels of participation for minority group members and women on State Contracts.

(ii) Contractor shall exert good faith efforts to achieve such goals for minority and women's participation. To successfully achieve such goals, the employment of minority group members and women by Contractor must be substantially uniform during the entire term of this State Contract. In addition, Contractor should not participate in the transfer of employees from one employer or project to another for the sole purpose of

achieving goals for minority and women's participation.

(b) **GOALS FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION.** For all State Contracts in excess of \$25,000.00 whereby the University is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or an combination of the foregoing or all State Contracts in excess of \$100,000.00 whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, Contractor shall exert good faith efforts to achieve a participation goal of fourteen percent (**14%**) for Certified Minority-Owned Business Enterprises and twelve percent (**12%**) for Certified Women-Owned Business Enterprises.

**6. ENFORCEMENT.** The University will be responsible for enforcement of each Contractor's compliance with these provisions. Contractor, and each Subcontractor, shall

permit the University access to its books, records and accounts for the purpose of investigating and determining whether Contractor or Subcontractor is in compliance with the requirements of Article 15-A of the Executive Law. If the University determines that a Contractor or Subcontractor may not be in compliance with these provisions, the University may make every reasonable effort to resolve the issue and assist the Contractor or Subcontractor in its efforts to comply with these provisions. If the University is unable to resolve the issue of noncompliance, the University may file a complaint with the DMWBD.

**7. DAMAGES FOR NON COMPLIANCE.**

Where the University determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to liquidated damages to the University. Such liquidated damages shall be calculated as an amount equaling the difference between:

a. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and

b. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the University, Contractor shall pay such liquidated damages to the University within sixty (60) days after such damages are assessed, unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the University.

**Attachment 1**  
**Proposer Information**

**YOU ARE INVITED TO SUBMIT A PROPOSAL FOR RFQ PCAC-091014.  
PROPOSERS MUST SUBMIT THE FOLLOWING:**

1. a) A completed Proposer Submission Form (this page);  
b) State Finance Law §§ 139-j and 139-k Form B;  
c) State Finance Law §§ 139-j and 139-k and Form C.
2. Information as requested in Part II: Detailed Specifications.
3. Your firm's Equal Employment Opportunity Policy Statement, which conforms to the provisions of Exhibit A-1.

**IF YOU ARE NOT SUBMITTING QUALIFICATIONS, PCAC REQUESTS THE FOLLOWING:**

1. Respond "No Proposal will be submitted" and state your reason(s).
2. Return only this page to the Issuing Office address on Page 1.

**PLEASE RESPOND TO THE FOLLOWING INQUIRIES AND/OR CERTIFICATIONS:**

1

1. Does your firm agree that all presentations and materials will be free from racial, religious, or sexual bias?  
YES: \_\_\_\_\_ NO: \_\_\_\_\_
2. Are you a New York State (NYS) resident business? YES: \_\_\_\_\_ NO: \_\_\_\_\_
3. Total number of people employed by firm: \_\_\_\_\_
4. Total number of people employed by firm in NYS: \_\_\_\_\_
5. Is your firm a NYS Minority-owned Business? YES: \_\_\_\_\_ NO: \_\_\_\_\_  
NYS Certified? YES: \_\_\_\_\_ NO: \_\_\_\_\_
6. Is your firm a NYS Women-owned Business? YES: \_\_\_\_\_ NO: \_\_\_\_\_  
NYS Certified? YES: \_\_\_\_\_ NO: \_\_\_\_\_
7. Please indicate if you or any officer of your organization, or any party owning or controlling more than 10 percent of your stock if you are a corporation, or any member if you are a firm or association, is an officer or employee of the State of New York or of a public benefit corporation of the State of New York. YES: \_\_\_\_\_ NO: \_\_\_\_\_
8. In accordance with State Finance Law §§ 139-j and 139-k, please certify that all information provided with respect to State Finance Law §§ 139-j and 139-k is complete, true and accurate.

FIRM'S NYS STATE FINANCIAL SYSTEM NUMBER (SFS ID): \_\_\_\_\_

FIRM'S TAX IDENTIFICATION NUMBER (TIN): \_\_\_\_\_

FIRM NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE NUMBER: (\_\_\_\_\_) \_\_\_\_\_ FAX NUMBER: (\_\_\_\_\_) \_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_

FIRM REPRESENTATIVE - NAME / TITLE (printed) \_\_\_\_\_

FIRM REPRESENTATIVE SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_



## **Attachment 2**

### **PCAC Enabling Legislation**



*Effective 8/15/11*

Bill No.: A00340

☒ Summary ☐ Actions ☐ Votes ☐ Memo ☒ Text

**A00340 Summary:**

BILL NO      A00340A  
 SAME AS      Same as S 1846-A  
 SPONSOR      Paulin (MS)  
 COSPNSR      Spano, Lupardo, Castelli  
 MLTSPNSR      Boyland

Authorizes the lease of lands located at the state university of New York at Purchase for a senior learning community.

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**A00340 Text:**

STATE OF NEW YORK

340--A

2011-2012 Regular Sessions

IN ASSEMBLY

(PREFILED)

January 5, 2011

Introduced by M. of A. PAULIN, SPANO, LUPARDO, CASTELLI -- read once and referred to the Committee on Higher Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to authorize the lease of lands located at the state university of New York at Purchase

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Legislative findings. The legislature finds that the
- 2 provision of a senior learning community upon the grounds of the state
- 3 university of New York at Purchase is appropriate to further the objec-
- 4 tives and purposes of the state university of New York. The legislature
- 5 further finds that granting the trustees of the state university of New
- 6 York the authority and power to lease and otherwise contract to make
- 7 available grounds and facilities of the campus of the state university
- 8 of New York at Purchase will ensure the availability of such senior
- 9 learning community, and also promote the effective use of such grounds

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[York at](#)



10 and facilities.

11 S 2. The trustees of the state university of New York are hereby  
 12 authorized to lease without any public bidding a portion of the lands of  
 13 the state university of New York at Purchase generally described in this  
 14 act to the Purchase college advancement corporation, a not-for-profit  
 15 corporation, upon such terms and conditions as the trustees deem advis-  
 16 able, for an initial term not to exceed forty years or for such time as  
 17 may be necessary to complete repayment of any debt related to the  
 18 projects described in this act, whichever is shorter. In the event that  
 19 the real property which is the subject of such lease or contract shall  
 20 ~~cease to be used for the purposes described in this act, said lease~~  
 21 shall immediately terminate and the real property and any improvements  
 22 thereon shall revert to the state university of New York. Any contract

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
 [ ] is old law to be omitted.

LBD02543-04-1

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2

1 or lease entered into pursuant to this act shall provide that the real  
 2 property which is the subject of such lease or contract and any improve-  
 3 ments thereon shall revert to the state university of New York upon the  
 4 expiration of such lease. The description of the parcels to be leased  
 5 pursuant to such section are not meant to be legal descriptions, but are  
 6 intended only to identify the parcels and improvements to be leased for  
 7 purposes consistent with the mission of the state university of New York  
 8 at Purchase.

9 S 3. For the purposes of this act: (a) "project" shall mean work at  
 10 the property authorized by this act to be leased to the Purchase college  
 11 advancement corporation as described in section fourteen of this act  
 12 that involves the design, construction, reconstruction, demolition,  
 13 excavating, rehabilitation, repair, renovation, alteration or improve-  
 14 ment of a senior learning community.

15 (b) "project labor agreement" shall mean a pre-hire collective  
 16 bargaining agreement between a contractor and a labor organization,  
 17 establishing the labor organization as the collective bargaining repre-  
 18 sentative for all persons who will perform work on the project, and  
 19 which provides that only contractors and subcontractors who sign a pre-  
 20 negotiated agreement with the labor organization can perform project  
 21 work.

22 S 4. Notwithstanding the provisions of any general, special, or local  
 23 law or judicial decision to the contrary:

24 (a) The Purchase college advancement corporation may require a  
 25 contractor awarded a contract, subcontract, lease, grant, bond, covenant  
 26 or other agreement for a project to enter into a project labor agreement  
 27 during and for the work involved with such project when such requirement  
 28 is part of the Purchase college advancement corporation's request for  
 29 proposals for the project and when the Purchase college advancement  
 30 corporation determines that the record supporting the decision to enter  
 31 into such an agreement establishes that the interests underlying the  
 32 competitive bidding laws are best met by requiring a project labor  
 33 agreement including: obtaining the best work at the lowest possible  
 34 price; preventing favoritism, fraud and corruption; the impact of delay;  
 35 the possibility of cost savings; and any local history of labor unrest.

36 (b) If the Purchase college advancement corporation does not require a  
 37 project labor agreement, then any contractor, subcontractor, lease,  
 38 grant, bond, covenant or other agreements for a project shall be awarded  
 39 pursuant to section 135 of the state finance law.

40 (c) Any contract to which the Purchase college advancement corporation  
 41 is a party, and any contract entered into by a third party acting in  
 42 place of, on behalf of and for the benefit of the Purchase college  
 43 advancement corporation pursuant to any lease, permit or other agreement  
 44 between such third party and the Purchase college advancement corpo-  
 45 ration, for a project deemed a public works project for the purposes of  
 46 article 8 of the labor law, and shall be subject to all of the  
 47 provisions of article 8 of the labor law, including the enforcement of



48 prevailing wage requirements by the fiscal officer as defined in para-  
49 graph e of subdivision 5 of section 220 of the labor law to the same  
50 extent as a contract of the state.

51 (d) Every contract entered into by the Purchase college advancement  
52 corporation for a project shall contain a provision that the contractor  
53 shall furnish a labor and material bond guaranteeing prompt payment of  
54 moneys that are due to all persons furnishing labor and materials pursu-  
55 ant to the requirements of any contracts for a project undertaken pursu-  
56 ant to this section and a performance bond for the faithful performance  
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1 of the project, which shall conform to the provisions of section 103-f  
2 of the general municipal law, and that a copy of such performance and  
3 payment bonds shall be kept by the Purchase college advancement corpo-  
4 ration and shall be open to public inspection.

5 (e) For the purposes of article 15-A of the executive law, any indi-  
6 vidual, public corporation or authority, private corporation, limited  
7 liability company or partnership or other entity entering into a  
8 contract, subcontract, lease, grant, bond, covenant or other agreement  
9 for a project authorized pursuant to this section shall be deemed a  
10 state agency as that term is defined in such article and such contracts  
11 shall be deemed state contracts within the meaning of that term as set  
12 forth in such article.

13 (f) Whenever the Purchase college advancement corporation enters into  
14 a contract, subcontract, lease, grant, bond, covenant or other agreement  
15 for a project undertaken pursuant to this act, the Purchase college  
16 advancement corporation shall consider the financial and organizational  
17 capacity of contractors and subcontractors in relation to the magnitude  
18 of work they may perform, the record of performance of contractors and  
19 subcontractors on previous work, the record of contractors and subcon-  
20 tractors in complying with existing labor standards and maintaining  
21 harmonious labor relations, and the commitment of contractors to work  
22 with minority and women owned business enterprises pursuant to article  
23 15-A of the executive law through joint ventures or subcontractor  
24 relationships.

25 S 5. The Purchase college advancement corporation shall require that  
26 whenever work is performed under this section, the contractors and  
27 subcontractors shall have apprenticeship programs appropriate for the  
28 type and scope of work to be performed, that have been registered with  
29 and approved by the commissioner of labor pursuant to article 23 of the  
30 labor law. Additionally, it must be demonstrated that the apprenticeship  
31 program has made significant efforts to attract and retain minority  
32 apprentices, as determined by affirmative action goals established for  
33 such programs by the department of labor.

34 S 6. Whenever the Purchase college advancement corporation enters into  
35 a contract under which employees are employed to perform building  
36 service work, as that term is defined in section 230 of the labor law,  
37 such work shall be subject to article 9 of the labor law to the same  
38 extent as building services work performed pursuant to a contract with a  
39 public agency.

40 S 7. Whenever employees perform work at the senior learning community  
41 other than work performed under sections four and six of this act, such  
42 employees shall be paid by their employer no less than the median hourly  
43 wage for "all occupations" in the metropolitan statistical area closest  
44 to the project location, published by the United States bureau of labor  
45 statistics, for the duration of the lease term. All of the provisions  
46 of article 9 of the labor law shall apply. Employers shall be subject to  
47 the requirements of contractors under article 9 of the labor law.

48 S 8. All developers must have entered into an agreement with the labor  
49 organization or organizations that is/are actively engaged in represent-  
50 ing and attempting to represent food and beverage, housekeeping, or  
51 other service employees in the state university of New York at Purchase  
52 area that is valid and enforceable under 29 U.S.C. section 185(a) and  
53 that prohibits any strikes, picketing or other economic interference  
54 with such food and beverage, housekeeping, or other service operations  
55 and ensures that any such operations that are conducted by contractors,



56 subcontractors, licensees, assignees, tenants or subtenants, shall be  
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1 done under contracts enforceable under 29 U.S.C. section 185(a) contain-  
2 ing the same provisions as specified above.

3 S 9. Notwithstanding any other provision of this act, an employer and  
4 employee organization of the senior learning community may enter into an  
5 agreement which shall: (1) confer jurisdiction of the New York state  
6 employment relations board; (2) provide for participation in an agree-  
7 ment for the designation of collective bargaining under subdivision 1 of  
8 ~~section 705 of the labor law, commonly known as card check; and (3)~~  
9 impose no strike provisions as set forth in subdivision two of this  
10 section. Upon execution of such an agreement by both parties containing  
11 all of the provisions set forth in this subdivision, the agreement shall  
12 be binding and enforceable against both parties.

13 S 10. Nothing in this act shall be deemed to waive or impair any  
14 rights or benefits of employees of the state university of New York that  
15 otherwise would be available to them pursuant to the terms of agreements  
16 between the certified representatives of such employees and the state of  
17 New York pursuant to article 14 of the civil service law; all work  
18 performed on such property that would ordinarily be performed by employ-  
19 ees subject to article 14 of the civil service law shall continue to be  
20 performed by such employees.

21 S 11. Without limiting the determination of such terms and conditions  
22 by said trustees, such terms and conditions may provide for leasing,  
23 construction, reconstruction, rehabilitation, improvement, operation and  
24 management of and provision of services and assistance and granting of  
25 licenses, easements and other arrangements with regard to such grounds  
26 and facilities by the Purchase college advancement corporation and  
27 parties contracting with the Purchase college advancement corporation  
28 and, in connection with such activities, the obtaining of financing,  
29 whether public or private or secured (including but not limited to,  
30 secured by leasehold mortgages and assignments of rents and leases), by  
31 the Purchase college advancement corporation and parties contracting  
32 with the Purchase college advancement corporation, for the purposes of  
33 completing the projects described in this act.

34 Parcel C shall be leased for the development of not more than 385  
35 units of a senior learning community.

36 S 12. Any contracts entered into pursuant to this act between the  
37 Purchase college advancement corporation and parties contracting with  
38 the Purchase college advancement corporation shall be awarded by a  
39 competitive process.

40 S 13. (a) Any contracts or leases entered into by the state university  
41 of New York or the Purchase college advancement corporation pursuant to  
42 this act shall be subject to approval of the attorney general as to form  
43 as well as by the director of the budget and the state comptroller. Any  
44 and all proceeds relating to the leases authorized by this act shall be  
45 allocated by the board of trustees for Purchase college, state universi-  
46 ty of New York, in the following manner: seventy-five percent to the  
47 student financial aid for students who are eligible to receive a tuition  
48 assistance award or supplemental tuition assistance pursuant to section  
49 667 or 667-a of the education law and twenty-five percent to support  
50 additional full-time faculty positions.

51 (b) The trustees of the state university of New York shall, on or  
52 before July first of each year that a lease of lands as authorized by  
53 this act remains in effect, report to the governor, the temporary presi-  
54 dent of the senate, the speaker of the assembly, the director of the  
55 division of the budget, the senate finance committee, the assembly ways  
56 and means committee and the higher education committees of the legisla-  
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1 ture the following information: (i) all proceeds derived from any lease  
2 authorized by this act with a description of how such proceeds have been  
3 allocated that year under subdivision (a) of this section; (ii) the  
4 amount of funds spent at the state university of New York at Purchase  
5 for additional full-time faculty positions and the number of additional



13 S 14. The property authorized by this act to be leased to the Purchase  
14 college advancement corporation is generally described as a parcel of  
15 real property with improvements thereon, consisting of approximately  
16 40.5 acres, situated on the campus of the state university of New York  
17 at Purchase. The description in this section of the land to be leased is  
18 not a legal description, but is intended only to identify the premises  
19 to be leased for purposes consistent with the mission of the state  
20 university of New York at Purchase:

22 ALL that plot, piece or parcel of land situate and being in the Town of  
23 Harrison, County of Westchester and State of New York, bounded and  
24 described as follows:

46 CONTAINING 40.05 ACRES OF LAND

August 18  
2011

6

4 demised premises.  
5 S 17. Insofar as the provisions of this act are inconsistent with the  
6 provisions of any law, general, special or local, the provisions of this  
7 act shall be controlling; provided, however, that all leases, contracts,  
8 financing, granting of licenses, easements, and other arrangements with  
9 regard to a project pursuant to this act shall be subject to the  
10 provisions of article 8 of the environmental conservation law.

2011.8.20



14 at Purchase for permanent preservation as open space lands.

15 S 19. All real property included in section eighteen of this act shall  
16 be maintained for one or more of the following purposes:

17 (a) open space lands and natural areas for maintaining plants, animals  
18 and natural communities; and

19 (b) an area of natural or historic interest and beauty which provides  
20 the public with passive recreational opportunities.

21 S 20. (a) The state university trustees shall cause to be undertaken a  
22 survey of the real property included in section nineteen of this act.  
23 Such survey shall be completed and made available to the legislature and  
24 the public not later than six months after the effective date of this  
25 act.

FEB 18, 2012

26 (b) The state university trustees shall develop, in consultation with  
27 the department of environmental conservation, a stewardship plan for the  
28 maintenance of the real property included in section nineteen of this  
29 act as open lands. Such plan shall be completed and made available to  
30 the public not later than six months after the effective date of this  
31 act.

FEB 18/2012

32 S 21. (a) Any contract or leases entered into by the state university  
33 of New York or the Purchase college advancement corporation pursuant to  
34 this act shall provide that not less than 20 percent of the units in the  
35 senior learning community must, upon the initial rental of the units and  
36 upon all subsequent rentals of the units after a vacancy, be affordable  
37 to and occupied or available for occupancy by individuals or families  
38 whose incomes at the time of initial occupancy do not exceed 80 percent  
39 of the median household income for the county of Westchester as calcu-  
40 lated by the United States census bureau.

41 (b) All affordable units must be geographically integrated with the  
42 market rate units and residents of such units shall be provided with and  
43 have access to the services and amenities available to other residents  
44 in the development.

45 (c) Residents of the county where the development is located shall  
46 have priority for the rental of 50 percent of the affordable units,  
47 provided they meet the income requirements of this section.

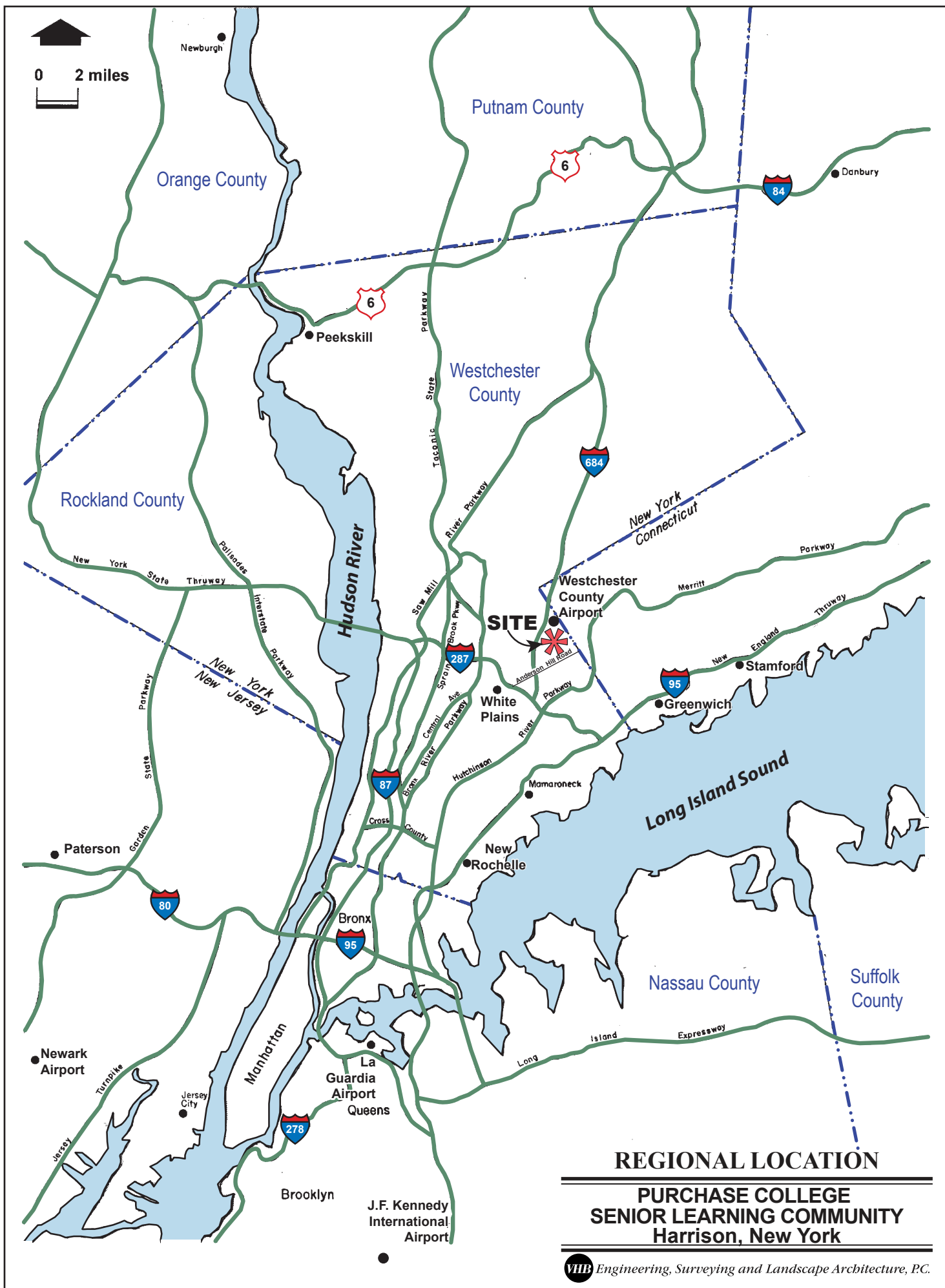
48 S 22. This act shall take effect immediately.

[Go to top](#)

### **Attachment 3**

#### **Vicinity Map**





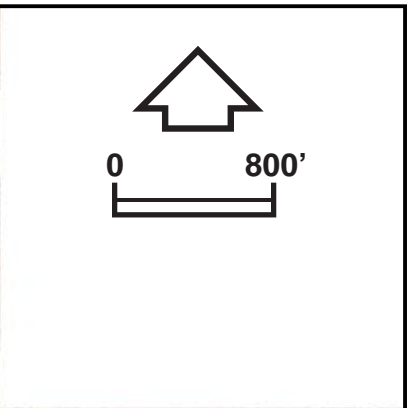
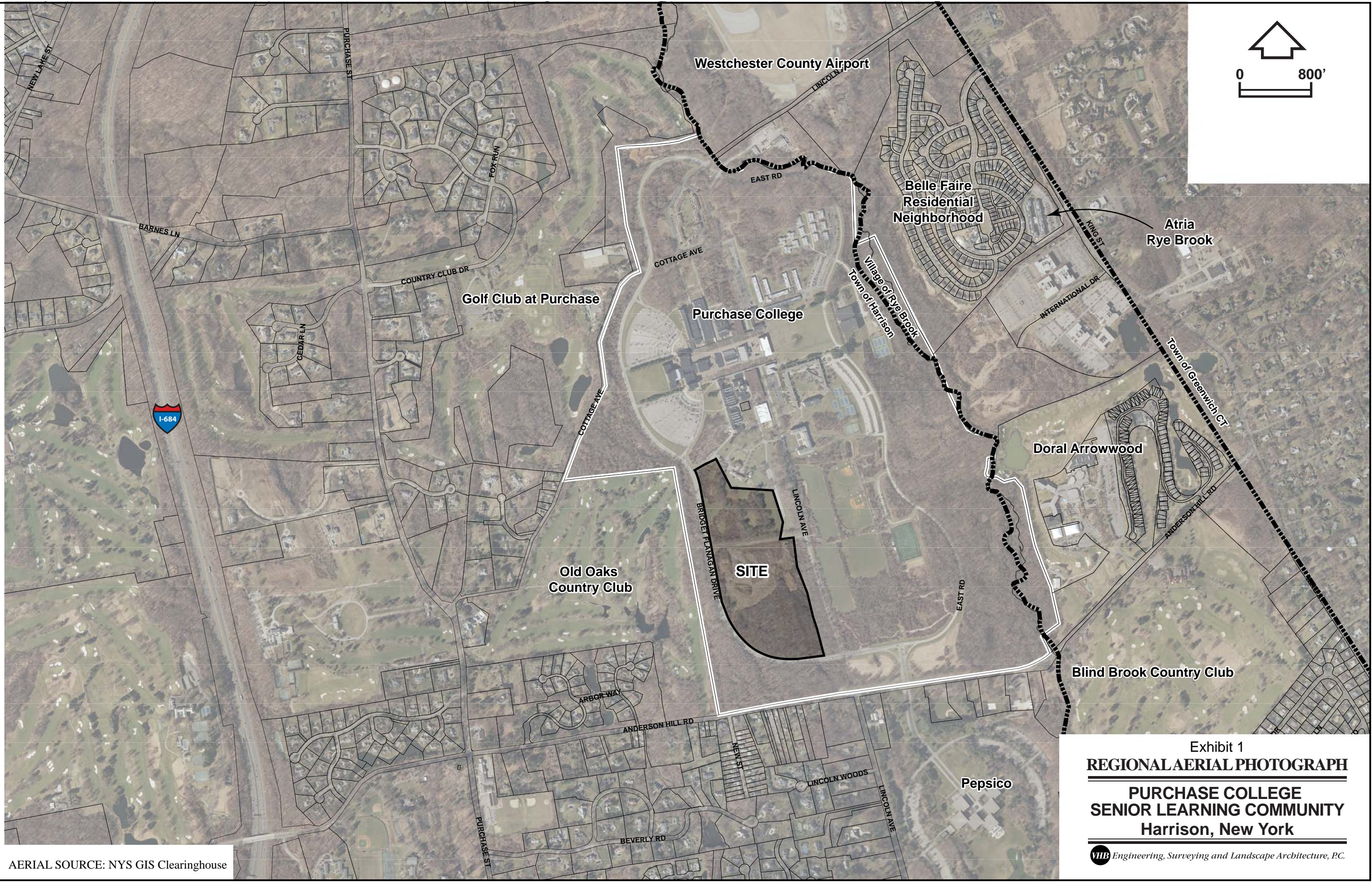
## REGIONAL LOCATION

**PURCHASE COLLEGE  
SENIOR LEARNING COMMUNITY  
Harrison, New York**

## **Attachment 4**

### **Aerial and Topographic Maps**





AERIAL SOURCE: NYS GIS Clearinghouse

Exhibit 1  
**REGIONAL AERIAL PHOTOGRAPH**  
**PURCHASE COLLEGE**  
**SENIOR LEARNING COMMUNITY**  
**Harrison, New York**  
**VHB Engineering, Surveying and Landscape Architecture, P.C.**





Exhibit 2  
**AERIAL PHOTOGRAPH**  
**PURCHASE COLLEGE**  
**SENIOR LEARNING COMMUNITY**  
**Harrison, New York**

**VHB** Engineering, Surveying and Landscape Architecture, P.C.



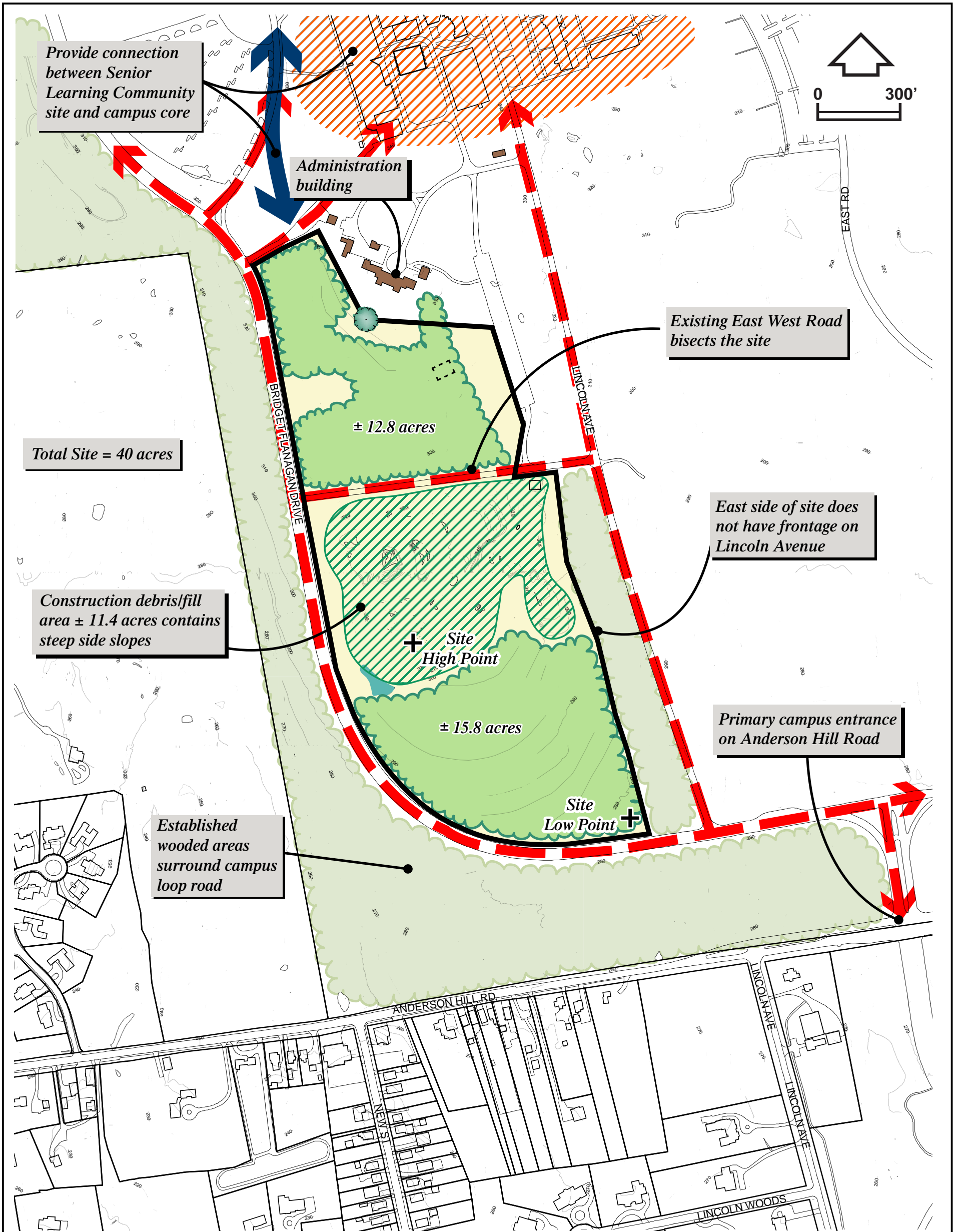


Exhibit 3  
**SITE OPPORTUNITIES AND  
CONSTRAINTS**

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**PURCHASE COLLEGE  
SENIOR LEARNING COMMUNITY  
Harrison, New York**

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## **Attachment 5**

### **Utility Report**

## **MEMORANDUM**

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TO: Wayne Rush, P.E.

DATE: December 19, 2012

FROM: Gerhard Schwalbe, P.E.

RE: **SUNY Purchase  
Senior Housing Project  
Purchase, New York**

We have completed our initial findings regarding the utility availability and development constraints for the 40-acre site planned for senior housing. It is our understanding that the project will be developed on two sites within the 40-acre site with up to 385 senior housing units.

### **Water Supply**

Water supply to the campus is obtained from a connection to a 16-inch public water main located in Anderson Hill Road to an underground meter assembly vault located northwest of the Lincoln Avenue and Anderson Hill Road intersection. Water supply is provided by Westchester Joint Water Works who obtains its water sources from the upstate Catskill and Delaware watersheds of the New York City water supply system. WJWW maintains two connections from the New York City system, one is from a connection at Shaft 22 and the other is taken from Rye Lake. WJWW is in negotiations with Westchester County to utilize a new pipe connection from the NYCDEP filtration plant located in Eastview so as to avoid the need to construct a new water filtration plant. It is not known if the costs associated with the improvements will impact the water rates for the College. According to the 2011 Annual Water Quality Report for 2011, WJWW purchased 4.55 billion gallons and sold 4.07 billion gallons to consumers.

SUNY Purchase utility records for a 24 month period from October 2010 through October 2012 show average water consumption for the campus to be approximately 6.1 million gallons per month or 203,000 gallons per day. Peak usage varies with a maximum monthly usage of 10.1 million gallons recorded during the month of February of 2012. It is not known why a high amount of water was used during that month as all other months in the winter ranged between 5 million to 6 million gallons per month. No water shortage events have been reported however reports of low pressure in the campus have been reported during the mid to late morning hours when school is in session. Some buildings in the campus are also equipped with fire booster pumps to provide higher pressure and fire flow. Hydrant flow tests provided indicate there is sufficient fire flow in the vicinity of the project site however there is drop in hydrant flow at the furthest end of the water main system indicating the system is not able to maintain constant pressure in all areas of the campus.

Using NYSDEC standards, projected usage for 385 two bedroom senior housing units has been estimated average to be approximately 93,000 gallons per day with an additional water usage of 31,000 gallons per day for the proposed dining hall, retail and pool facilities totaling the project water usage of

approximately 124,000 gallons per day. Although these estimated flows are considered conservative and actual consumption will be less, this amount represents an approximately 61% increase in total consumption used on campus. It has also been reported an additional 100 bedroom dormitory may be constructed on campus adding approximately 7,500 gallons per day. While it is not anticipated that the additional domestic water consumption will cause any significant impact on the campus system both fire demand and/or unusual flow demands occurring during the peak usage on the campus should be evaluated to determine if other improvements may be required to support the increased usage.

As shown in Figure No. 1, Water Service to the senior housing site can be made with a wet tap connection to the 16-inch main located in Lincoln Avenue immediately north of East-West Road. It is recommended that a water main loop along the westerly portion of the property reconnecting back to the existing 16-inch water main with a wet tap at the south intersection of Lincoln Avenue and Brigid Flanagan Drive. This will improve water flow through the project site and reduce stagnant water at pipe dead ends.

Although no communication has been made to Westchester Joint Water Works (WJWW), there does appear to be some concern regarding operating pressures within the campus and the additional peak flow demand may require improvements to the campus water system. It is recommended that the proposed project conduct additional water flow tests on the campus system once a determination of needed fire flow and peak water usage from consumption, irrigation and mechanical systems has been made. It is recommended that the design of the senior housing project consider native plantings to reduce the need for irrigation systems and mechanical systems that do not rely on extensive water use to reduce the impact on the campus water system.

### **Sanitary Sewer Service**

Sanitary sewer service is provided to the campus from sewer mains owned and maintained by SUNY. The sewer system is connected to an 18-inch Westchester County Trunk Sewer that lies along the eastern boundary of the campus and flowing southward along the Blind Brook. Other than normal maintenance and occasional pipe clogs, no issues have been reported. The estimate sanitary flow for the project is estimated to be 113,000 gallons per day.

As shown in Figure No. 2, because the senior housing site is situated at an elevation lower than the main campus, a new sewer main will be required from the housing site extending south along the eastern property boundary and continuing easterly along the north grass area of Brigid Flanagan Drive. Approximately 3,900 LF feet of a new 8 inch SDR- 35 PVC pipe would have sufficient capacity for the project. Trenching for the sewer pipe and manhole installation may require excavation up to 12-14 feet deep along Brigid Flanagan Drive to reach the manhole located on the Blind Brook Trunk Sewer at the eastern end of the campus property.

Westchester County Department of Environmental Facilities (WCDEF) will need to be contacted to verify the capacity of their trunk sewer to accommodate the new sewer connection.

Alternatively a new sewage pump station could be constructed on the southern parcel with a force main connection to the main campus sewer to the north that would not require a new connection to the county trunk sewer.



The final layout of the new sewer main for the proposed development may change due to existing site and environmental conditions. Soil borings will be necessary to verify soil conditions and support for the pipe and manholes.

### **Stormwater Management**

The stormwater management plan will be required to meet the requirements of SPDES General Permit for Stormwater Discharges - GP 0-10-001, and the New York State Stormwater Management Design Manual, August 2010. The project will be required to provide stormwater management practices to meet the Water Quality Volume, Runoff Reduction Volume, and Channel Protection Volume as well as maintain the peak runoff rates at or below existing levels for the 10-year and 100-year storm. Additional measures to protect the landfill from erosion and groundwater control may also be required by NYSDEC.

The development site is located on the southwestern portion of the Purchase College Campus. The site is mostly undeveloped consisting of wooded, brush, and grass area. The site drains to the south, to off-site streams that are tributary to Blind Brook. Blind Brook flows south through Harrison and the city of Rye to Milton Harbor of the Long Island Sound.

The stormwater management plan is to comply with the stormwater requirements through a series of Standard Management Practices (SMP) and Green Infrastructure (GI) techniques. The stormwater concept will be to treat the stormwater runoff at the source as much as possible through a series of rain gardens, porous pavement, vegetated swales and other GI techniques. Additional stormwater features to meet the water quality and detention requirements will be located around the perimeter of the development site. These SMPs can include bio-retention basins and wet extended detention basins equipped with control structures.

Assuming a development area of approximately 20 acres and an impervious cover of 50%, it is anticipated the volume of Stormwater storage needed is approximately 180,000 CF. Figure No. 3 illustrates the location of stormwater basins on the project site. Alternatively the basins could be placed outside the development area to allow for maximum development potential in the project site.

### **Electric Service**

It would appear that the existing high voltage 15 KV feeders serving the Campus will have capacity to serve the new electrical loads associated with the new Senior Housing Project. Once contact with Con Edison is allowed to occur, the capacity of the utility system will be confirmed and a design concept can be developed.

Using standard design practices, current planning for the electric service anticipates a new high voltage automatic transfer switch (ATS) to provide normal service from one feeder and alternative service from the secondary feeder, when the normal feeder system is not available. A pad mounted transformer will be placed behind the transfer switch to serve the project.

The ATS should be located near the roadway, in an area that can be screened but remain accessible to

Con Ed as shown on Figure No. 4 with an extension of a single primary feeder from the ATS to a new transformer pad area. The accompanying graphics showing the schematic layout of the electrical system show the high voltage switchgear on the opposite side of the Lincoln Avenue from the development sites. We sited the high voltage equipment at this location to minimize the visual impacts to the development site, and we suggest it could be screened with a stone wall and plantings to match the Lincoln Avenue environs. The pad mounted transformer would be located as close to the main building sites as possible to minimize the length of the secondary conductors and associated higher costs of construction of heavier secondary cables. The ATS can also be located adjacent to the transformer if greater protection of the feeder system is required by the Senior Housing Project. The ATS and pad mounted transformer are typically provided by Con Edison with the cost passed on to the electric customer, in this case the Senior Housing Project. Con Ed may elect to require the customer to provide the ATS in accordance with all requirements of Con Edison and all costs for the ATS will be direct to the Senior Housing Project.

The electric service should be sub-metered to track electric costs and payments for electric consumption due from the Senior Housing Project to SUNY Purchase. Fees associated with the sub-metering are allowed to be passed on to the user, with a minor adjustment for administrative fees.

In the event Con Ed finds the primary feeders do not have capacity and requires a new dual 15KV feeder line routed to Anderson Hill Road the line would be required to be placed underground. The capacity and condition of the primary feeders should be reviewed early on with Con Edison so as to identify all costs associated with bringing service to the project site.

### **Natural Gas**

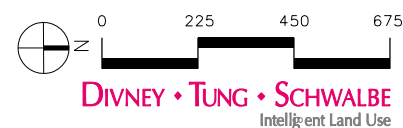
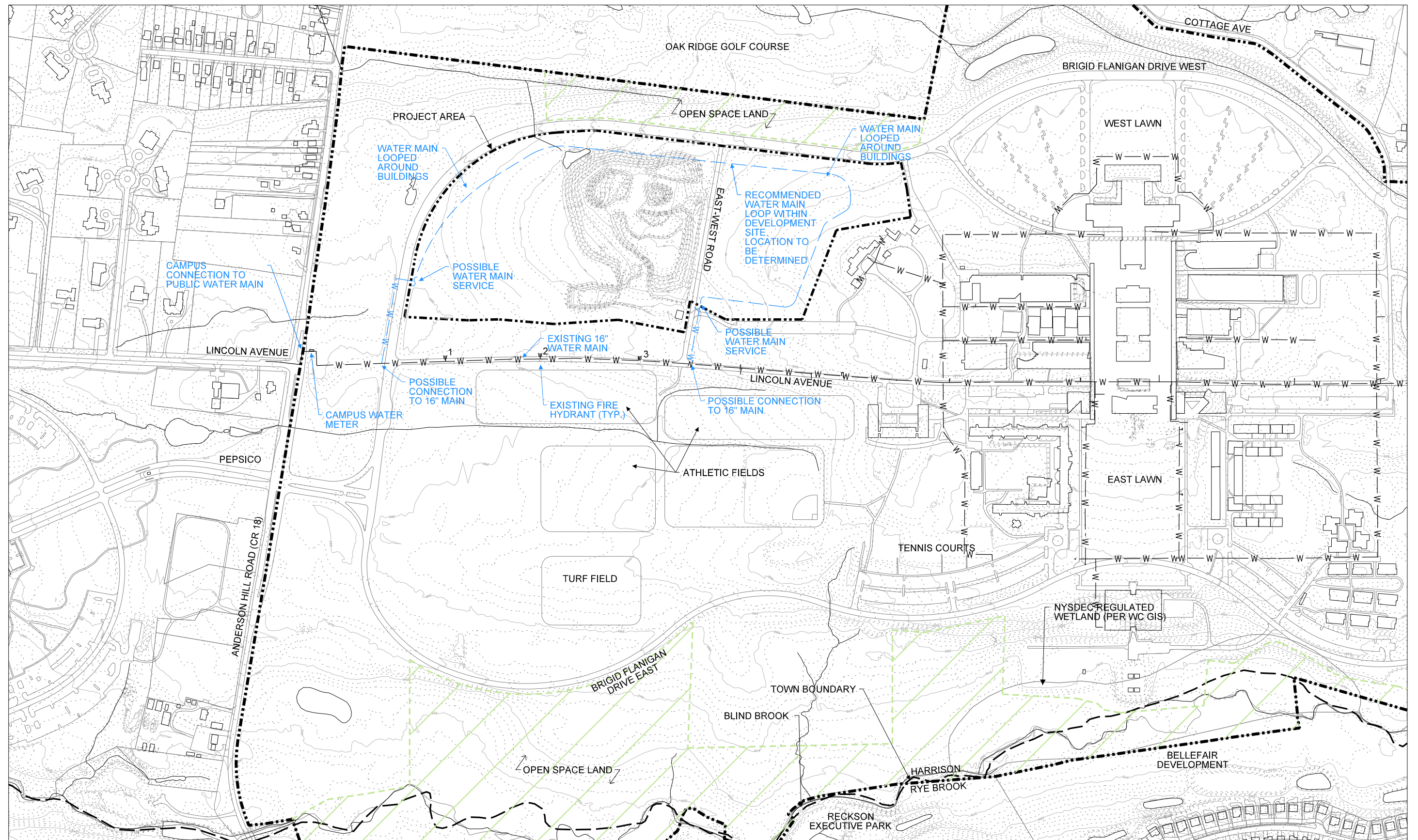
It is reported that a 16-inch high pressure main exists in Lincoln Avenue and that main serves the SUNY Purchase Campus. At this time, it is anticipated that the lateral for the Senior Housing Project will be derived from the gas main in Lincoln Avenue and will be extended to a high pressure regulator and metering assembly constructed in accordance with Con Edison's required standards.

Con Edison bases the regulator sizes on the actual equipment being supplied, and typically only provides the minimum pressure required to serve the pressure and flows associated with the equipment listings. If the Developer elects to utilize a higher pressure piping systems to minimize piping costs and if a booster is required to achieve this high pressure; then all of the costs of the booster system are by the Developer. Developer should be instructed to not rely on Con Edison to provide natural gas pressures above the listings of the equipment.

The gas meter rig and assembly must be accessible by Con Edison, and will be constructed and operated in accordance with Con Edison's standards, specifications and engineering requirements.

As with electric service, Con Edison should be consulted early in the process to verify service capacity to the site.





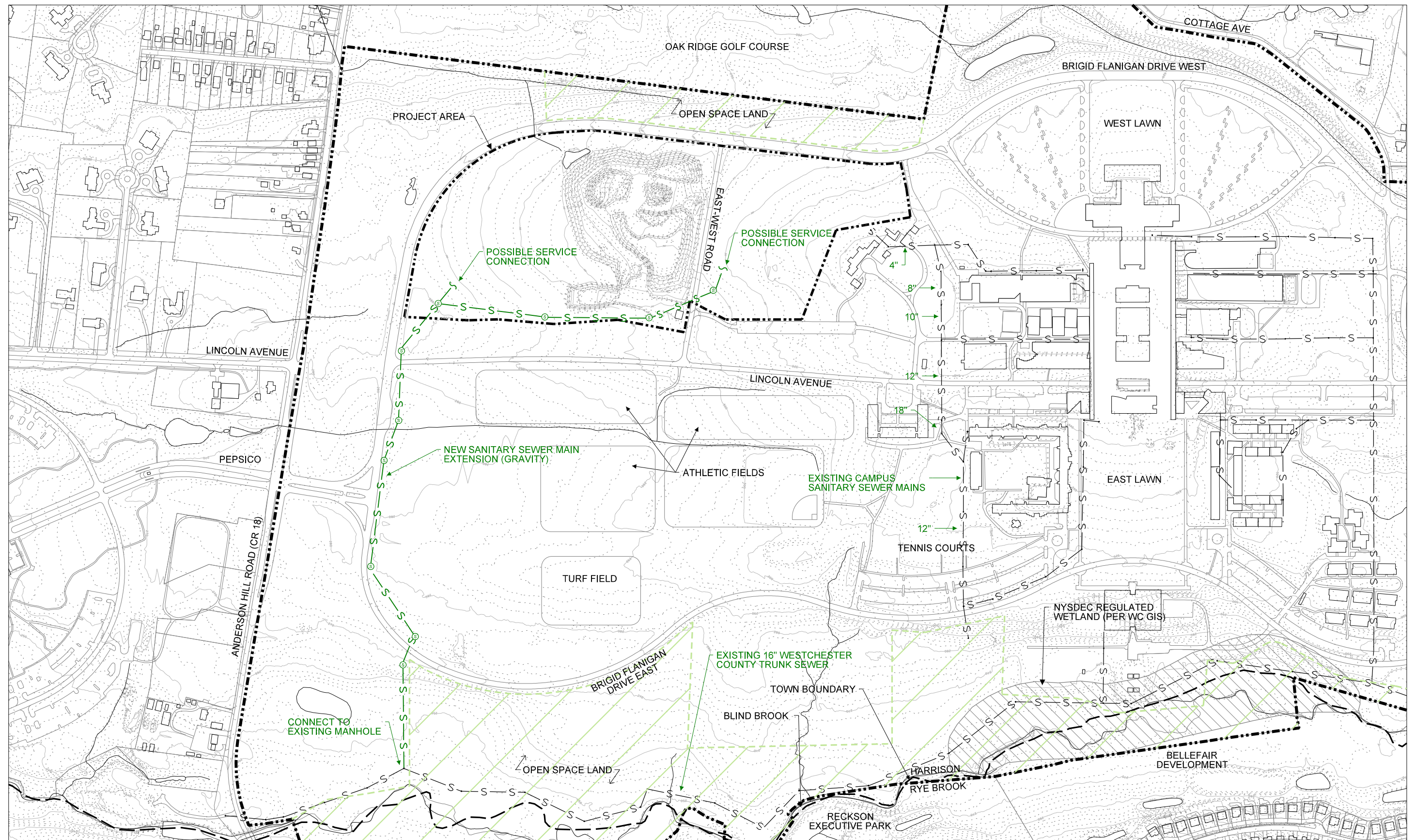
HYDRANT FLOW TEST (2012)	
1	2417 GPM @ 54 PSI
2	2439 GPM @ 55 PSI
3	2417 GPM @ 54 PSI

## WATER SUPPLY

SENIOR LEARNING COMMUNITY  
 PURCHASE COLLEGE, HARRISON, N.Y.  
 STATE UNIVERSITY OF NEW YORK

FIGURE NO. 1  
 12/19/2012

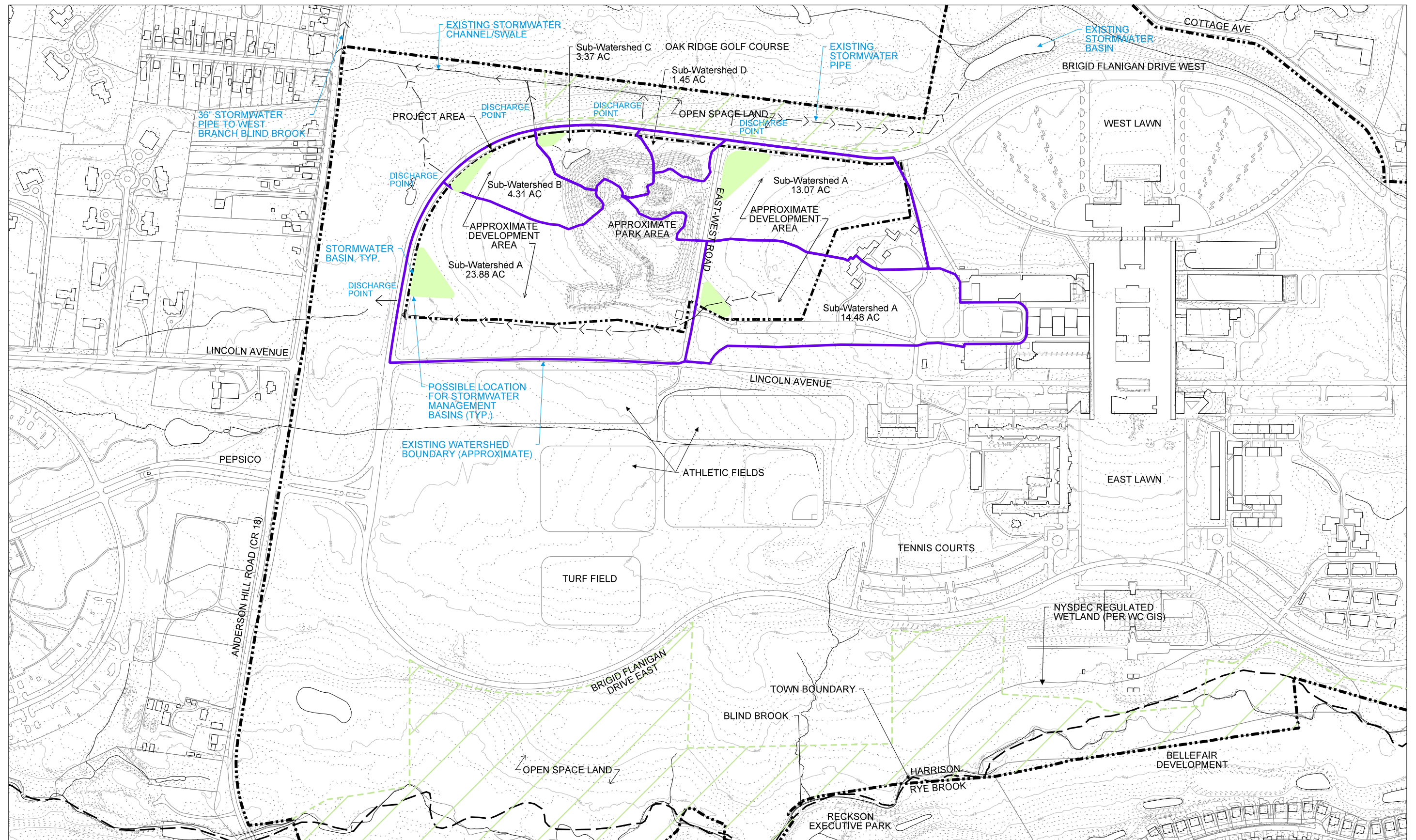




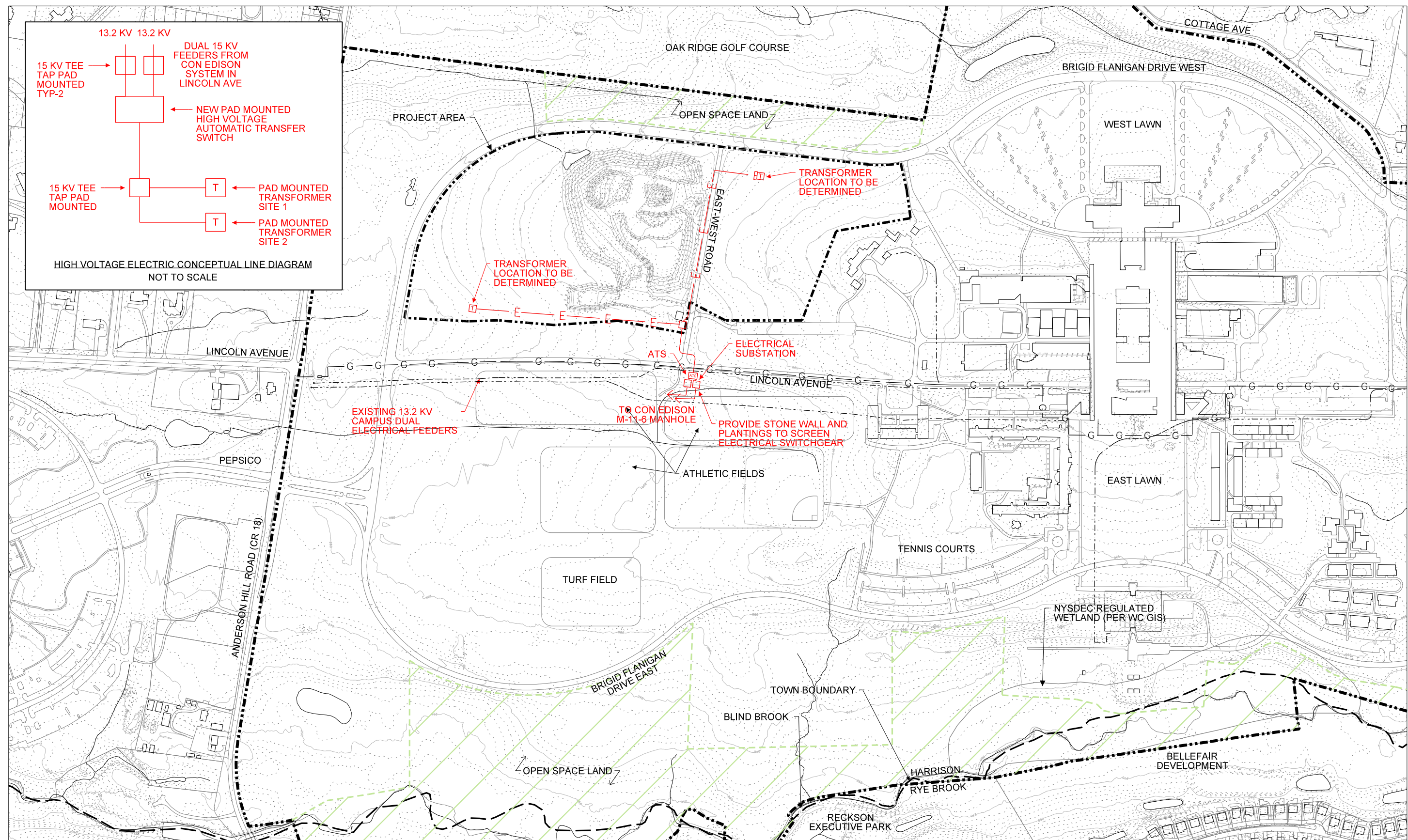
**SANITARY SEWER SERVICE**  
SENIOR LEARNING COMMUNITY  
PURCHASE COLLEGE, HARRISON, N.Y.  
STATE UNIVERSITY OF NEW YORK

FIGURE NO. 2  
12/19/2012

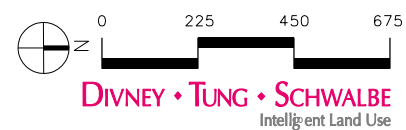
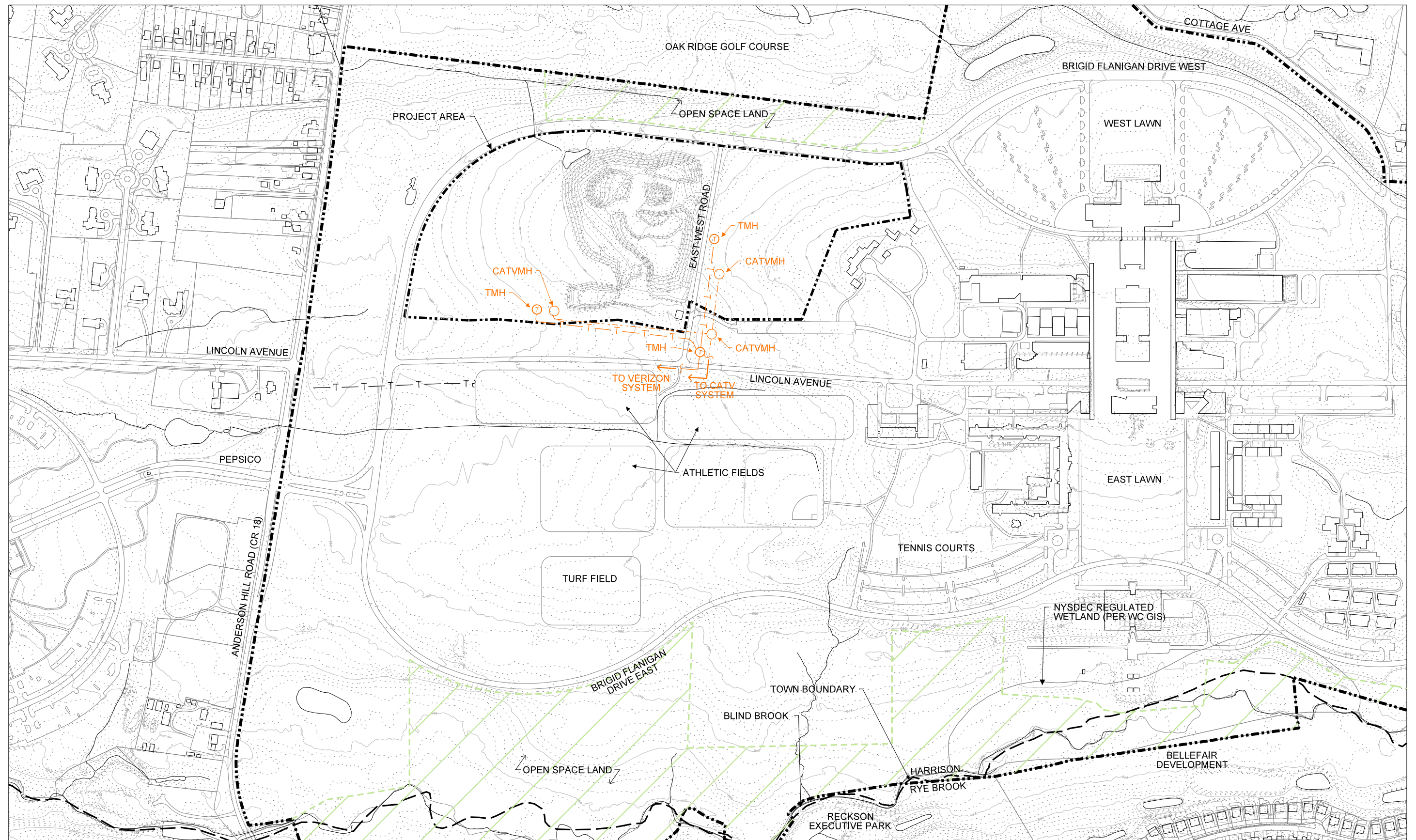








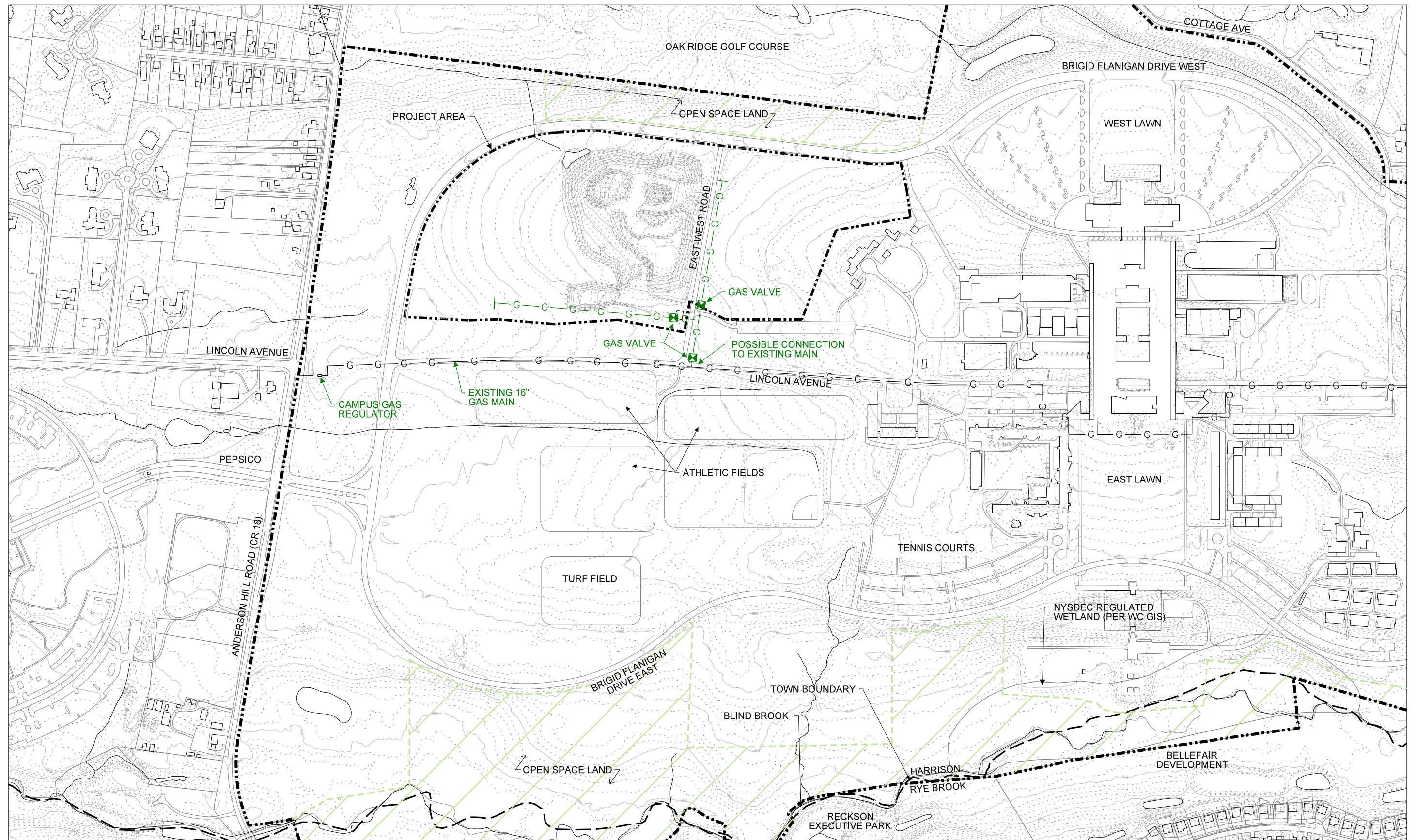




**COMMUNICATIONS SERVICE**  
SENIOR LEARNING COMMUNITY  
PURCHASE COLLEGE, HARRISON, N.Y.  
STATE UNIVERSITY OF NEW YORK

FIGURE NO. 5  
12/19/2012





## GAS SERVICE

SENIOR LEARNING COMMUNITY  
 PURCHASE COLLEGE, HARRISON, N.Y.  
 STATE UNIVERSITY OF NEW YORK

FIGURE NO. 6  
 12/19/2012



**Attachment 6**  
**Preliminary Geotechnical and Environmental Engineering Report**



## **PRELIMINARY GEOTECHNICAL AND ENVIRONMENTAL ENGINEERING REPORT**

**SUNY Purchase College  
735 Anderson Hill Road  
Purchase, New York 10577**

### **PREPARED FOR:**

Purchase College Advancement Corporation  
SUNY Purchase College  
735 Anderson Hill Road  
Purchase, New York 10577

### **PREPARED BY**

SESI Consulting Engineers, PC  
12A Maple Avenue  
Pine Brook, NJ 07058

Job No.: N-8306

### **DATE:**

December 14, 2012

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Justin M. Protasiewicz, EIT  
*Project Engineer*

---

Michael St. Pierre, P.E.  
*Vice President*  
NY Lic. No. 080271

**SITE DESCRIPTION**

We have completed our preliminary geotechnical and environmental investigation for the existing Construction and Demolition (C&D) debris landfill located at the above referenced site. The purpose of our investigation was to obtain preliminary geotechnical and environmental information on the landfill to assist in the evaluation of the landfill closure and to provide recommendations for future development. The 20± acre landfill site is located in the north half of Lease Parcel C which encompasses an approximate 40.05± acre rectangular shaped lot bounded by East-West Road to the north, Lincoln Avenue to the east, and West Avenue, which wraps around the parcel to the South and West.

Based on our observations and a review of "Topographic Survey of Lease Parcel 'C'," developed by Chazen Engineering and Land Surveying Company, latest revision dated June 18, 2004, the landfill materials appear to have been stockpiled haphazardly throughout the landfill area, with lower elevations in the east side of the landfill ranging from 305± to 320± and rising steeply toward the west to an elevation of 364± at its high point. There are several localized high points within the larger landfill area. Several access roads are present throughout the landfill. Most of the landfill is currently covered by low vegetation, although there are some larger trees also present.

Based on a plan entitled, "Revised Topography," by Martin O'Grady & Associates, dated January 1974 (copy included in the Appendix), the site topography prior to the landfilling operations ranged from 315± to 317± adjacent to the center of East-West Road and the grades gradually sloped downwards from north to south where the elevations ranged from 293± to 295±. The landfill thicknesses, based on interpolation of the original and historical topography, are approximately 64± feet at the thickest point in the southwest side of the landfill to approximately 5± feet at the thinnest point in the northeast side of the landfill.

**History**

This historical summary of the SUNY Purchase landfill was derived from letters/reports provided by you dating back to 2001. According to an Order of Consent from the New York State Department of Environmental Conservation (NYDEC), dated April 20, 2001, the landfill was originally created as a result of a "Letter Agreement dated September 18, 1999," in which the companies Westway Industries, Inc. and its partner and subsidiary companies (Fairways F.T., Inc. and SDS Materials), who would serve as the "general contractor of the fill project, so as to ensure proper construction and handling of the fill project," was permitted to dump approximately 100,000 cubic yard of clean fill at the site. The consent order states that during the NYDEC inspections of the site on March 3, 2000, August 8, 2000, and September 21, 2000, Westway was found in violation of 6NYCRR Part 360-1.7(a)(i) by operating a solid waste management facility (non-exempt construction and demolition debris landfill) without a permit or other form of authorization. The Order of Consent prescribed specific requirements needed to remedy the situation and provide proper closure of the landfill. These requirements included submitting a Landfill Closure Plan, obtaining a Bond and submitting a Post Closure Monitoring and Maintenance Manual. It also included specific dates for starting and completing the landfill closure.

Based on review of a subsequent letter from the NYDEC to SUNY dated April 29, 2004, it appears that material continued to be accepted at the landfill, at least until the summer of 2002. In addition, dredge spoils were imported in the spring and summer of 2002 under a beneficial use determination (BUD); however, the DEC reported that this material was discharging an orange colored liquid into the surrounding wetland. According to the letter dated April 29, 2004, the NYDEC inspection of the material that was stockpiled onsite under the BUD did not meet the BUD criteria and would also be considered part of the landfill and must be remediated as such.

Based on notes from a meeting on May 11, 2004 at the NYSDEC regional office in Tarrytown, NY, SUNY indicated that they would be altering the Landfill Closure Plan since they wanted to pursue a different development option. The DEC indicated that a new closure plan would need to be submitted. In addition, if the C&D materials were to be processed for sale, a permit would be required under DEC regulations in Part 360. The DEC also indicated that additional testing of the materials would be required and a Beneficial Use Determination (BUD) would also be required.

Based on a letter dated June 16, 2004 from the NYDEC to SUNY, Fairways, F.T., Inc. reportedly submitted a closure plan prior to 2004 which contained plans for contouring of the landfill material to create a bowl-shaped area that would provide a foundation for construction of an amphitheater. As part of the closure plan, the NYDEC required a low permeability final cover/capping system to be installed over the entire landfill to mitigate any potential impacts on human health and the environment. As a result of Fairways non-compliance, SUNY told the NYSDEC that they had decided to move forward with remediation of the landfill independently of Fairways. Construction of a residential development on the landfill was discussed with the DEC who indicated that such a development would increase the risk of human exposure to the landfill materials. Processing the C&D material for a beneficial reuse was also discussed at this time. Four (4) alternatives for the landfill closure were discussed at the May 11, 2004 conference and summarized in the letter dated June 16, 2004. A generalized summary of the four (4) alternatives presented by the NYSDEC was:

1. Close the landfill according to an approved Engineering Plan. This would result in the implementation of institutional and engineering controls and continued monitoring of the landfill.
2. Completely remove the landfill without processing any of the fill materials. This would allow unrestricted use of the site.
3. Process some of the salvageable construction and demolition waste such as concrete, brick, rock, etc. for reuse and close/cap the landfill with the remaining materials left in-place and monitor using necessary institutional and engineering controls. A Beneficial Use Determination would be necessary for the material and institutional and engineering controls would also be necessary for the processed materials in addition to those for the landfill to prevent human exposure and migration of any residual contaminants to the surrounding soils and groundwater. This would result in the implementation of institutional and engineering controls and continued monitoring of the landfill.
4. Same as Alternate #3, however the remaining landfill materials would be removed. This would allow unrestricted use of the site.



In a letter dated July 1, 2004, from Gannett Fleming (GF) to SUNY, GF reviewed the four (4) alternatives provided by the NYDEC for reuse and closure of the landfill. GF recommended that SUNY pursue Alternate 4 or a combination of 3 and 4. GF made recommendations for further geotechnical and environmental investigations to determine the amount of C&D material in the landfill that could be processed and determine the environmental constraints of the material.

In a letter dated August 5, 2004, SUNY notified the DEC of its intent to proceed with Alternative 4 – waste processing and complete removal of the landfill in an attempt to achieve unrestricted use of the site. It further stated that a small-scale feasibility study was to be undertaken to determine the volume of recognizable C&D materials that could be processed. A final determination would be made based on the results of this study.

GF subsequently performed a limited investigation of a small portion of the landfill (western side) on August 12 and 13, 2004. Their study included excavating 26 test pits and passing the excavated materials through a 2-inch mesh screen to determine the amount of C&D materials present within the test pit. Environmental samples were also taken of the fines for laboratory testing. Their investigation determined that there was between 20 and 80% C&D debris within the area investigated. They concluded that the C&D materials could be processed and reused with a BUD to reduce the landfill volume by approximately half; however, because some of the sampling yielded exceedances of SVOC's and metals, the disposal of fill would likely be limited to 6NYCRR Part 360 permitted facilities (landfills). It should be noted that their investigation was confined to only a small portion of the entire landfill and they did not excavate to the full depth of the landfill. It is also not clear if they performed any environmental testing of the dredge spoils.

We have not been provided with any additional correspondence or documentation regarding the landfill since GF's investigation in 2004.

## **FIELD AND LABORATORY INVESTIGATIONS**

As previously indicated, Gannett Fleming performed a limited geotechnical and environmental investigation on August 12 and 13, 2004. During their investigation, GF excavated a total of twenty-six (26) test pits to a maximum depth of 20± feet below grade. The materials in each test pit were screened by a geologist from GF to determine the quantities of C&D debris and fines. Samples of the fines were collected and analyzed for Volatile Organic Compounds (VOC's), Semi-Volatile Organic Compounds (SVOC's), Metals, and Polychlorinated Biphenyls (PCB's). Results of their environmental testing will be discussed later in this report and a copy is included in the Appendix.

Our engineering study consisted of a site reconnaissance, a review of existing soils and geologic data, and a field investigation consisting of the excavation of twenty-five (25) test pits. The test pits were excavated on November 6 and 7, 2012 to depths of 6.5 to 15± feet below existing ground surface using a Komatsu PC158ULSC excavator. Ground surface elevations were interpolated from the "Topographic Survey of Lease Parcel 'C',"

developed by Chazen Engineering and Land Surveying Company, latest revision dated June 18, 2004.

The locations of the test pits are shown on the "Test Pit Location Plan," which is attached as *Figure 1*. Individual Test Pit logs, which describe the materials encountered, are presented as *Figures 2 through 26*. A key to soil terminology is included as *Figure 27*.

During our test pit investigation, SESI collected eight (8) discrete soil samples from randomly selected locations within the existing landfill materials. The sample depths were field-determined based on screening with a Photo Ionization Detector (PID), visual, and olfactory observations. The samples were submitted to a NYDEC certified laboratory under chain of custody for analysis of the TCL+30/TAL Suite (Target Compound List +30 Tic's/Target Analyte List) which included Total Volatile Organic Compounds (VOC's), Base Neutral Acid Extractable's (BNA's), Target Analyte (TAL) Metals (23 Metals + Cyanide), Pesticides, and Polychlorinated Biphenyls (PCB's) in accordance with Section 2.1 of the NYDEC DER-10 Technical Requirements for Site Investigation and Remediation. The results of the testing are included in the attached Table 2.

All fieldwork was performed under the direct technical observation of a field engineer from SESI Consulting Engineers, P.C. Our representative located the test pits in the field, maintained continuous logs of the explorations as work proceeded, and performed the soil sampling operations in order to develop the required subsurface information. Test pit locations were chosen in areas that would provide a good overall coverage of the landfill materials accessible by the excavation equipment. It should be noted that some areas could not be accessed due to steep slopes and risky terrain created by the stockpiled concrete material.

Geotechnical soil samples, suitable for identification purposes, were also extracted from the test pits at various intervals. All soil samples extracted in the field were brought to our office where they were examined in our soil mechanics laboratory.

Geotechnical laboratory classification testing consisted of eight (8) mechanical grain size analyses and two (2) percent passing sieve No. 200 tests. The results of the percent passing sieve No. 200 tests are included on the individual test pit logs. The results of the mechanical grain size analyses are presented in graphical form as *Figures 28 through 35*.

## **SUBSURFACE CONDITIONS**

### **Geology**

The United States Geological Survey indicates that the site soils are mapped as younger ground moraine deposited during the Quaternary Period. The soils generally consist of an unassorted mixture of clay, silt, sand, gravel, and boulders ranging from GM to GC to SM. The soils can be locally overlain by small, thin swamps containing muck and peat and stream courses with postglacial alluvium. The soil thickness of the ground moraine is very irregular; however, thicknesses are generally less than 25 feet. Bedrock in this area is classified as a coarse mica schist and mica gneiss.

**Site Specific Subsurface Conditions**

The natural soils, where encountered, are in general agreement with the geologic mapping. Based on the individual test pit logs, there is a layer of topsoil and vegetation over the majority of the landfill followed by a variable thickness layer of fill consisting of soil mixed with C&D debris, C&D debris mixed with soil, or dredge materials.

The generalized subsurface conditions encountered are:

**Surface Materials:** A majority of the test pits were excavated through topsoil ranging in thickness from 2 inches to 2 feet. At TP-15 and TP-16, which were located in one of the areas of dredge material spoils, there was a topsoil like material at the surface consisting of primarily brown coarse to fine sand, some silt, and little coarse to fine gravel.

**Fill:** A miscellaneous fill was encountered in the majority of the test pits to depths of up to  $\pm 15$  feet below grade. In most locations, the fill consisted of a mixture of construction and demolition debris containing mostly concrete with brick, metal, rebar, wire, etc. and coarse to fine sand, with varying amounts of silt and gravel. There were areas of fill that consisted of primarily clayey silt with varying amounts of sand, gravel, peat, and other organic material. These areas are likely the results of historical dredging activities at offsite locations. Numerous golf balls were observed in the dredge material indicating that they may have come from a golf course swamp cut or pond dredging event. All of the site fills appeared to have been placed haphazardly with no compactive efforts applied. Concrete and other C&D debris varied drastically depending on location. The location of each of the different material types is discussed further in the "Discussion and Recommendations" section of this report.

Based on interpolation of original and existing topographies, it appears that the landfill thicknesses range from approximately  $64\pm$  feet at the thickest point in the southwest side of the landfill to approximately  $5\pm$  feet at the thinnest point in the northeast side and along the perimeter of the landfill.

The Gannett Fleming investigation in the western portion of the landfill indicated between 20 and 80 percent of the material encountered was C&D debris that could be processed and reused. SESI's investigation over the majority of the landfill found areas with little to no C&D to as much as 80 percent C&D materials. It should be expected that the composition of the landfill will vary greatly from one location to another and with depth.

**Natural Glacial Soils:** The natural glacial soils were encountered beneath the fill in two (2) of the test pits (STP-10 and STP-22) to their completion depths ranging from  $13.5\pm$  to  $15\pm$  feet below grade. The natural soils consisted of primarily reddish brown clay or coarse to fine sand with varying amounts of silt and gravel. Mottling was present in both layers of natural soils encountered; likely caused by oxidation resulting from fluctuating groundwater elevations.

**Groundwater:** Groundwater was encountered in five (5) of the twenty five (25) test pits at depths ranging from  $4.5\pm$  feet to  $12\pm$  feet below existing grade. The groundwater



encountered in STP-2, STP-9, and STP-11 is likely perched groundwater created as water percolates into the landfill and encounters confining soil strata. The groundwater levels encountered at STP-10 and STP-22 were more likely the true groundwater levels indicative of the surrounding area as these test pits were advanced through a thinner layer of landfill materials and into the natural site soils. The groundwater at STP-10 and STP-22 corresponds to an elevation of 302± and 310± respectively. The groundwater elevation can be seasonally dependent and vary with the amount of recent precipitation.

### **Environmental Conditions**

During the preliminary environmental investigation of the site, sample depths were field-determined based on screening with a Photo Ionization Detector (PID), visual, and olfactory observations. The readings on the PID were negligible; however, in some test pits, staining and odors were observed. Sampling was biased towards these locations to provide a better indication of the contamination present within the landfill. The results of the environmental testing can be found in Table 2 of this report, which presents the analytical results for the eight (8) soil samples that were collected during the investigation.

## **DISCUSSION AND RECOMMENDATIONS**

### **Geotechnical Results Summary**

A preliminary review of the existing landfill topography and the historical topography prior to the landfill activities indicates that the approximate quantity of landfill material totals 250,000 to 300,000± cubic yards. This quantity is based on rough quantity take off of the apparent landfill extents. The amount of C&D associated with each test pit is presented on Table 1 attached to this report. The average quantity of C&D associated with the test pits during our investigation was approximately 20-40%; however, some areas contained little to no C&D while others contained C&D materials in excess of 80 percent. It should be anticipated that the amount of C&D materials will vary greatly throughout the landfill. Based on the results of our preliminary investigation, there were three distinct types of material present within the portion of the landfill investigated:

#### **Soils with C&D debris**

These soils are believed to comprise a majority of the landfill and estimated to be in excess of 150,000 c.y. These materials were primarily present in the western half of the landfill and are believed to extend below the depth of the test pit excavations. The fill generally consisted of coarse to fine sand, with varying amounts of silt and gravel mixed with varying amounts of construction and demolition debris containing mostly concrete with brick, metal, rebar, wire, etc.

#### **C&D debris with Soils**

These materials are haphazardly placed around the entire landfill; however, they are largely concentrated in the central to east side of the landfill where they comprise a large debris field that contains large quantities of concrete; in many cases containing little to no soils intermixed. The large central section of the landfill was not accessible during the investigation because the concrete field was not safe to access with the trackhoe. The



quantity of the C&D debris with soils is estimated to be in excess of 80,000 c.y. It is unclear to what depth this material is present up to; therefore, for estimating purposes, the entire area extending to the bottom of the landfill was used in the volume calculation. It should be noted that there are other areas of this type of material throughout the landfill. This material type represents the most readily recoverable materials for potential reuse.

#### Dredge Materials

The landfill materials stockpiled in the southeastern corner of the site consist primarily of clayey silt with varying amounts of sand, gravel, peat, and other organic material. These materials were reportedly dredge spoils from a project known as Van Cortlandt Park Lake. During the preliminary investigation, similar material types were observed in the large stockpile in the southeast corner of the landfill and in two stockpiles in the southwest corner of the landfill. The quantity of this material in all four locations is estimated to be in excess of 40,000 c.y.

This investigation was only preliminary, therefore, based on the limitations of the equipment used (depth attained), we were not able to geotechnically characterize the entire landfill. An additional investigation will be required in order to determine the fill properties at depths in excess of 15 to 20± feet below grade.

#### Preliminary Geotechnical Recommendations

The existing subsurface conditions are poor from a building foundation support standpoint. The existing landfill materials would consolidate under the any new fill and building loads, resulting in unacceptable total and differential settlements. In addition, uncontrolled fills have no allowable bearing capacity and would either need to be improved in-place or bypassed if any future buildings are planned on the landfill.

If order to construct any future buildings on the landfill and eliminate any differential settlements, they could be supported on deep foundations (e.g piles). Without removing the larger C&D materials, the pile option may require pre-drilling, making this option very costly. In addition, a structural pile-supported slab would also be required with this option.

In order to construct any future buildings over the landfill using conventional shallow foundations and a slab-on-grade, would be to improve the existing landfill materials in-place using Dynamic compaction. Dynamic compaction is a method of compacting thick deposits of marginal materials in-place without the need for removal and replacement. This treatment will greatly reduce both total and differential settlements, does not require excavation and dewatering, and is significantly less costly than the pile option. This option will also greatly reduce the amount of differential settlement between the building and the site utilities and amenities. Some small long-term post-construction settlements will occur with this option, but they should be well within tolerable limits for the planned type of construction.

If buildings are going to be proposed over the landfill, it should be discussed with the NYSDEC and become part of the landfill closure plan.

**Roadway Area Preparation Procedures**

We understand that you may be constructing an access road through the landfill which will require some reworking of the landfill materials. In general, the roadway preparation procedures should consist of:

Any asphalt, vegetation or topsoil should be removed from the roadway areas, prior to placing additional fill. Also, the subgrade should be proofrolled with a heavy vibratory roller and compacted to 95 percent of Modified Proctor density (ASTM D-1557) prior to placing additional fill or the pavement section.

Any soft areas disclosed during the proofrolling should be excavated to suitable material and backfilled with a granular fill in 12 inch compacted lifts. Fill placed in the roadway areas should be compacted to 95 percent of Modified Proctor density (ASTM D-1557). Wetting or drying of the fill materials should be accomplished as necessary to achieve the required density.

If offsite borrow material is required, it should have a maximum particle size of 6 inches and the maximum amount of fines (percentage passing a No. 200 mesh sieve) should be 15% to help facilitate construction during wet weather. The "fines" should be non-plastic. It may be possible to reuse some of the existing C&D materials provided that there are sufficiently broken up to create a well-graded material for roadway support.

It should be noted that some of the landfill materials have a relatively high silt/clay content and will be difficult to compact when wet. In addition, the materials may be over-optimum in their present condition. Wetting or drying of the fill material should be accomplished as necessary to achieve the required density.

We should be provided with the Concept Development Plans when they are completed so we can develop geotechnical details for construction.

**Environmental Results Summary**

The results of the environmental testing were compared to the New York State Unrestricted Use Criteria and the Soil Cleanup Objectives (SCO's) presented in 6 NYCRR Part 375-6, last updated December 2006. Based on comparison of the environmental testing results to the SCO's, all samples yielded exceedances to Unrestricted Use Criteria. In addition, exceedances of the Restricted SCO's were observed for Metals, Pesticides, and Semi-Volatile Organic Compounds (SVOC's). These exceedances will limit the beneficial reuse locations. It should be noted that iron content was the exceedance in the metals category and may be typical of background concentrations of this specific metal.

Gannett Fleming's results were similar, with exceedances of the RSCO's in six of the eight samples they collected for Metals and SVOC's.

Additional sampling and testing will be required if the material is to be processed and/or completely removed from the site. The sampling frequency will need to be determined based on discussions with the NYSDEC.

**Recommendations for Landfill Closure**

The New York Department of Environmental Conservation (NYDEC) issued a letter on June 16, 2004 outlining four alternate remedial actions that could be taken for the landfill. The following are the four alternatives presented by the NYDEC:

1. Close the landfill according to an approved Engineering Plan.
2. Completely remove the landfill without processing any of the fill materials.
3. Process some of the salvageable construction and demolition waste such as concrete, brick, rock, etc. for reuse and close the landfill with the remaining materials and monitor using necessary institutional and engineering controls. A Beneficial Use Determination would be necessary for the material and institutional and engineering controls would also be necessary for the processed materials in addition to those for the landfill to prevent human exposure and migration of any residual contaminants to the surrounding soils and groundwater.
4. Same as Alternate #3, however the remaining landfill materials would be removed.

Based on the results of the Environmental Testing, we cannot currently render any judgments pertaining to the environmental quality of the entire landfill as it currently exists. Based on our limited preliminary testing, there is contamination present within the landfill materials exceeding both the unrestricted and restricted SCO's and additional testing will likely be required depending on the alternate chosen.

Based on the results of our preliminary investigation and review of the documents provided, we have the following comments on the four alternates presented above:

- Alternate #1 would be the cheapest option in the short-term, but would require capping of the landfill with clean fill and long-term monitoring. It may also restrict any future development of the site and/or require costly foundation support.
- Alternate #2 is the most costly option, but would allow for unrestricted use of the site. This option is not likely to be economically feasible.
- Alternate #3 would reduce the size and extents of the landfill and would provide additional developable space, but the remaining landfill materials would still need to be capped and long term monitoring would still be required. It may be possible to generate money by processing the C&D to help offset the costs of the landfill closure. We recommend that the C&D processing be discussed with a contractor to see if it makes economic sense.
- Alternate #4 would allow for unrestricted use of the site and it may be possible to offset some of the costs by processing the C&D materials to help offset the removal costs. This option would likely be preferred over Alternate #2.

Once the development plans have been prepared for the project, we should discuss these alternates to determine the best approach for closure of the landfill. It would also be helpful to have input from a contractor who would process the C&D materials.

**Additional Information Required**

In order to fully assess the landfill closure options and provide final recommendations, we should be provided with the following additional documents referenced in the letters described in the history section of this report. This includes:

- The NYSDEC approved Landfill Closure Plan
- Any other NYSDEC approved engineering plans
- Original report dated December 14, 2000 referenced in the NYSDEC letter dated April 20, 2001
- Post Closure Monitoring and Maintenance Manual (if developed)
- Beneficial Use Determination approved by the DEC

If the College does not have this information, SESI can request the information from the NYSDEC through the Freedom of Information Law (FOIL) or from the case manager at the NYSDEC.

**Additional Investigations**

Additional investigations may be required by the NYSDEC to better characterize the extents, depth and composition of the landfill. This may include:

- Soil borings through the landfill with additional environmental sampling.
- Test pits around the perimeter of the landfill to determine the lateral extents of the landfill.
- Installation of groundwater monitoring wells around the perimeter and beneath the landfill to determine if there are any environmental impacts to the groundwater.

**Recommended Next Steps**

- Develop concept development plans for our review.
- Review the additional information requested.
- Perform additional investigations of the landfill, if required.
- Develop a conceptual landfill closure plan.
- Develop costs estimates for the landfill closure.
- Meet with the NYDEC case manager to discuss specific requirements for the landfill closure.

**LIMITATIONS**

The subsurface data reviewed identifies the subsurface conditions only at the locations of the test holes and at the depths where the samples were taken. SESI Consulting Engineers, PC reviews the published geologic data and the field data and uses their professional judgment and experience to render an opinion on the subsurface conditions throughout the site. Because the actual subsurface conditions may differ, we recommend that SESI be retained to provide construction observation services in order to minimize the risks associated with unanticipated conditions.



This report should not be used:

- When the nature of the proposed structure is changed;
- When the size or configuration of the proposed structure is altered;
- When the location or orientation of the proposed structure is modified;
- When there is a change in ownership; or
- For application to an adjacent or any other site.

SESI shall not accept any responsibility for problems which may occur if SESI is not consulted when there are changes to the factors considered in this report's development. The soil logs should not be separated from the Engineering Report in order to minimize the likelihood of soil log misinterpretation.

#### **DISCLAIMER**

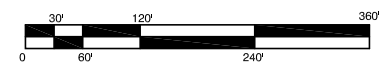
This Report was prepared by SESI for the sole and exclusive use of Purchase College Advancement Corporation. Nothing under the Professional Services Agreement between SESI and its client, Purchase College Advancement Corporation shall be constructed to give any rights or benefits to anyone other than Client and SESI, and all duties and responsibilities undertaken pursuant to the Agreement will be for the sole and exclusive benefit of Client and SESI and not for the benefit of any other party. This Report has been prepared and issued subject to the express conditions that same is not to be disseminated to anyone other than Client, without the advance written consent of SESI (which SESI, in its sole discretion, is free to grant or withhold). Use of the Report by any other person is unauthorized and such use is at the sole risk of the user.



## **Attachment 7**

### **Concept Plans**





**PURCHASE COLLEGE  
SENIOR LEARNING COMMUNITY**

TOWN / VILLAGE OF HARRISON,  
WESTCHESTER, NEW YORK

OPEN SPACE / PARK

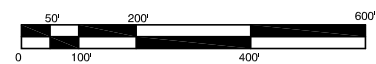
**SCHEMATIC DESIGN  
OVERALL SITE PLAN**

Date: 9 August 2013

Drawing Number: **L-03**







**PURCHASE COLLEGE  
SENIOR LEARNING COMMUNITY**

TOWN / VILLAGE OF HARRISON,  
WESTCHESTER, NEW YORK

**OPEN SPACE / PARK**

**SCHEMATIC DESIGN  
CONTEXT PLAN**

Date: 9 August 2013

Drawing Number: **L-02**







**PURCHASE COLLEGE  
SENIOR LEARNING COMMUNITY**

TOWN / VILLAGE OF HARRISON,  
WESTCHESTER, NEW YORK

OPEN SPACE / PARK

**SCHEMATIC DESIGN  
ENLARGEMENT PARK PLAN**

Date: 9 August 2013

Drawing Number: **L-04**





## **Attachment 8**

### **Form of Agreement**



**STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND CONSULTANT  
(LUMP SUM CONTRACT)**

Attachments:

Exhibit A (Standard Contract Clauses)  
Exhibit A-1 (Affirmative Action Clauses)  
Exhibit A-2 (Services Performed by Consultant)  
Exhibit A-2(a) (Site Information Checklist)  
Exhibit A-2(b) (Elements of Documentation)  
  
Exhibit A-2(c) (Geotechnical Survey Requirements)  
Exhibit A-2(d) (Boundary and Topographic Survey Requirements)  
Exhibit B (Services Performed by Owner)  
Exhibit C (Project Design Schedule)  
Exhibit D (Owner's Design Criteria)  
Exhibit E (Project Budget)  
Exhibit F (Compensation Schedule)  
Exhibit G (Consultant's Hourly Rate Schedule)  
Exhibit H (Certificates of Insurance)  
Exhibit I (Consultant Representation)  
Exhibit J (Form for Request for Payment)  
Exhibit K (RFQ)  
Exhibit L (Proposal)

**AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

BETWEEN Purchase College Advancement Corporation, a New York State non-profit corporation having its principal place of business located at 735 Anderson Hill Road, Purchase, New York 10577-1402 ("OWNER");

and

("CONSULTANT");

**WHEREAS**, Owner requires planning and engineering services ("Services") related to the development of the proposed Senior Learning Community project at Purchase College, State University of New York (the "Project"), and issued Request for Qualifications PCAC-091014, dated \_\_\_\_\_, for the Services (the "RFP"), which is incorporated herein and made a part hereof as Exhibit K; and

**WHEREAS**, in response to the RFQ, Consultant timely submitted a "Proposal to Provide planning and engineering Consulting Services" for the Project (the "Proposal"), which is incorporated herein and made a part hereof as Exhibit L; and

**WHEREAS**, Owner has, in compliance with all applicable laws and the RFQ, selected Consultant as the "Successful Offerer" of the Services, and awarded this Agreement to Consultant; and

**WHEREAS**, as demonstrated by the Proposal, Consultant is well qualified to provide Services for the Project; and

**WHEREAS**, Owner wishes to engage Consultant to provide Services in connection with the first phase of the Project (as such phase shall be defined in the Development Plan to be prepared by Owner and LCSD/SCD Partners, LLC in accordance with a separate agreement), and Consultant is willing to provide such services; and

NOW, THEREFORE, in consideration of the foregoing and mutual covenants contained herein, the Consultant and Owner agree as follows:

**ARTICLE I  
CONSULTANT SERVICES**

1.01 *Basic Services*: The Consultant shall faithfully and diligently perform all services enumerated in Exhibit A-2, those normally and customarily provided by an planning/engineering consultant in the course of performing

such services, and any Additional Services (collectively, "Services"), all in accordance with Owner's instructions and the Owner's Design Criteria (Exhibit D).

1.02 *Additional Services:* Owner reserves the right to increase or decrease the scope of Consultant's Services. Consultant shall be compensated for such additional services ("Additional Services") in accordance with Section 3.02 hereof. If Owner decreases the scope of Consultant's Services, an equitable adjustment shall be made in the Contract Sum provided in Section 3.01 as mutually agreed between the parties. Owner shall request proposals for changes in scope through its Contract Administrator, and Consultant shall perform no Additional Services unless Owner's designated representative has approved such Additional Services in writing.

1.03 *Owner's Responsibilities:* Owner shall do the work enumerated in Exhibit B hereof. Consultant hereby agrees to coordinate its Services with Owner's work and Owner's other consultants.

1.04 *Consultant's Representations:*

1.04.1 Consultant represents that Services provided by Consultant will be performed with the degree of care and skill ordinarily exercised by members of the same profession currently practicing in the New York metropolitan region with respect to projects of similar type, scale, and scope. Upon notice to Consultant (and upon mutual agreement of the parties, in circumstances in which such agreement is called for) the Consultant will correct Services not meeting that standard without additional compensation.

1.04.2 Consultant represents and acknowledges that it is knowledgeable of all laws, codes, rules and regulations applicable to the construction of the Project and agrees to comply with these laws, codes, rules and regulations. In the event of conflict between the aforementioned standards and laws and codes, the more stringent requirement shall control so long as it satisfies the requirements of the applicable law. Should Consultant fail to comply with applicable laws, codes, standards, rules, and regulations in effect, Consultant hereby agrees to bear the full cost of correcting its documents and the cost of changing the affected documents of Owner and any other Project consultant, including the replacement of reproducible drawings.

1.04.3 Consultant represents to Owner that Consultant is financially solvent and fully qualified to perform the Services contemplated by this Agreement, that it is properly licensed pursuant to applicable law to perform such Services, and that such license is in full force and effect as of the date hereof, and shall be maintained in full force and effect throughout the term of this Agreement.

1.05 *Subconsultants:* Nothing herein shall be construed so as to prohibit Consultant from entering into subcontracts with others ("Subconsultants") for Services within the scope of this Agreement, or Subconsultants from entering into further

subcontracts for such Services, but prior to the award of any subcontract, Consultant shall submit the name of the proposed Subconsultant and subcontract form to Owner for approval or disapproval. Owner reserves the right to disapprove any proposed Subconsultant and subcontract for any reason.

1.05.1 Consultant shall bind each Subconsultant to the terms stated herein as the Consultant is bound. Consultant shall require all Subconsultants to include a similar provision making the terms stated herein binding in each subcontract for Services hereunder.

1.05.2 Consultant shall insure that all persons rendering Services under this Agreement are properly licensed to provide such services in the place in which the Project is located, that such license is in full force and effect as of the date hereof, and that such license is maintained in full force and effect throughout the term of this Agreement.

1.05.3 Consultant hereby agrees to include a provision in all subcontracts issued for Services allowing Consultant to assign said subcontract to Owner or Owner's designee without Subconsultant's consent. Consultant shall require all Subconsultants to include a similar assignment provision in each and every subcontract Subconsultant issues for Services hereunder. Consultant shall assign such Subconsultants upon Owner's request.

1.05.4 Consultant hereby affirms that it is fully responsible for the acts, errors, and omissions of its Subconsultants and shall fully indemnify, defend, and save harmless Owner, its agents, employees, and assigns from any and all claims which arise on account of Services rendered by Consultant's Subconsultants. This Section 1.05 shall survive the termination of this Agreement.

1.06 *Coordination:* Consultant shall coordinate its Services with the work of all Subconsultants and Owner's other consultants and in accordance with Exhibit I, shall represent, upon completion of the construction documents, that it has so coordinated its Services.

1.07 *Hazardous Materials:* It is acknowledged by both parties that Consultant's scope of Services does not include any services related to remediation of hazardous or toxic materials at the Project site otherwise than expressly discussed in the RFQ.

## **ARTICLE II PERIOD OF SERVICES**

2.01 *Commencement of Services:* TIME IS OF THE ESSENCE OF THIS AGREEMENT. Owner may sustain financial loss for which Consultant shall be liable if the Project or any part thereof is delayed because the Consultant fails to perform any part of its Services in accordance with this Agreement. Upon written authorization from Owner,

Consultant will proceed with performance of the Services called for in this Agreement, and shall submit documents in accordance with the Project Design Schedule (Exhibit C).

### ARTICLE III COMPENSATION

3.01 *Contract Sum*: In consideration of the performance of the Services set forth herein, Owner agrees to pay the Consultant a lump sum/not-to-exceed fee of

(\$ \_\_\_\_\_) (the "Contract Sum") which includes all federal, state, and local taxes. It is specifically understood that the Contract Sum includes the cost of all Services to be performed under this Agreement and any permitted subcontract, including the expenses identified in Exhibit A-2 hereof.

3.02 *Compensation for Additional Services*: For Additional Services of the Consultant, compensation shall either be computed as "time and expense" at the fixed hourly rate of the Consultant's personnel as listed in the Consultant's Hourly Rates Schedule (attached hereto as Exhibit G) plus agreed expenses incurred specifically as a result of such Additional Services or expressed as a "lump sum" as the parties may agree. The rates established in Exhibit G for Additional Services may be annually adjusted in accordance with the Consultant's normal salary review practices but shall not exceed an increase of three (3) percent annually.

3.03 *Records*: For purposes of Section 3.02 hereof, Consultant agrees to keep, on the basis of generally accepted accounting principles, financial records which shall be made available to Owner within ten (10) working days of the receipt of a written request from Owner. Consultant agrees to maintain such records and their availability to Owner for a period of five (5) years after the date that Owner makes final payment to Consultant in accordance with Section 3.04.2.

#### 3.04 *Payment Procedure*:

3.04.1 Consultant shall submit monthly requests for payment to Owner in the form of the Request for Payment attached hereto as Exhibit J, and upon request of Owner shall certify to any lender to the Project the performance of the services on which such Request for Payment is based.

3.04.2 Payments for Services shall be made in accordance with the schedule identified in Exhibit F hereof. Owner shall make final payment upon the full completion of Consultant's Services hereunder and upon acceptance of the Project by Owner. Payments for Additional Services will be made as such Additional Services are rendered.

3.04.3 The Request for Payment shall be in proportion to Services performed. Owner reserves the right to reject any Request for Payment, which is based on a percentage of

completion in excess of that which Owner deems reasonable. A rejected request may result in delayed payment.

### ARTICLE IV PROJECT COST

4.01 *Definition of Project Cost*: The initial Project budget established by Owner is set forth in Exhibit E hereof and may not be changed without the written approval of the Owner. For purposes of this Agreement, the "Project Cost" shall be the total cost or estimated cost to Owner of all elements of the Project designed or specified by Consultant. The Project Cost includes the construction cost (at current market rates of labor, materials and equipment) of work provided by Owner and Owner's contractors and fixtures, furniture, and equipment (FF&E) designed, specified, selected, or specially provided for by Consultant, including reasonable allowances for overhead and projected escalation up to the time of its purchase and/or installation into the Project. The Project Cost shall not include the costs of land, rights-of way, financing, management fees, contingencies, change order allowance, compensation of the Consultant, or other costs which are the responsibility of Owner as provided in Exhibit B, if any.

#### 4.02 *Responsibility for Project Cost*:

4.02.1 In providing opinions of probable Project Cost, the Owner understands that the Consultant has no control over cost or the price of labor, materials, and equipment or over the accuracy of such opinions as compared to bid or actual cost.

4.02.2 In the event the bid or negotiated construction proposal exceeds the Consultant's opinion of probable Project Cost by more than five (5) percent, Consultant, upon notice from Owner and prior to the award of that contract, agrees to perform a redesign of the Project (or those portions of the Project with respect to which bids exceed the stipulated percentage). This redesign effort shall constitute Consultant's sole responsibility and Owner's sole remedy related to the adequacy of Consultant's opinion of probable Project Cost.

4.02.3 The Project Cost shall be increased in the amount of any increase in actual cost incurred after the contract for construction and/or a purchase order is agreed upon. Such increases in cost may result from change orders or other amendments to the contract for construction and/or purchase order.

4.02.4 If bidding and negotiation has not commenced within 90 days after Consultant submits final construction documents to Owner, the Project Cost shall be adjusted to reflect changes in the general level of prices between the date of submission and the date(s) on which proposals are sought.

### ARTICLE V TERMINATION

**5.01 General:**

5.01.1 Owner may terminate this Agreement with Consultant for any reason or no reason by giving notice of same at any time. This Agreement may be terminated by Consultant upon the substantial failure of Owner to perform in accordance with the terms herein, provided that Owner's failure to perform is through no fault of the Consultant and shall continue for thirty (30) days after written notice thereof from Consultant specifying the nature and extent of such default. If, upon receipt of such notice, Owner shall (if such default is not susceptible of being cured within thirty (30) days promptly commence to cure the default, and shall thereafter diligently pursue such efforts to completion, then such notice shall be of no force and effect. Termination by either party may only be accomplished in accordance with the terms of this article.

5.01.2 In the event of any termination under this Article, Consultant consents to Owner's selection of another consultant of Owner's choice to assist the Owner in any way in completing the Project. Consultant further agrees to cooperate and provide any information requested by Owner in connection with the completion of the Project, and consents to, and authorizes the making of any changes to the design of the Project by Owner and such other consultant, as Owner may desire.

5.02 *Payment:* Owner agrees to pay Consultant, in accordance with the provisions of Article III hereof, through the date of termination where termination occurs for the convenience of Owner rather than for cause. Such payment shall be based on a mutually agreeable estimate by Consultant and Owner of the percentage of Services completed as of the date of termination and Owner shall have no further liability for compensation, expense, or fees to Consultant hereunder. Any services provided by Consultant, which are requested by Owner after termination shall be fairly compensated by Owner. All amounts payable shall be subject to Owner's right of offset.

5.03 *Suspension of Services:* If, prior to termination of this Agreement, any portion of work designed or specified by Consultant during any phase of the work is suspended for more than six (6) months or abandoned upon written notice from Owner, Owner shall pay Consultant for the Services performed on such portion of work prior to suspension or abandonment.

## **ARTICLE VI INDEMNIFICATION AND INSURANCE**

**6.01 Indemnification:**

6.01.1 Consultant agrees, to the fullest extent permitted by law, to indemnify and hold Owner and its representatives, agents, employees, partners, directors, officers, members, and lenders harmless from any injury, damage to life and property, suits, actions, or claims and any resulting liability, loss or expense (including attorneys' fees and costs of defense) to the

extent caused by the negligent acts, errors or omissions of the Consultant or those of its agents, employees, or subconsultants in connection with the performance of professional services under this Agreement.

6.01.2 Owner agrees, to the fullest extent permitted by law, to indemnify and hold Consultant harmless from any damage, liability, or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by Owner's negligent acts, errors or omissions and those of its contractors, subcontractors or consultants, and arising from the Project.

6.01.3 Neither Consultant nor Owner is obligated to indemnify the other for the other's negligence.

6.02 *Insurance:* Consultant shall secure and maintain at its cost such insurance as will protect it from claims under worker's compensation acts; claims for damages because of bodily injury, including personal injury, sickness or disease, or death of any of its employees or of any person other than its employees; claims for damages because of injury to or destruction of tangible property including loss of use resulting therefrom; and claims arising out of the performance of professional services caused by any errors, omissions, or negligent acts for which Consultant is liable. The limits of liability shall be as follows:

*Comprehensive Liability (Bodily Injury)*

Each person	\$3,000,000
Each occurrence	\$5,000,000

*Comprehensive Liability (Property Damage)*

Each occurrence	\$5,000,000
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*Automobile (Bodily Injury)*

Each person	\$ 100,000
Each accident	\$ 300,000

*Automobile (Property Damage)*

Each accident	\$ 100,000
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*Worker's Compensation*

In accordance with the requirements of the laws of New York.

*Professional Liability*

Each claim	\$ 5,000,000
Annual aggregate	\$ 5,000,000
Deductible	\$ 20,000

At its option, the Consultant may increase the limits of liability to amounts greater than those referred to above.

At its option, Owner may require higher limits of the Annual Aggregate of Professional Liability Insurance, if in the sole opinion of the Owner, the Consultant is performing significant enough other work for other clients to justify such increase.



Consultant shall name Purchase College Advancement Corporation, Purchase College, the State University of New York, the State of New York, and the Development Consultant as additional insured on each policy.

**6.03 Insurance Certificates:** Consultant shall furnish insurance certificates to Owner, which will be incorporated into this Agreement as Exhibit H and will submit such certificates to Owner prior to or in conjunction with the execution of this Agreement. Additionally, Owner shall be entitled to demand that Consultant, from time to time, furnish evidence that the insurance required by this Agreement is in effect, and such evidence shall be provided within ten (10) days of the request. Consultant shall notify Owner immediately if its insurance coverage is terminated or materially modified for any reason. The maintenance in full current force and effect of such forms of insurance shall be a condition precedent to the Consultant's exercise or enforcement of any rights under this Agreement.

## **ARTICLE VII GENERAL PROVISIONS**

**7.01 Successors and Assigns:** Owner and Consultant each binds itself, its partners, successors, executors, administrators, and assigns to the other party of this Agreement, and to the partners, successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement. Consultant shall not assign, sublet, or transfer its interest in this Agreement without the prior written consent of Owner. However, Owner may assign this Agreement without the written consent of Consultant.

**7.02 Proprietary Information:** Consultant agrees to refrain from disclosing proprietary information obtained from Owner and to refrain from disclosing, without Owner's prior written authorization, any information, document, or material developed in carrying out its Services.

**7.03 Employee Responsibilities:** Consultant agrees that all persons performing Services herein are employees or agents of Consultant. Consultant further agrees that it will be solely responsible for the payment of all taxes and benefits required by law for said employees or agents without liability to Owner.

**7.04 Independent Contractor:** Consultant agrees that in the performance of any Services hereunder it shall be acting as an independent contractor and not as agent of Owner.

**7.05 Consultant Personnel:** Owner reserves the right to approve any of Consultant's personnel assigned to the Project. If Owner determines that the continued participation of any member of Consultant's staff is not in the best interest of the Project, Owner may require Consultant to replace the unsatisfactory staff member.

**7.06 Exclusiveness of Prescribed Remedies:** No remedy herein conferred upon or reserved to Owner is intended to be exclusive of any other remedy or remedies; but each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, or now to hereafter existing at law or in equity or by statute.

**7.07 Extent of Agreement:** This Agreement represents the entire and integrated agreement between Owner and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Consultant.

**7.08 Ownership of Documents:**

**7.08.1** All documents, including original drawings, estimates, Owner's Design Criteria, specifications, field notes, and data are and shall remain the property of Owner, and Consultant hereby assigns to Owner all proprietary rights that Consultant may have in all such documents prepared by, through, or under Consultant, including all copyright rights. Upon acceptance of the Project or when this Agreement is terminated in accordance with Article V hereof, Consultant will promptly on demand turn over to Owner originals of all drawings and documents, including electronic files of such drawings and documents. Any reuse of the drawing and/or documents for extension of this Project or any other Project by Owner will be at Owner's or any other user's sole risk and shall be without liability or legal exposure to Consultant.

**7.08.2** Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the Owner's reserved rights.

**7.09 Claims and Disputes**

**7.09.1** Any dispute, claim or controversy of any kind between the parties arising out of this Agreement or involving the interpretation or application of any provision of this Agreement shall be submitted to arbitration in Westchester County in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association; provided, that each party shall be required to submit its proposed resolution of such dispute, claim or controversy to the arbitrator and the arbitrator shall be required to render a decision adopting in full one or the other of such proposed resolutions, and no compromises or alternative resolutions shall be allowed or considered by the arbitrator. The parties jointly shall agree on an arbitrator. If the parties are unable to agree in good faith within a reasonable time on selection of an arbitrator, either party may request appointment of an arbitrator by the American Arbitration Association. The arbitration decision shall be final and binding on both parties and subject to judicial enforcement under the law unless the arbitration is fraudulent or so grossly erroneous as to necessarily imply bad faith. General costs of arbitration are to be shared by both parties equally provided that the arbitrator

may choose to award general costs of arbitration against a single party if he or she determines that the final position argued by the party was not reasonable. The presence of any claim or dispute, or legal proceeding arising therefrom, shall not relieve Consultant from its obligation to properly perform its Services as set forth herein.

7.09.2 In addition to and prior to arbitration, Owner and Consultant agree that all disputes between them arising out of or relating to this Agreement that have not been resolved after negotiation shall be submitted to non-binding mediation in Westchester County in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise. Demand for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for mediation shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute, or other matter in question would be barred by the applicable statute of limitations.

7.09.3 No claim or dispute arising out of or related to this Agreement shall include, by consolidation, joinder or any other manner, an additional person or entity not party to this Agreement unless both parties agree that common or interrelated factual occurrences require additional parties to resolve the claim or dispute.

7.10 *Governing Law:* The laws of the State of New York shall govern this Agreement.

7.11 *Interpretation:* Limitations on liability and indemnities in this Agreement are business understandings between the parties and shall apply to all the different theories of recovery, including breach of contract or warranty, tort (including negligence), strict or statutory liability, or any other cause of action. These limitations on liability and indemnities will not apply to any losses or damages that have been found by a trier of fact to be caused by Consultant's sole or gross negligence or Consultant's willful misconduct.

7.12 *Third Party Beneficiaries:* Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either Owner or Consultant. Consultant's Services under this Agreement are being performed solely for the Owner's benefit, and no other entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder.

7.13 *Severability and Survival:* Any provision of this Agreement later held to be unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect. All obligations arising prior to the termination of this Agreement and all provisions of this

Agreement allocating responsibility or liability between Owner and Consultant shall survive the completion of Services hereunder and the termination of this Agreement.

7.14 *Titles:* The titles used in this Agreement are for general reference only and are not part of the Agreement.

7.15 This Agreement incorporates: (i) Exhibits A and A-1; (ii) the RFQ (Exhibit K), including, without limitation, Part I.W, and Part II, Section 6.2, thereof; and (iii) Consultant's Proposal (Exhibit L). This Agreement embodies the entire agreement and understanding of the parties hereto and supersedes all prior agreements and understandings, written and oral, relating to the subject matter hereof, and may not be modified or amended or any term or provision hereof waived or discharged, except in writing, signed by the party against whom such modification, waiver or discharge is sought to be enforced. In the event of any inconsistency or conflict among the documents comprising this Agreement, such inconsistency or conflict shall be resolved by giving precedence to the documents in the following order: (i) Exhibits A and A-1; (ii) this printed Agreement; (iii) the RFQ (Exhibit K); and (iv) Consultant's Proposal (Exhibit L). Notwithstanding the foregoing or anything in this Agreement and/or Exhibits A and A-1 to the contrary, Owner and Consultant acknowledge and agree that: (i) this Agreement is not a "State Contract" as defined in Exhibit A-1, and that the term "State Contract" as used in Exhibits A and A-1 shall be deemed to mean this Agreement; (ii) that the terms "SUNY," "State University of New York," "State University," and "University" as used in Exhibits A and A-1 shall be deemed to mean Owner; and (iii) that section 16 of Exhibit A shall not apply.

7.16 Consultant and Owner each represent that this Agreement has in all respects been duly authorized, executed, and delivered.

7.17 All notices, demands, and requests that may be given or that are required to be given by either party to the other party under this Agreement must be in writing. Notices given by a party's attorney on behalf of such party shall be deemed given by such party. All notices, demands, requests or other communications required or permitted to be given hereunder must be sent by (i) personal delivery, (ii) Federal Express or a similar nationally recognized overnight courier service, or (iii) via email transmission. Notices delivered by personal delivery shall be deemed to have been given upon tender to a natural person at the address shown. Notices delivered by email transmission shall be deemed to have been given on the day transmitted in accordance herewith, provided that a duplicate copy of such notice is sent via one of the other means of transmittal permitted hereby. Notices delivered by overnight courier shall be deemed to have been given the next day after delivery to such overnight commercial courier. All copies of notices sent to the parties listed below as receiving copies shall be given in the same manner as the original notice that was sent but shall not be a prerequisite to the effectiveness of any notice. Notwithstanding the foregoing, whenever under

this Agreement a notice is either received on a day that is not a business day or is required to be delivered on or before a specific day that is not a business day, the day of receipt or required delivery shall automatically be extended to the next business day. The addresses and emails for proper notice under this Agreement are as follows:

TO Owner: Purchase College Advancement Corporation  
Purchase College, State University of New York  
735 Anderson Hill Road  
Purchase, New York 10577  
Attention: Judy Nolan, Secretary  
Phone: 914- 251-6067  
Email: [Judy.Nolan@purchase.edu](mailto:Judy.Nolan@purchase.edu)

#### WITH COPIES

TO: Purchase College Advancement Corporation  
Purchase College, State University of New York  
735 Anderson Hill Road  
Purchase, New York 10577  
Attention: Karl Duchek, Treasurer  
Phone: 914- 251-6139  
Email: [Karl.Duchek@purchase.edu](mailto:Karl.Duchek@purchase.edu)

DelBello Donnellan Weingarten Wise & Wiederkehr, LLP  
One North Lexington Avenue. 11<sup>th</sup> Floor  
White Plains, New York 10601  
Attention: Peter J. Wise  
Phone: 914-681-0200  
Email: [pjw@ddw-law.com](mailto:pjw@ddw-law.com)

#### TO CONSULTANT:

Attention:  
Phone:  
Email:

#### WITH COPIES

TO:

7.18 Notwithstanding any provision of this Agreement, Owner may terminate this Agreement in the event it is found that the certification filed by Consultant in accordance with New York State Finance Law §§ 139-j and 139-k was intentionally false or intentionally incomplete.

7.19 Owner has undertaken an affirmative review of Consultant's responsibility in accordance with the standards outlined in New York State Comptroller's Bulletin G-221, and based upon such review, has reasonable assurance that Consultant is responsible.

7.20 Consultant shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 889-aa; State Technology Law Section 208). Consultant shall be liable for the costs associated with such breach if caused by Consultant's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Consultant's agents, officers, employees, or subcontractors.

7.21 Chapter 10 of the Laws of 2006 amends State Finance Law §§8 and 163 by requiring that contractors annually report certain employment information to the contracting agency, the New York Department of Civil Service and Office of the State Comptroller. As a result of these changes in law, State contractors will be required to disclose, by employment category, the number of persons employed to provide services under a contract for consulting services, the number of hours worked and the amount paid to the contractor by the State as compensation for work performed by these employees. This will include information on any persons working under any subcontracts with the State contractor. In furtherance of these reporting requirements, Consultant agrees to complete and submit the initial planned employment data report (Form A) and the annual employment report (Form B).

7.22 This Agreement shall be effective upon execution by both parties and approval by the New York Attorney General, Office of the State Comptroller, and Office of the Division of the Budget.



Contract # \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement the day and year first above written.

Owner:  
Purchase College Advancement Corporation

By: \_\_\_\_\_  
Thomas J. Schwarz, President

Consultant:

By: \_\_\_\_\_

STATE OF NEW YORK )  
COUNTY OF WESTCHESTER) ss.:

On the day of in the year 2014, before me, the undersigned, personally appeared Thomas J. Schwarz, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )  
COUNTY OF WESTCHESTER) ss.:

On the day of in the year 2014, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

*Contractor Certification: I certify that all information provided to PCAC with respect to prior non-responsibility determinations within the past four (4) years based on prior (i) impermissible contacts or other violations of State Finance Law §139j, or (ii) the intentional provision of false or incomplete information to a government entity is complete, true and accurate.*

Consultant:

By: \_\_\_\_\_

APPROVED AS TO FORM:  
**ERIC T. SCHNEIDERMAN**  
**ATTORNEY GENERAL**

By: \_\_\_\_\_  
Name:  
Title:  
Date: \_\_\_\_\_, 2014

APPROVED AND FILED:  
**THOMAS P. DI NAPOLI**  
**STATE COMPTROLLER**

By: \_\_\_\_\_  
Name:  
Title:  
Date: \_\_\_\_\_, 2014

APPROVED:  
**ROBERT L. MEGNA**  
**BUDGET DIRECTOR**

By: \_\_\_\_\_  
Name:  
Title:  
Date: \_\_\_\_\_, 2014

# EXHIBIT A

## Standard Contract Clauses

### State University of New York

December 13, 2012

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a Contractor, licensor, licensee, lessor, lessee or any other party):

1. **EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. **PROHIBITION AGAINST ASSIGNMENT** Except for the assignment of its right to receive payments subject to Article 5-A of the State Finance Law, the Contractor selected to perform the services herein are prohibited in accordance with Section 138 of the State Finance Law from assigning, transferring, conveying, subletting or otherwise disposing of its rights, title or interest in the contract without the prior written consent of SUNY and attempts to do so are null and void. Notwithstanding the foregoing, SUNY may, with the concurrence of the New York Office of the State Comptroller, waive prior written consent of the assignment, transfer, conveyance, sublease or other disposition of a contract let pursuant to Article XI of the State Finance Law if the assignment, transfer, conveyance, sublease or other disposition is due to a reorganization, merger or consolidation of Contractor's its business entity or enterprise and Contractor so certifies to SUNY. SUNY retains the right, as provided in Section 138 of the State Finance Law, to accept or reject an assignment, transfer, conveyance, sublease or other disposition of the contract, and to require that any Contractor demonstrate its responsibility to do business with SUNY.

3. **COMPTROLLER'S APPROVAL.** (a) In accordance with Section 112 of the State Finance Law, Section 355 of New York State Education Law, and 8 NYCRR 316, Comptroller's approval is not required for the following contracts: (i) materials; (ii) equipment and supplies, including computer equipment; (iii) motor vehicles; (iv) construction; (v) construction-related services; (vi) printing; and (vii) goods for State University health care facilities, including contracts for goods made with joint or group purchasing arrangements.

(b) Comptroller's approval is required for the following contracts: (i) contracts for services not listed in Paragraph (3)(a) above made by a State University campus or health care facility certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$250,000; (ii) contracts for services not listed in Paragraph (3)(a) above made by a State University campus not certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$50,000; (iii) contracts for services not listed in Paragraph (3)(a) above made by health care facilities not certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$75,000; (iv) contracts whereby the State University agrees to give something other than money, when the value or reasonably estimated value of such consideration exceeds \$10,000; (v) contracts for real property transactions if the contract value exceeds \$50,000; (vi) all other contracts not listed in Paragraph 3(a) above, if the contract value exceeds \$50,000, e.g. SUNY acquisition of a business and New York State Finance Article 11-B contracts and (vii) amendments for any amount to contracts not listed in Paragraph (3)(a) above, when as so amended, the contract exceeds the threshold amounts stated in Paragraph (b) herein. However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or

for a purchase order or other transaction issued under such centralized contract.

(c) Any contract that requires Comptroller approval shall not be valid, effective or binding upon the State University until it has been approved by the Comptroller and filed in the Comptroller's office.

4. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation

6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law

shall be a condition precedent to payment by SUNY of any SUNY-approved sums due and owing for work done upon the project.

7. **NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based on the submission of competitive bids, Contractor affirms, under penalty of perjury, and each person signing on behalf of Contractor, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered it to SUNY a non-collusive bidding certification on Contractor's behalf.

8. **INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 *et seq.*) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR 105.4).

9. **SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State, its representatives, or the State Comptroller.

10. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as SUNY and its representatives and entities involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the

State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. SUNY shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate SUNY official, in writing, that said Records should not be disclosed; and (ii) said Records shall be sufficiently identified; and (iii) designation of said Records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, SUNY's or the State's right to discovery in any pending or future litigation.

#### 11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

Identification Number(s). Every invoice or New York State Claim for Payment submitted to the State University of New York by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State University of New York is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the State University of New York contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

#### 12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

(a) In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this

agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(1) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(2) at SUNY's request, Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(3) Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(b) Contractor will include the provisions of "1", "2" and "3", above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a Contractor or sub-contractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. SUNY shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, SUNY shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. **CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Exhibit A, the terms of this Exhibit A shall control.

14. **GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. **LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. **NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. **SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made.

Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. **PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State. In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with the approval of the State, otherwise, the bid may not be considered responsive. Under bidder certification, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. **MacBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that Contractor and any individual or legal entity in which the Contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165(5) of the State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. **OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St., 7th Floor  
Albany, NY 12245  
Tel: 518-292-5100  
Fax: 518-292-5884  
email: opa@esd.ny.gov

A directory of certified minority and women-owned business enterprises is available from:  
NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414

email: mwbecertification@esd.ny.gov  
<http://esd.ny.gov/MWBE/directorySearch.html>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to SUNY;



(b) The Contractor has complied with the Federal Equal Employment Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Search Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that SUNY may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with SUNY in these efforts.

**21. RECIPROCITY AND SANCTIONS**

**PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act of 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. Contact the NYS Department of Economic Development, Division for Small Business, 30 South Pearl Street, Albany, New York 12245, for a current list of jurisdictions subject to this provision.

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal or similar services, then in accordance with Section 163(4-g) of the State Finance Law, the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to SUNY, the Department of Civil Service and the State Comptroller.

**24. PURCHASES OF APPAREL AND SPORTS EQUIPMENT.** In accordance with State Finance Law Section 165(7), SUNY may determine that a bidder on a contract for the purchase of apparel or sports equipment is not a responsible bidder as defined in State Finance Law Section 163 based on (a) the labor standards applicable to the manufacture of the apparel or sports equipment, including employee compensation, working conditions, employee rights to form unions and the use of child labor; or (b) bidder's failure to provide information sufficient

for SUNY to determine the labor conditions applicable to the manufacture of the apparel or sports equipment.

**25. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**26. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.** To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the Contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or SUNY discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if SUNY determines that such action is in the best interests of the State.

**THE FOLLOWING PROVISIONS SHALL APPLY ONLY TO THOSE CONTRACTS TO WHICH A HOSPITAL OR OTHER HEALTH SERVICE FACILITY IS A PARTY**

27. Notwithstanding any other provision in this contract, the hospital or other health service facility remains responsible for insuring that any service provided pursuant to this contract complies with all pertinent provisions of Federal, state and local statutes, rules and regulations. In the foregoing sentence, the word "service" shall be construed to refer to the health care service rendered by the hospital or other health service facility.

28. (a) In accordance with the 1980 Omnibus Reconciliation Act (Public Law 96-499), Contractor hereby agrees that until the expiration of four years after the furnishing of services under this agreement, Contractor shall make available upon written request to the Secretary of Health and Human Services, or upon request, to the Comptroller General of the United States or any of their duly authorized representatives, copies of this contract, books, documents and records of the Contractor that are necessary to certify the nature and extent of the costs hereunder.

(b) If Contractor carries out any of the duties of the contract hereunder, through a subcontract having a value or cost of \$10,000 or more over a twelve-month period, such subcontract shall contain a clause to the effect that, until the expiration of four years after the furnishing of such services pursuant to such subcontract, the subcontractor shall make available upon written request to the Secretary of Health and Human Services or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, copies of the subcontract and books, documents and records of the subcontractor that are necessary to verify the nature and extent of the costs of such subcontract.

(c) The provisions of this section shall apply only to such contracts as are within the definition established by the Health Care Financing Administration, as may be amended or modified from time to time.

**END OF EXHIBIT A**

# EXHIBIT A-1

## Affirmative Action Clauses State University of New York

January 14, 2013

**1. DEFINITIONS.** The following terms shall be defined in accordance with Section 310 of the Executive Law:

**STATE CONTRACT** herein referred to as "State Contract", shall mean: (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000.00), whereby the State University of New York ("University") is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or a combination of the foregoing, to be performed for, or rendered or furnished to the University; (b) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; and (c) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University as an owner of a state assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project.

**SUBCONTRACT** herein referred to as "Subcontract", shall mean any agreement for a total expenditure in excess of \$25,000 providing for services, including non-staffing expenditures, supplies or materials of any kind between a State agency and a prime contractor, in which a portion of the prime contractor's obligation under the State contract is undertaken or assumed by a business enterprise not controlled by the prime contractor.

**WOMEN-OWNED BUSINESS ENTERPRISE** herein referred to as "WBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more United States citizens or permanent resident aliens who are women; (b) an enterprise in which the ownership interest of such women is real, substantial and continuing; (c) an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that

does not exceed three million five hundred thousand dollars (\$3,500,000), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

A firm owned by a minority group member who is also a woman may be certified as a minority-owned business enterprise, a women-owned business enterprise, or both, and may be counted towards either a minority-owned business enterprise goal or a women-owned business enterprise goal, in regard to any Contract or any goal, set by an agency or authority, but such participation may not be counted towards both such goals. Such an enterprise's participation in a Contract may not be divided between the minority-owned business enterprise goal and the women-owned business enterprise goal.

**MINORITY-OWNED BUSINESS ENTERPRISE** herein referred to as "MBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more minority group members; (b) an enterprise in which such minority ownership is real, substantial and continuing; (c) an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars (\$3,500,000.00), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

**MINORITY GROUP MEMBER** shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (a) Black persons having origins in any of the Black African racial groups; (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race; (c) Native American or Alaskan native persons having origins in any of the original peoples of North America. (d) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian Subcontinent or Pacific Islands.

**CERTIFIED ENTERPRISE OR BUSINESS** shall mean a business verified as a minority or women-owned business enterprise pursuant

to section 314 of the Executive Law. A business enterprise which has been approved by the New York Division of Minority & Women Business Development ("DMWBD") for minority or women-owned enterprise status subsequent to verification that the business enterprise is owned, operated, and controlled by minority group members or women, and that also meets the financial requirements set forth in the regulations.

**2. TERMS.** The parties to the attached State Contract agree to be bound by the following provisions which are made a part hereof (the word "Contractor" herein refers to any party other than the University):

1(a) Contractor and its Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(b) Prior to the award of a State Contract, the Contractor shall submit an equal employment opportunity (EEO) policy statement to the University within the time frame established by the University.

(c) As part of the Contractor's EEO policy statement, the Contractor, as a precondition to entering into a valid and binding State Contract, shall agree to the following in the performance of the State Contract: (i) The Contractor will not discriminate against any employee or applicant for employment, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State Contracts; (ii) The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the State Contract, all qualified applicants will be afforded equal employment opportunities without discrimination; (iii) At the request of the University the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

(d) Except for construction contracts, prior to an award of a State Contract, the

Contractor shall submit to the contracting agency a staffing plan of the anticipated work force to be utilized on the State Contract or, where required, information on the Contractor's total work force, including apprentices, broken down by specified ethnic background, gender, and Federal occupational categories or other appropriate categories specified by the contracting agency. The form of the staffing plan shall be supplied by the contracting agency. If Contractor fails to provide a staffing plan, or in the alternative, a description of its entire work force, the University may reject Contractor's bid, unless Contractor either commits to provide such information at a later date or provides a reasonable justification in writing for its failure to provide the same.

(e) After an award of a State Contract, the Contractor shall submit to the University a workforce utilization report, in a form and manner required by the agency, of the work force actually utilized on the State Contract, broken down by specified ethnic background, gender, and Federal occupational categories or other appropriate categories specified by the University.

(f) The Contractor shall include the provisions of this section in every Subcontract in such a manner that the requirements of the provisions will be binding upon each Subcontractor as to work in connection with the State Contract, including the requirement that Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and, when requested, provide to the Contractor information on the ethnic background, gender, and Federal occupational categories of the employees to be utilized on the State Contract.

(g) To ensure compliance with the requirements of this paragraph, the University shall inquire of a Contractor whether the work force to be utilized in the performance of the State Contract can be separated out from the Contractor's and/or Subcontractors' total work force and where the work of the State Contract is to be performed. For Contractors who are unable to separate the portion of their work force which will be utilized for the performance of this State Contract, Contractor shall provide reports describing its entire work force by the specified ethnic background, gender, and Federal Occupational Categories, or other appropriate categories which the agency may specify.

(h) The University may require the Contractor and any Subcontractor to submit compliance reports, pursuant to the regulations relating to their operations and implementation of their affirmative action or equal employment opportunity program in effect as of the date the State Contract is executed.

(i) If a Contractor or Subcontractor does not have an existing affirmative action program, the University may provide to the Contractor or Subcontractor a model plan of an affirmative action program. Upon request, the Director of DMWBD shall provide a contracting agency with a model plan of an affirmative action program.

(j) Upon request, DMWBD shall provide the University with information on specific recruitment sources for minority group members and women, and contracting agencies shall make such information available to Contractors

2. Contractor must provide the names, addresses and federal identification numbers of certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State Contract and a description of the Contract scope of work which the Contractor intends to structure to increase the participation by Certified minority- and/or women-owned business enterprises on the State Contract, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State Contract which the Contractor intends to be performed by a certified minority- or woman-owned business enterprise. In the event the Contractor responding to University solicitation is joint venture, teaming agreement, or other similar arrangement that includes a minority- and women owned business enterprise, the Contractor must submit for review and approval: i. the name, address, telephone number and federal identification of each partner or party to the agreement; ii. the federal identification number of the joint venture or entity established to respond to the solicitation, if applicable; iii. A copy of the joint venture, teaming or other similar arrangement which describes the percentage of interest owned by each party to the agreement and the value added by each party; iv. A copy of the mentor-protégé agreement between the parties, if applicable, and if not described in the joint venture, teaming agreement, or other similar arrangement.

3. **PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN.** The University shall determine whether Contractor has made conscientious and active efforts to employ and utilize minority group members and women to perform this State Contract based upon an analysis of the following factors:

(a) Whether Contractor established and maintained a current list of recruitment sources for minority group members and women, and whether Contractor provided written notification to such recruitment sources that contractor had employment opportunities at the time such opportunities became available.

(b) Whether Contractor sent letters to recruiting sources, labor unions, or authorized representatives of workers with which contractor has a collective bargaining or other agreement or understanding requesting assistance in locating minority group members and women for employment.

(c) Whether Contractor disseminated its EEO policy by including it in any advertising in the news media, and in particular, in minority and women news media.

(d) Whether Contractor has attempted to provide information concerning its EEO policy to Subcontractors with which it does business or had anticipated doing business.

(e) Whether internal procedures exist for, at a minimum, annual dissemination of the

EEO policy to employees, specifically to employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions. Such dissemination may occur through distribution of employee policy manuals and handbooks, annual reports, staff meetings and public postings.

(f) Whether Contractor encourages and utilizes minority group members and women employees to assist in recruiting other employees.

(g) Whether Contractor has apprentice training programs approved by the N.Y.S. Department of Labor which provides for training and hiring of minority group members and women.

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor.

4. **PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES.** Based upon an analysis of the following factors, the University shall determine whether Contractor has made good faith efforts to provide for meaningful participation by minority-owned and women-owned business enterprises which have been certified by DMWBD:

(a) Whether Contractor has actively solicited bids for Subcontracts from qualified M/WBEs, including those firms listed on the Directory of Certified Minority and Women-Owned Business Enterprises, and has documented its good faith efforts towards meeting minority and women owned business enterprise utilization plans by providing, copies of solicitations, copies of any advertisements for participation by certified minority- and women-owned business enterprises timely published in appropriate general circulation, trade and minority- or women-oriented publications, together with the listing(s) and date(s) of the publications of such advertisements; dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the University, with certified minority- and women-owned business enterprises, and the reasons why any such firm was not selected to participate on the project.

(b) Whether Contractor has attempted to make project plans and specifications available to firms who are not members of associations with plan rooms and reduce fees for firms who are disadvantaged.

(c) Whether Contractor has utilized the services of organizations which provide technical assistance in connection with M/WBE participation.

(d) Whether Contractor has structured its Subcontracts so that opportunities exist to complete smaller portions of work.

(e) Whether Contractor has encouraged the formation of joint ventures, partnerships, or other similar arrangements among Subcontractors.

(f) Whether Contractor has requested the services of the Department of Economic Development (DED) to assist Subcontractors' efforts to satisfy bonding requirement.

(g) Whether Contractor has made progress payments promptly to its Subcontractors.



(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor. It shall be the responsibility of Contractor to ensure compliance by every Subcontractor with these provisions.

**5. GOALS. (a) GOALS FOR MINORITY AND WOMEN WORK FORCE PARTICIPATION.**

(i) The University shall include relevant work force availability data, which is provided by the DMWBD, in all documents which solicit bids for State Contracts and shall make efforts to assist Contractors in utilizing such data to determine expected levels of participation for minority group members and women on State Contracts.

(ii) Contractor shall exert good faith efforts to achieve such goals for minority and women's participation. To successfully achieve such goals, the employment of minority group members and women by Contractor must be substantially uniform during the entire term of this State Contract. In addition, Contractor should not participate in the transfer of employees from one employer or project to another for the sole purpose of achieving goals for minority and women's participation.

**(b) GOALS FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION.** For all State Contracts in excess of \$25,000.00 whereby the University is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial

and other professional services, supplies, equipment, materials or an combination of the foregoing or all State Contracts in excess of \$100,000.00 whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, Contractor shall exert good faith efforts to achieve a participation goal of fourteen percent (**14%**) for Certified Minority-Owned Business Enterprises and twelve percent (**12%**) for Certified Women-Owned Business Enterprises.

**6. ENFORCEMENT.** The University will be responsible for enforcement of each Contractor's compliance with these provisions. Contractor, and each Subcontractor, shall permit the University access to its books, records and accounts for the purpose of investigating and determining whether Contractor or Subcontractor is in compliance with the requirements of Article 15-A of the Executive Law. If the University determines that a Contractor or Subcontractor may not be in compliance with these provisions, the University may make every reasonable effort to resolve the issue and assist the Contractor or Subcontractor in its efforts to comply with these provisions. If the University is unable to resolve the issue of noncompliance, the University may file a complaint with the DMWBD.

**7. DAMAGES FOR NON COMPLIANCE.**

Where the University determines that Contractor is not in compliance with the

requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to liquidated damages to the University. Such liquidated damages shall be calculated as an amount equaling the difference between:

a. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and

b. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the University, Contractor shall pay such liquidated damages to the University within sixty (60) days after such damages are assessed, unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the University.

## END OF EXHIBIT A-1

## **EXHIBIT A-2**

### **SERVICES PERFORMED BY CONSULTANT**

Without limiting the generality of this Agreement, the Owner and Consultant specifically agree the Consultant's Services include but are not limited to the following:

#### **I. General Project Requirements**

##### **A. Cooperation**

1. Beyond the services described herein, the Consultant will cooperate fully and expeditiously with the Owner and the requirements of Exhibit B - Services Performed by the Owner.
2. The Consultant will cooperate with the Owner throughout all Project phases to ensure the documents are economical, complete and fulfill the design intent of the Project.
3. The Consultant's efforts leading to complete, final construction documents is an evolutionary process. As part of its Services, the Consultant will make changes resulting from the Owner's review and participation in the process. This includes all work required to coordinate with the Owner and regulatory agencies and to complete preliminary design documents for approval of the Owner and regulatory agencies. It also includes design development changes up to the date of "C Phase" authorization.
4. The Consultant will be responsible for giving the Owner a written record of all meetings (detailing action requirements, responsibility and due dates) within seven (7) calendar days of such meetings. Additionally, the Consultant will provide written response to all "Requests for Information" (R.F.I.'s) from Owner or Owner's construction manager or general contractor (the "**Contractor**") within three (3) working days of that request.

##### **B. Services**

The Consultant's Services include the site design and detailing for a complete project in every respect unless specifically excluded herein.

1. The Consultant will provide the following services-
  - Geotechnical exploration and analysis (Exhibit A-2(c))
  - Surveying including boundary, topography and ALTA/ASTM title (Exhibit A-2(d))
  - Civil Engineering
  - Landscape Architecture
  - Traffic and Parking Studies/Engineering
  - Environment Studies/Engineering
  - Leadership in Energy and Environmental Design (L.E.E.D) Certification related to site design
  - Code analysis related to site design.
  - Facilitator for building permit and other jurisdictional approvals related to site design.
  - State Environmental Quality Review Act (SEQRA) services required to attaining approval for the Project.
  - Construction Administration of all of the above.
2. The Consultant will provide Additional Services if required by the local jurisdiction or Project requirements and deemed appropriate by the Owner. The Owner will compensate

the Consultant for Additional Services in accordance with the Standard Form of Agreement that accompanies this Exhibit. **Always, the Owner must provide written authorization of Additional Services before execution of such services.**

**C. Coordination**

The Consultant will be fully responsible for coordinating the work product of all consultants providing services for the Project, including Owner and those provided by the Owner, to ensure a total and complete set of documents for regulatory approval, bidding, and construction. Such consultants may provide the following services:

- Architectural Design
- Structural Engineering
- Mechanical Engineering
- Plumbing Engineering
- Fire Protection Engineering
- Electrical Engineering
- Electrical Subsystems Design
- Acoustical Design
- Interior Design
- Graphics Design including site signage
- Food Facilities Design
- Peer Reviews

**D. Project Cost**

Consultant will review the Project Budget (Exhibit E) to provide an evaluation of the feasibility of achieving the target cost given the scope of the Project. Subsequently, the Consultant will provide comments regarding the opinions of probable cost generated by the Owner at decision-making milestones in the Project Schedule (Exhibit C).

**E. Project Criteria**

1. The Consultant will review the project criteria, facilities program, and any other information furnished by the Owner to understand the requirements of the Project and will review its understanding of such requirements with the Owner.
2. The Consultant will review and comply with any covenants, conditions of zoning and development agreements that affect the Project design, and present all considerations to the Owner for review and inclusion in the construction documents.

**F. Schedule**

1. The Consultant will develop a Production Schedule for the performance of professional services showing all major and minor activities and will submit the Production Schedule to Owner for approval before beginning work. Such approved Production Schedule will become part of Exhibit C to this Agreement. The Production Schedule will include allowances for periods required for coordination of all Consultants' work, for Owner's review of submissions, and for approvals of authorities having jurisdiction over the Project. The Owner and Consultant may jointly adjust the Production Schedule as the Project proceeds.
2. The Consultant will be fully responsible for scheduling and producing all work in a way that meets established milestone dates. The Consultant will not exceed the time limits established by the Production Schedule, except with reasonable cause.

**G. Codes**



The Consultant will establish, maintain, and coordinate communication with the individual jurisdictional authorities for the Project location. The Consultant will ensure that all design work conforms to state and local codes and requirements, and any applicable requirements of the State University of New York. The Consultant with the Owner's direction will prepare all submissions for required building permits, if any.

1. A & B Phase Code Research and Analysis
  - a. The Consultant will provide research and analysis of the following jurisdictional regulations, codes, and ordinances:
    - Zoning regulations, development agreements, and covenants, conditions and restrictions including landscaping, site lighting, and sign regulations,
    - Conservation/wetland regulations as they affect the structure and site planning
    - Public improvement regulations,
    - Building and Fire safety codes related to site design, and
    - Any other code enforced by jurisdictional authorities and affecting the Project's site design.
  - b. The Consultant will visit the Project site and meet with the jurisdictional officials and enforcement officers, if any. The Consultant will give the Owner a written report of each meeting. Whenever possible, the meetings will be attended by the Owner's representatives and when necessary the Owner's consultants.
  - c. The Consultant will prepare documents to display resolution of code related design requirements.
2. C & D Phase Code Incorporation
  - a. The Consultant will incorporate the detailed requirements of the code research and analysis into the construction drawings as approved by the Owner.
  - b. During construction, the Consultant will maintain contact with the local code authorities if required, and provide interpretation, clarification, and resolution of code-related issues

#### **H. Non-reimbursable Expenses**

The Consultant will include the following expenses in the Contract Sum:

1. Printing and photocopying of all submissions listed below
2. Printing of all base plans or distribution of the computer-generated files for use by the Consultant's Subconsultants and the Owner's consultants
3. Local and long distance telephone, facsimile and other electronic communications
4. Photocopying and other printing required for communication with the Owner and the Owner's consultants
5. Photocopying and other printing required for communication with Consultant's Subconsultants
6. Express mail or delivery services required to meet the Project Schedule through no fault of the Owner
7. The cost of all materials, computer time, data processing, computer storage disk, etc. incurred in the interest of the Project

8. The cost of all transportation and travel expenses within Consultant's metropolitan area

**I. Reimbursable Expenses**

The Owner will reimburse the Consultant for the following expenses when specifically requested with the Owner's prior agreement:

1. Travel related expenses outside the Consultant's metropolitan area (including air travel, rental car, hotel accommodation, and meals)
2. Fees for permits or applications to regulatory agencies, if any
3. Document printing expenses not included in the submission requirements listed below (including printing of multiple sets of the regulatory approval, permitting, bidding, and Construction Documents)

**J. Project Site**

The Consultant will become thoroughly familiar with the Project site, will complete a "Site Information Checklist" (Exhibit A-2 (a)), and will present their findings to Owner for review and distribution to the Owner's consultants.

**K. Specifications**

The Owner's Architect will establish the format and produce the complete Project Specifications. The Consultant will provide its portions of the specifications in the Owner's Architect format.

**L. Value Engineering**

The Consultant will actively participate in the Owner's value engineering efforts through all phases of the Project's design and construction. The Consultant will recommend and review alternative design and construction approaches to the Project including substitutions and recommendations submitted by the Contractor prior to and during the bidding process subject to Paragraph I.A.3 above.

**M. Quality Control**

The Consultant will give the Owner written description and representation of quality control of documents. The Consultant will represent, as a minimum, that quality control of documents includes reviews for scope, criteria, value engineering, cost reduction, code and regulatory approvals compliance, single discipline and multiple discipline coordination, and constructability.

**N. Computer-Aided Design and Drafting (CADD) Data**

1. The Consultant will transfer all Computer-Aided Design and Drafting (CADD) data on CDROM disks unless the Owner agrees to other arrangements.
2. All CADD data will be formatted as **DWG** or **RVT** that is compatible with the latest version of AutoCAD or Revit. The files must be free of corrupted or unusable data.
3. The Consultant will provide written descriptions of their layer conventions and file naming. Compatibility means the Owner can integrate the Consultant CADD databases into its CADD operations efficiently and without the necessity of the Owner translating or pre-processing the files. The burden of ensuring compatibility lies with the Consultant.
4. All CADD files created for the site specific applications to this Project are and remain the property of the Owner. At the completion of the Consultant's Services, the Consultant will turn over to the Owner copies of all Project related CADD files. Any use of these

files for extensions of this Project or use on other Projects will be at the Owner's or any other user's sole risk and will be without liability or legal exposure to the Consultant.

## **II. Conceptual Design and Program Refinement – Master Planning (A Phase)**

The conceptual design/master helps the Owner determine project feasibility and establish the Development Plan and shall be prepared with information provided by the Owner and local knowledge of the design team. The Consultant will review and incorporate, as appropriate, all data provided.

### **A. Owner Information**

The Consultant will obtain all known code and covenant information, a developer's site checklist, a preliminary survey, plus additional information as required from the Owner. The Owner expects further refinement of the Project Program (Exhibit D) as the planning progresses and the Development Plan is drafted and finalized.

### **B. Conceptual Design/Master Plan**

The Consultant will include the following information in the conceptual plan/master plan (see Exhibit A-2(b) for additional requirements):

- A site vicinity map
- Existing and/or a proposed site boundary and dimensions
- Building footprints and number of stories (from the Owner's Architect)
- Total allowable building area, all required parking and drives, and critical setback dimensions for building and parking
- Existing topography, proposed finished floor elevations, schematic indications of proposed retaining walls and/or slope easements, notation of all apparent wetlands, flood plain or protected plant and animal species
- Existing utilities, proposed relocation or demolition of existing structures, services etc.
- Proposed roads, signaling devices, etc.
- Suggested location for an entrance sign
- Suggested location for trash enclosure

### **C. Document Requirements**

The Consultant will provide the following conceptual plan/master plan documents to the Owner:

- Drawings: 2 sets of prints
- Narrative or cuts sheets: 3 set (8½ x 11 format)

The Consultant will submit the complete conceptual site plan in electronic formats useable by the Owner:

- all AutoCAD files in DWG format or Revit files in RVT format
- all documents in PDF format

## **III. Schematic Design (B-1 and B-2 Phases)**

Upon written authorization from the Owner, the Consultant will proceed with the schematic design (B-1) phase services. The Owner will deliver to the Consultant the available data collected by the Owner before B-1 Phase authorization. The Consultant will review the Owner's data, the Project Program, and local building regulations to ascertain the complete scope of the Project and review such understanding with the Owner. Schematic Design will include the Consultant's services required to plan for future expansion of the Project.



**A. Geotechnical Testing Locations**

The Consultant will provide information required for the Owner's geotechnical engineering Consultant to accurately layout the soil testing locations.

**B. Site Information Checklist**

The Consultant with assistance from the Owner's Architect will complete a Site Information Checklist using the form included as Exhibit A-2(a) to this Agreement.

**C. Site Observation Report**

The Consultant will prepare a Site Observation Report containing the following detailed information:

- Planning and zoning issues
- Topographic description
- Utility information
- Signage issues
- Storm water/ wetlands concerns
- Site access
- Building code information
- Permit and fee information
- Demolition required
- Potential geotechnical problems
- Potential hazardous waste problems

**D. Preliminary Site Plan**

The Consultant will incorporate information obtained from the Owner and other information the Consultant collects into a Preliminary Site Plan. The Preliminary Site Plan will contain the following information:

- Development Agreement/zoning requirements
- Building footprint with all setbacks
- Total allowable floor area of the building(s)
- Proposed and existing grading
- Proposed and existing utilities
- Storm-water management structures
- Off-site improvements
- Parking
- An overall location map

Existing utility information will include inverts, line sizes, and horizontal locations. The Preliminary Site Plan will be drawn at a scale of one-inch equals 20 feet (1"=20') or other scale as approved by the Owner. The Owner will review the Preliminary Site Plan. The Consultant will take action on the review comments and produce a revised Preliminary Site Plan for the Project. The Consultant will use the revised Preliminary Site Plan to collect additional site design information from all Project consultants, utility companies, and jurisdictional authorities.

**E. Utilities Coordination**

The Consultant will meet with the local utility providers and determine the most economical utility installations. The Consultant will incorporate the utility information on the Preliminary Site Plan.

**F. Engineering Feasibility Meeting**

1. The Owner and Consultant will schedule an Engineering Feasibility Meeting (EFM). The purpose of the meeting is to identify problems the Owner can expect in developing the site. The Consultant will prepare and submit the "Site Observation Report," as noted above, before this meeting.
2. The Consultant and the Owner's legal, operations, development, design and construction consultants will attend the Engineering Feasibility Meeting. The Owner will direct the meeting.
3. The Preliminary Site Plan, Site Observation Report, Site Information Checklist, planning and zoning regulations, and code research/analysis will be the basis for discussion of site-related engineering and economic issues.
4. The Consultant will be familiar with local documentation requirements and will know the number of hearings (at which attendance with the Owner will be required) to obtain site plan approvals, including the State Environmental Quality Review Act (SEQRA) approval, if required. The Consultant and Owner will develop a regulatory approval schedule during this meeting.

**G. Early Schematic Design (B-1 Phase)**

1. The Consultant will develop schematic drawings for the project reflecting the Owner's current program, budget, and schedule; any applicable requirements of the local governing authorities; and all covenants, conditions, and restrictions placed on the Project. The Early Schematic Design (B-1 Phase) documents will include drawings and narrative material as required by Exhibit A-2(b).
2. The Consultant will review the preliminary estimate of construction cost prepared by the Owner from the B-1 Documents and provide written comments concerning the cost of the Project.

**H. Meetings with Jurisdictional Authorities**

The Owner may review the Early Schematic Design documents with the local jurisdictional authorities. The Owner will coordinate the time and location of the meeting(s). The Consultant will attend the meeting(s).

**I. Document Requirements**

The Consultant will provide the following Early Schematic Design documents to the Owner:

- Drawings: 2 sets of prints
- Narrative or cuts sheets: 3 set (8½ x 11 format)

The Consultant will submit the complete, Early Schematic Design documents in electronic formats useable by the Owner:

- all AutoCAD files in DWG format or Revit files in RVT format
- all documents in PDF format

**IV. Final Schematics/Regulatory Submissions (B-2 Phase)**

The Consultant will coordinate with the Owner and prepare all documents required by governing agencies to obtain planning approval for the Project including State Environmental Quality Review Act submission, if required. Minimum documentation requirements described in Exhibit A-2(b) are required for the Owner to obtain accurate estimates of construction cost.

**A. Schedule**

The Consultant and Owner will finalize the schedule for obtaining planning and environmental approvals. The schedule will clearly show application preparation time, submission milestone dates, agency review periods, comment resolution periods and a projected receipt date of approvals. Such schedule will revise Exhibit C to this Agreement.

**B. Regulatory Submission Documents (if required)**

The Consultant will prepare the Regulatory Submission Documents for which the Consultant is responsible and coordinate Consultant's works with all consultants including the Owner's Consultants and assist the Owner so a complete submission is provided to authorities having jurisdiction (AHJ). At a minimum, the Consultant will develop the site lighting plan, building plans, and building elevations. The Owner will deliver the Regulatory Submission Documents to the local jurisdictional authorities and pay any fees.

**C. Regulatory Hearings, Meetings, and Support**

The Consultant will attend any required hearings and meetings with the local jurisdictional authorities including those required to attain approval under the State Environmental Quality Review Act (SEQRA) in order to provide testimony regard those aspects of the Project's design for which the Consultant is responsible.

**D. Final Schematic Document Requirements**

1. The Consultant will develop final schematic documents for the project reflecting the Owner's current program, budget, and schedule; any applicable requirements of the local governing authorities; and all covenants, conditions, and restrictions placed on the Project. The Final Schematic Design documents will include drawings and narrative material as required by Exhibit A-2(b).
2. The Consultant will provide the following Final Schematic Design documents to the Owner:
  - Drawings: 2 sets of prints
  - Narrative or cuts sheets: 3 sets (8½ x 11 format)
3. The Consultant will submit the complete Final Schematic Design documents in electronic formats useable by the Owner:
  - all AutoCAD files in DWG format or Revit files in RVT format
  - all documents in PDF format

**E. Construction Cost**

The Consultant will review the estimate of construction cost prepared by the Owner's consultant from the Final Schematic Design (B2) documents provided by the Consultant. The Consultant will provide written comments concerning the cost of the Project. The Project's design must stay within the Owner's Project Budget (as modified). Should it become apparent that the construction cost exceeds the Owner's Project Budget, the Consultant will perform all necessary design modifications to so conform as part of its Services.

**V. Design Development (B-3 Phase)**

Upon authorization from the Owner, the Consultant will proceed with the Design Development phase services. Information and instructions received though the Schematic Design (B) phase will be incorporated into the Design Development drawings and specifications. The Consultant will develop plans specifications and other documents that fix and describe the scope of the Project. Minimum requirements



for plans, elevations, sections, schedules, narratives, and product specifications are described in Exhibit A-2(b).

**A. Geotechnical Boring Locations**

If additional soils investigation is required, the Consultant will provide information required for the Owner's geotechnical engineering consultant to accurately layout the additional test locations.

**B. Construction Cost**

The Consultant will review the estimate of construction cost prepared by the Owner's consultant from the Design Development (B3) documents provided by the Consultant. The Consultant will provide written comments concerning the cost of the Project. The Project's design must stay within the Owner's Project Budget (as may be modified). Should it become apparent that the construction cost exceeds the Owner's Project Budget, the Consultant will perform all necessary design modification to so conform as part of its Services.

**C. Utility Design Information**

The Consultant will provide information required to obtain any required approval from governing authorities to the Owner or such other entity as the Owner may designate. Such information includes, but is not limited to, service requirements for domestic water, pressure, and flow requirements for fire suppression systems, sanitary sewer, gas, and electrical utilities.

**D. Document Requirements**

The Consultant will provide the following Design Development documents to the Owner:

- Drawings: 2 sets of prints
- Narrative or cuts sheets: 3 sets (8½ x 11 format)

The Consultant will submit the complete Design Development documents in electronic formats useable by the Owner:

- all AutoCAD files in DWG format or Revit files in RVT format
- all documents in PDF format

**VI. Construction Documents (C-1Phase)**

Upon authorization from the Owner, the Consultant will proceed with the Construction Document (C) phase services. Information and instructions received through the Design Development (B) phase will be incorporated into the Construction Documents. The Consultant will prepare, for approval by the Owner, Construction Documents consisting of all items and documents required to clearly delineate and describe the completed Project and that allow for efficient construction and completion of the work.

**A. Schedule**

The Architect Consultant will review, revise as necessary, and distribute the schedule for Construction Document preparation and submission. The Owner and Consultant along with the other Project consultants will mutually approve the schedule further amending Exhibit C to this Agreement.

**B. Estimate of Construction Cost**

The Consultant will review the estimate of construction cost prepared by the Owner and provide written comments concerning the cost of the Project.

**C. 90% Construction Document Review**

1. Upon attaining 90% completion of the Consultant's Construction Documents (C-Phase) services, the Consultant will assemble a set of 90% Construction Documents (including documents prepared by the Owner's consultants). The Consultant will check and resolve all coordination problems and notify the Owner that the documents and engineering calculations are ready for review. At the Owner's direction, the Consultant will issue 90% Construction Documents to Owner for review and comment.
2. The Consultant will provide record documentation of the Owner's 90% review in the form of electronic PDF files of the marked-up plans and specifications.
3. The Consultant will incorporate information and direction received through the 90% Construction Document Review into the construction bid documents subject to paragraph I.A.3 above.

**D. Construction Contract Documents**

1. The Consultant and Owner will jointly prepare the necessary construction contract documents related to the site design for the Project including but not limited to:
  - Project Information
  - Instructions to Bidders / Information Available to Bidders
  - Form of Agreement between the Owner and Contractor
  - General Conditions of the Contract (including supplementary conditions)
  - Construction Document List
  - General Requirements (Division One Specifications) including:
    - Summary of the Work
    - Project Procedures – Pricing/Payment/Schedule
    - Allowances
    - Applications for Payment
    - Alternates
    - Unit Prices
    - Coordination
    - Project Meetings
    - Submittals
    - Quality Control
    - Temporary Facilities/Vehicular Access/Parking
    - Materials and Equipment
    - Contract Close Out
    - Project Record Documents
    - Addenda
2. Before Issuing Construction Contract Documents, the Consultant will provide a signed version of Exhibit I to this Agreement.
3. Upon authorization from the Owner, the Consultant will provide the following construction contract documents to the Owner:
  - Drawings: 2 sets of prints
  - Project Manuals 3 sets (8 ½ x 11 format)

The Consultant will submit the complete construction contract documents in electronic formats useable by the Owner and Owner's Architect:

- all AutoCAD files in DWG format or Revit files in RVT format all documents in PDF format

**E. Construction Document Review**

The Owner may perform a document review of the complete Construction Documents to determine if the Consultant has completed its quality control of the Construction Documents. If issues are found, the Consultant will resolve at no additional cost to the Owner using pre-bid Addenda, Supplemental Information, or Change Order as appropriate.

**VII. Permits (C-1 Phase)**

The Owner may request the Consultant to file applications for any site permits except those that are the responsibility of the Owner's Contractor(s) at any time following the beginning of C-Phase. The Consultant will provide all documents required by regulatory agencies and supply the Owner with one copy of each submitted item.

**A. Permit Application**

The Consultant will coordinate, complete, and file all required site work permit applications except those that are the responsibility of the Owner's Contractor(s). The Consultant will deliver all permit applications in person unless other arrangements are made with the Owner.

**B. Permit Expedition**

The Consultant will constantly monitor the progress of each permit application to assure the proper authorities receive the documentation required. The Consultant will be responsible for scheduling the permit application, review, response, and approval process. The Consultant will report the status to the Owner weekly.

**C. Permit Fees**

The Consultant will determine the proper fees required for each permit application and report these requirements to the Owner for processing of fee checks.

**D. Permit Comments**

The Consultant will review permit comments with the Owner before incorporating the comments into the documents. The Consultant will revise the Construction Documents as required by the agency reviewing the application and as approved by the Owner.

**E. Partial Permits**

1. It may be the Owner's intention to secure partial permits as early as possible as design work progresses. If the Owner chooses to file for such partial permits, the Consultant will prepare the required documents and file the permit application as noted above.
2. The Owner will reimburse only those costs incurred by the Consultant as a direct result of the requirement to file for partial permits. The Consultant and Owner will agree on the cost of such Additional Services before commencing partial permit services.

**VIII. Bidding and Negotiation (C-2 Phase)**

The Consultant, following the Owner's approval of the Construction Documents and latest estimate of construction cost, will assist the Owner in obtaining bids or negotiated proposals from contractors. During the bidding period, the Consultant will receive questions from the bidding contractors and issue documents clarifying the Construction Contract Documents as necessary. Such documents will be issued to the Owner for review prior to distribution to the bidding contractor(s). Once the bid or negotiated proposal is received, the Consultant will review and discuss additional material or scope changes (proposed by the

Contractor) with the Owner. The Owner and Consultant will agree on the changes (if any) that are to be made to the Construction Documents.

**IX. Construction Related Services (D Phase)**

**A. General Construction Administrative Duties**

1. The Consultant's responsibility to provide Services for the Construction Phase will commence with the award of the Agreement between the Owner and Contractor for construction of the Project and will terminate upon written acceptance of the completed Project by the Owner.
2. The Consultant will provide administration of the Agreement between the Owner and Contractor as set forth below and in the General Conditions of the Contract along with its Supplementary Conditions. Duties, responsibilities, and limits of authority of the Consultant will not be restricted, modified, or extended without written agreement of the Owner and the Consultant.
3. The Consultant will be a representative of and will advise and consult with the Owner during the Construction Phase. The Consultant will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work. The Consultant will not be responsible for the Contractor's schedules or failure to carry out the work according to the Construction Documents. The Consultant will not have control over or charge of acts or omissions of the Contractor, subcontractors, or their agents or employees, or of any other persons performing portions of the work.
4. The Consultant will interpret and decide matters concerning performance of the Owner and Contractor under the requirements of the Construction Documents on written request of the Owner or Contractor. The Consultant's response to such request will be made with reasonable promptness and within any time limits agreed upon. Interpretations and decision of the Consultant will be in writing or in the form of drawings. When making such interpretations and initial decisions, the Consultant will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations of decisions so rendered in good faith.
5. The Consultant will render written decisions within a reasonable time on all claim disputes or other matters in question between the Owner and Contractor relating to the execution or progress of the Work as provided in the Construction Documents. The Consultant's decisions will be subject to mediation and arbitration as provided in the Agreement to which this is an exhibit, and in the Construction Documents.
6. The Consultant will have authority to reject work that does not conform to the Construction Documents. Whenever the Consultant considers it necessary or advisable for implementation of the intent of the Construction Documents, the Consultant will have authority to require additional inspection or testing of the work in accordance with the provisions of the Construction Documents, whether or not such work is fabricated, installed, or completed.

**B. Submittals**

1. The Consultant will review and approve or take other appropriate action upon Contractor's submittals such as shop drawings, product data and samples, for the purposes of: (a) assuring compliance with applicable laws, statutes, ordinances, codes, orders, rules and regulations; and (b) assuring that the work affected by and represented by such submittals is in compliance with the requirements of the Construction Documents. The Consultant will be responsible for determining what aspects of the Work will be the subject of shop drawings and submittals. The Consultant will not



knowingly permit such aspects of the work to proceed in the absence of approved shop drawings and submittals.

2. The Consultant's action will be taken within ten (10) business days of the Consultant's receipt of each submitted item.
3. Review of the Contractor's submittals is not conducted to determine the accuracy and completeness of other details such as dimensions and quantities or for substantiation of instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Construction Documents.

#### **C. Revisions to the Construction Documents**

The Consultant will prepare all revisions to the Construction Documents required for correction to the Consultant's work and for design changes initiated by the Owner. (Owner initiated changes may be negotiated as an Additional Service.) It is the Consultant's responsibility to coordinate with the work of all consultants, including the Owner's consultants, for such revisions. The following standard A.I.A. Documents will be used to administer changes in the construction contract documents:

1. *Architect's (Engineers) Supplemental Instructions* are used to make minor changes in the work that, in the opinion of the Consultant, do not involve adjustment in the Contract Sum or an extension of the Project Schedule and which are consistent with the intent of the construction contract documents.
2. *Proposal Requests* are used to obtain cost information from the Contractor prior to authorizing changes to the construction contract documents. The resulting proposals will require the approval of the Consultant, the Owner, and the Contractor prior to issuing a Change Order for the work.
3. *Construction Change Directives* are used to authorize changes in the work when waiting for detailed cost proposals from the Contractor would unnecessarily delay the completion of the work. The Consultant, the Owner, and the Contractor approve such directives.
4. The Consultant and Owner will review and approve *Change Orders* prepared by the Contractor. Such Change Orders will incorporate the Construction Change Directives and approved proposals responding to the *Proposal Request* issued by the Consultant.

#### **D. Site Visits**

1. The Consultant and its Subconsultants will visit the site as requested by the Owner and at intervals appropriate to the stage of construction of the Project. The Consultant will have access to the work at all times wherever it is in preparation or progress. The Consultant and its Subconsultants will become generally familiar with the progress and quality of the construction work and determine if construction work is proceeding according to the Construction Documents and will so certify as required by the Owner or its lender.
2. The Owner will reimburse the Consultant's out of town travel expenses (not fees) for all construction related site visits unless the visit is necessary in order for the Consultant to correct his work that was in error, not complete, not coordinated or not according to applicable codes or the Project specifications.
3. The Consultant will submit a single consolidated site observation report documenting work in progress, quality of construction, observations, items to verify and information or action required within seven (7) calendar days after the site visit.

#### **E. Consultant's Project Representative**

The Consultant will provide on-site project representation at a minimum of four hours each week while the site construction activities are in progress. The Consultant will provide additional time when significant portions of the site work are in progress.

**F. Contractor's Applications for Payment**

1. Based on the Consultant's and Subconsultants' observations and evaluations of the Contractor's Application for Payment, the Consultant will review and certify the amounts due the Contractor for the site related scope of work.
2. The Consultant's certification for payment will constitute a representation to the Owner and the Owner's lender(s), based on the Consultant's observations at the site and on the data comprising the Contractor's Application for Payment, that the site work has progressed to the point indicated and that, to the best of the Consultant's knowledge, information and belief, quality of the work is in accordance with the Construction Documents. The foregoing representations are subject to an evaluation of the work for conformance with the Construction Documents upon substantial completion, to results of subsequent tests and inspections, to minor deviations from the Construction Documents correctable before completion and to specific qualification expressed by the Consultant. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified.

**G. Completion of Construction**

1. The Consultant will conduct inspections and provide a "punch list" to determine the date or dates of substantial completion and the date of completion of the site work.
2. The Consultant will receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Construction Documents and assembled by the Contractor
3. The Consultant will issue a final Certificate for Payment upon compliance with the requirements of the Construction Documents.

**H. Record Documents**

1. The Consultant will provide coordination, final assembly, and supervision of the preparation, and approval of the Project's record documents related to site work. The Owner's Contractor will prepare the Project's record documents.
2. The Project's record documents will include drawings prepared by the Owner's Contractor under a "performance specification", drawings prepared by the Owner's Contractor for the layout of structural members, drawings prepared by the Owner's Contractor for coordination of the installation of the mechanical, plumbing and electrical systems, and a complete set of "posted" drawings indicating each change to the drawings resulting from Architect's Supplemental Instruction, a Construction Change Directive, a Change Order and each instance where the as-built condition materially varies from the Construction Documents.
3. After completion of the construction of the Project, two paper sets and electronic PDF files of the Project's record documents will be provided to the Owner at the Owner's expense.
4. The Consultant will review the Operations and Maintenance Manuals assembled by the Owner's Contractor and notify the Owner in writing of their satisfactory completion.

**X. Attachments**

Exhibit A-2(a) (Site Development Checklist)  
Exhibit A-2(b) (Elements of Documentation)  
Exhibit A-2(c) (Geotechnical Survey Requirements)  
Exhibit A-2(d) (Boundary and Topographic Survey Requirements)

**END OF EXHIBIT A-2**

**EXHIBIT A-2(a)**

**SITE INFORMATION CHECKLIST**

Project Name: \_\_\_\_\_ Number \_\_\_\_\_  
State/Local: \_\_\_\_\_  
Address or Cross Streets \_\_\_\_\_

**GENERAL SITE INFORMATION**

New Boundary and Topographic Survey (three dimensional CAD data and paper copies)

Site Plan See requirements in Exhibit A (three-dimensional CAD data and paper copies)

Geotechnical Survey

Environmental Site Assessment Phase I (provided by Owner)

**UTILITY INFORMATION**

Sewer capacity available YES NO

Contact person at utility, address, e-mail, and phone number: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_

Sewer Fees: Connection \$ \_\_\_\_\_ Use \$ \_\_\_\_\_ per \_\_\_\_\_



Public Water available                      YES                      NO

Contact person at utility, address, e-mail, and phone number: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Fire Marshall Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone/e-mail: \_\_\_\_\_

Special water characteristics: (hard/soft, etc.): \_\_\_\_\_

Hardness: \_\_\_\_\_ mg/L or \_\_\_\_\_ grains/gal.

Does Fire Water have to be metered? \_\_\_\_\_

Will a separate meter for Fire Water be required? \_\_\_\_\_

Expected water pressure and flow at site: \_\_\_\_\_ psi at \_\_\_\_\_ gpm

Source of information: \_\_\_\_\_

Will the Sewer Fee be based on water usage? \_\_\_\_\_

If so, will a separate irrigation meter be allowed? \_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_

Water Fees:    Connection: \$ \_\_\_\_\_ Use: \$ \_\_\_\_\_ Meter Size: \_\_\_\_\_ Cost: \$ \_\_\_\_\_

Natural Gas Available    YES                      NO

Contact person at utility, address, e-mail, and phone number: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Gas Pressure: \_\_\_\_\_ Size of main line: \_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_

Gas Fees:    Connection: \$ \_\_\_\_\_ Use: \$ \_\_\_\_\_

Electricity Available YES NO

Contact person at utility, address, e-mail, and phone number: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Transformer location: On-site \_\_\_\_\_ Off-site \_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_

Electrical Fees: Connection: \$ \_\_\_\_\_ Transformer included? \_\_\_\_\_ Use: \$ \_\_\_\_\_

Cable TV Available YES NO

Contact person at utility, address, and phone number: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Cable TV: Connection: \$ \_\_\_\_\_ Use: \$ \_\_\_\_\_ per \_\_\_\_\_

Telephone/DSL

Contact person at utility, address, and phone number: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_

Telephone: Connection: \$ \_\_\_\_\_ Use: \$ \_\_\_\_\_ per \_\_\_\_\_

Stormwater Management

Will stormwater need to be retained on-site? \_\_\_\_\_ If ponds or special structures  
will be needed, show location on the site plan.

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## **SITE HISTORY**

Previous uses (List): \_\_\_\_\_

Sources of information: \_\_\_\_\_

Regulatory agency check: (name of contact/agency) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Areas of the site with possible evidence of toxic wastes: \_\_\_\_\_

\_\_\_\_\_

Old buildings or evidence of existing foundations on site: \_\_\_\_\_

\_\_\_\_\_

Evidence of fill pipes or fuel/chemical storage: \_\_\_\_\_

\_\_\_\_\_

Possible sources of hazardous wastes on site (neighbors, etc.): \_\_\_\_\_

\_\_\_\_\_

Evidence of protected plant and animal species: \_\_\_\_\_

\_\_\_\_\_

## **ZONING**

Present: \_\_\_\_\_ Required: \_\_\_\_\_

Is subdivision required? \_\_\_\_\_

Are special off-site improvements required? \_\_\_\_\_

If so, describe \_\_\_\_\_

\_\_\_\_\_

(i.e., special grading, environmental, road improvements)

**Zoning Requirements** (Write N/A if not applicable)

**Variance Required**

Maximum coverage \_\_\_\_\_ Provided \_\_\_\_\_, \_\_\_\_\_

Maximum height \_\_\_\_\_ Provided \_\_\_\_\_, \_\_\_\_\_

Maximum units \_\_\_\_\_ Provided \_\_\_\_\_, \_\_\_\_\_

Minimum green space \_\_\_\_\_ Provided \_\_\_\_\_, \_\_\_\_\_

Variance Required

Screening or fencing required\_\_\_\_\_ Provided\_\_\_\_\_, \_\_\_\_\_

Tree preservation required\_\_\_\_\_ Provided\_\_\_\_\_, \_\_\_\_\_

Special Architectural requirements\_\_\_\_\_

Setbacks required: Front (Provided) Side (Provided) Rear (Provided)

for building \_\_\_\_\_

for parking/streets \_\_\_\_\_

Parking spaces required: Total required by code: \_\_\_\_\_

Total required by Program: \_\_\_\_\_

Total provided: \_\_\_\_\_

Describe parking requirements:

Independent Living Unit: \_\_\_\_\_

Health Care Components: \_\_\_\_\_

Employee: \_\_\_\_\_

Visitors: \_\_\_\_\_

Minimum size of parking spaces allowed: \_\_\_\_\_ Does the size allow for the overhang (usually 2 ft.)? Minimum stall depth requirement is 18'.

Comments: \_\_\_\_\_

% of compact car spaces allowed: \_\_\_\_\_ size: \_\_\_\_\_

No. of accessible stalls required: \_\_\_\_\_ size: \_\_\_\_\_

Minimum aisle width in parking lots (for 90 degree parking): \_\_\_\_\_

Signs

	Type of Sign			
Restrictions:	Free Standing	Wall	Directional	Construction
Size	_____	_____	_____	_____
Number permitted	_____	_____	_____	_____
Height limitation	_____	_____	_____	_____



Setback Required \_\_\_\_\_

Logo Allowed \_\_\_\_\_

If signs are submitted during site plan review, does such review constitute approval? \_\_\_\_

If a sign variance is required, can the application be considered simultaneously with other variances? (i.e., setback, parking, building height) \_\_\_\_\_

Satellite Dishes Allowed YES NO Restrictions \_\_\_\_\_

Other considerations for final site plan design: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Briefly describe Zoning Variances required: \_\_\_\_\_

\_\_\_\_\_

Comments: \_\_\_\_\_

### **JURISDICTIONAL FEES**

<u>Permit Fees</u>	Plan Review	\$ _____
	Site Inspection	\$ _____
	Building	\$ _____
	Health Department	\$ _____
	Other	\$ _____

Comments: \_\_\_\_\_

\_\_\_\_\_

<u>Impact Fees</u>	Water	\$ _____
	Sewer	\$ _____
	Traffic	\$ _____
	School	\$ _____
	Other	\$ _____

Comments: \_\_\_\_\_  
\_\_\_\_\_

## **PROJECT DIRECTORY**

### **Architectural Consultant**

Contact Person: \_\_\_\_\_  
Firm: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone/e-mail: \_\_\_\_\_

### **Civil Engineering Consultant**

Contact Person: \_\_\_\_\_  
Firm: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone/e-mail: \_\_\_\_\_

### **Surveyor**

Contact Person: \_\_\_\_\_  
Firm: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone/e-mail: \_\_\_\_\_

### **Geotechnical Consultant**

Contact Person: \_\_\_\_\_  
Firm: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone/e-mail: \_\_\_\_\_

Environmental Consultant

Contact Person: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Phone/e-mail: \_\_\_\_\_

Traffic Consultant

Contact Person: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Phone/ e-mail: \_\_\_\_\_

**END OF EXHIBIT A-2(a)**

**EXHIBIT A-2(b)**

**ELEMENTS OF ARCHITECTURAL DOCUMENTATION**

KEY: D = Drawing or diagrammatic presentation

N = Narrative, cut sheets or specification

O = By Others

	Concept	Schematic		D.D.	C.D.
<b>Site Engineering Consultant Requirements</b>	A Phase	B1 Phase	B2 Phase	B3 Phase	C Phase
A. Surveys					
Land/Boundary	D	D	D	D	D
Topog./Utilities	D	D	D	D	D
B. Soil borings & report					
General	-	N,D	N,D	N,D	N,D
Specific building location (if required)	-	-	N,D	N,D	N,D
C. Local planning consultant					
Local insight and process	-	As required		-	-
D. Potential permitting consultants					
a. Traffic	-	As required		-	-
b. Environmental	-	As required		-	-

	Concept	Schematic		D.D.	C.D.
<b>1. Analysis (as supplemented by Owner's Architect)</b>	A Phase	B1 Phase	B2 Phase	B3 Phase	C Phase
A. Site – Environmental (Surrounding Context, Roads, Trails, Pathways, Sun, Wind, Rain, Views to, Views from, Slope, Drainage, Wetlands, Vegetation, Existing Structures, Micro-climate, Development Impact	N,D	N,D	N,D	-	-
B. Water - Sources (Potable and Grey Water)	N	N	-	-	-
- Water Saving Incentive Program(s)	N	N	N	N	N



	Concept	Schematic		D.D.	C.D.
<b>2. Regulatory Research and Compliance</b>	A Phase	B1 Phase	B2 Phase	B3 Phase	C Phase
A. Zoning/Land Use/Environmental Height, density, setbacks Aesthetics Permits and process Parking Landscaping Storm water management	N - - - - -	D N N N N N	D D N N N N	As required and for verification	
B. Other codes and/or regulations pertinent to this project type and location	-	N,D	N,D	As required	

	Concept	Schematic		D.D.	C.D.
<b>3. Site</b>	A Phase	B1 Phase	B2 Phase	B3 Phase	C Phase
A. Roadways Curbs and improvements	D -	D N	D D	D D	D D
B. Fire lanes	D	D	D	D	D
C. Sidewalks and paths	-	-	D	D	D
D. Parking tabulation	D	D	D	D	D
E. Site amenities	-	N	D	D	D
F. Trash compactor and pad	-	D	D	D	D
G. Site illumination	-	N	D	D	D

	Concept	Schematic		D.D.	C.D.
<b>4. Landscaping</b>	A Phase	B1 Phase	B2 Phase	B3 Phase	C Phase
A. Plan General areas-sod, seed, vegetation. Specific areas - sod, seed, vegetation.	- -	D -	D -	- D	- D
B. Plant list	-	-	N	D	D
C. Plant schedule	-	-	-	D	D
D. Planting details	-	-	-	-	D
E. Irrigation	-	-	-	N	D

	Concept	Schematic		D.D.	C.D.
<b>5. Grading</b>	A Phase	B1 Phase	B2 Phase	B3 Phase	C Phase
A. Proposed and existing contours	D	D	D	D	D
B. Storm water retention	N	D	D	D	D
C. Cut/Fill/Topsoil quantity tab	-	N,D	N,D	-	-
D. Unusual Conditions (Rock, expansive, wetlands, etc.)	N	N,D	N,D	D	D

	Concept	Schematic		D.D.	C.D.
<b>6. Site Utilities</b>	A Phase	B1 Phase	B2 Phase	B3 Phase	C Phase
A. On-Site Location, size, elevations Utility company termination	- -	N,D N,D	N,D N,D	D D	D D
B. Off-Site Location, size, elevations Utility company termination	N N	N,D N,D	N,D N,D	D D	D D

	Concept	Schematic		D.D.	C.D.
<b>7. Specification</b>	A Phase	B1 Phase	B2 Phase	B3 Phase	C Phase
A. Scope of work checklist	-	N	N	-	-
B. Finish schedule	-	N	N	N,D	D
C. Outline specification	-	-	-	N	-
D. Complete specification	-	-	-	-	N

**END OF EXHIBIT A-2(b)**

## **EXHIBIT A-2(c)**

### **GEOTECHNICAL SURVEY REQUIREMENTS**

Qualified personnel will perform the Geotechnical Survey under the supervision of a Registered Professional Engineer. All reports will bear the seal of a Registered Professional Engineer.

#### **I. General Reporting Requirements for Geotechnical Surveys**

Subject to any limitations stated in this proposal, the specified investigation shall be completed and the logs and report(s) delivered to the Owner within twenty-one (21) calendar days after written authorization to proceed is received, barring circumstances beyond the Geotechnical Engineer's control which force a delay. In such an instance, the Geotechnical Engineer will inform the Owner of the cause of the delay.

The Geotechnical Engineer will make all segments of the report covering the investigations and analyses on white paper, 8 1/2 x 11 inches, suitable for photocopying, and will be bound in booklet form.

#### **A. Field and Laboratory Reports**

The Geotechnical Engineer will prepare reports according to the following:

1. All data required to be recorded according to the ASTM standards (or other standard test methods employed) will be obtained, recorded in the field and referenced to boring numbers; soil will be classified in the field logs according to applicable ASTM standards and other standards, including, but not limited to, ASTM standard D2488. Nevertheless, the Geotechnical Engineer preparing the reports will base the classification for final logs on field information, and results of tests, and further inspection of samples in the laboratory.
2. A chart illustrating the soil classification criteria and the terminology and symbols used on the boring logs will be included with the report.
3. Identify the ASTM standards or other recognized standard sampling and test methods used.
4. Provide a plot plan giving dimensioned locations of test borings.
5. Provide vertical sections for each boring plotted and graphically presented showing number of borings, sampling method used, date of start and finish, surface elevations, description of soil and thickness of each layer, depth to



loss or gain of drilling fluid, hydraulic pressure required or number of blows per foot (N value for each sample) and, where applicable, depth to wet cave-in, depth to artesian head, groundwater elevation and time when water reading was made and presence of gases. Note the location of strata containing organic materials, wet materials or other inconsistencies that might affect engineering conclusions.

6. Describe the existing surface conditions and summarize the subsurface conditions.
7. Provide appropriate subsurface profiles of rock or other bearing stratum.
8. Estimate potential variations in elevation and movements of subsurface water due to seasonal influences.
9. Report all laboratory determinations of soil properties.

## **B. Foundation Engineering Evaluations**

The Geotechnical Engineer will analyze the information developed by investigation or otherwise available to the Geotechnical Engineer, including those aspects of the subsurface conditions that may affect design and construction of proposed structures, and will consult with the Owner's Civil Engineering (C.E.) Consultant, Architect, and Structural Engineer on the design and engineering requirements of the Project. The Geotechnical Engineer will address the following issues in his report.

1. Foundation support of the structure and slabs, including bearing pressures, bearing elevations, foundation design recommendations and anticipated settlement.
2. Anticipation of, and management of, groundwater for design of structures and pavements.
3. Lateral earth pressures for design of walls below grade, including backfill, compaction and sub-drainage, and their requirements.
4. Soil material and compaction requirements for site fill, construction backfill, and for the support of structures and pavements.
5. Sub-grade modulus for design of pavements or slabs.
6. Requirements for temporary dewatering systems.
7. Stability of slopes.

8. Seismic Activity.
9. Frost penetration depth and effect.
10. Analysis of the effect of weather or construction equipment or both on soil during construction.
11. Analysis of soils to discover presence of potentially expansive, deleterious, chemically active or corrosive materials or conditions, or presence of gas.
12. Evaluation of depth of material requiring rock excavation and methods of removal.

## **II. Field Work**

### **A. Access**

The Owner will arrange for access to the property for purposes of sampling and testing.

### **B. Benchmarks**

The Owner's Boundary and Topographic Surveyor will establish benchmarks. The Geotechnical Engineer will survey all borings and other test locations from the established benchmarks.

### **C. Borings**

1. The Geotechnical Engineer, along with the Owner's Architect and Structural Engineer shall determine the location of borings and other test required for the project. If the Geotechnical Engineer finds it necessary to change the location or depth of any of these proposed borings, he will notify the Owner. The Owner will select an alternate location or depth for the boring.
2. If the Geotechnical Engineer encounters unusual conditions, including unanticipated materials which standard sampling equipment cannot penetrate, the Geotechnical Engineer will immediately consult with the Owner and Owner's Architect and Civil Engineer.
3. The Geotechnical Engineer will advise the Owner as to any further exploration and testing required to obtain information that the Geotechnical Engineer requires for a professional interpretation of subsoil conditions at the building site and will perform such additional work as authorized by the Owner after consultation with the Owner and Owner's Architect and Civil

Engineer.

**D. Drilling and Sampling Methods**

1. Unless otherwise stipulated, drilling and sampling will be performed according to current applicable ASTM standards and other standards, including, but not limited to, ASTM standards D1586, D1587, and D2113.
2. The samples will be preserved and field logs prepared either by a Geotechnical Engineer or by an experienced soils technician acting under the supervision of a Geotechnical Engineer.

**E. Protection of Property**

The Geotechnical Engineer will contact the Owner and all utility companies for information regarding buried utilities and structures, will take all reasonable precautions to prevent damage to property both visible and concealed, and will reasonably restore the site to the condition existing before the Geotechnical Engineer's entry. Such restoration will include, but not be limited to, backfilling of borings, patching of slabs and pavements, and repair of lawns and plantings. Each boring should be temporarily plugged, pending additional groundwater readings. At the completion of the groundwater readings, the borings will be permanently plugged, including patching of slabs and pavements.

**F. Disposition of Samples**

After all laboratory tests have been completed, the samples will be retained at the Geotechnical Engineer's office until foundation installation is complete or the Project is terminated by the Owner.

**END OF EXHIBIT A-2(c)**

## **EXHIBIT A-2(d)**

### **BOUNDARY AND TOPOGRAPHIC SURVEY REQUIREMENTS**

The Boundary and Topographical Surveys will be prepared by the same land surveyor or professional engineer.

#### **I. General Drawing Requirements for Boundary and Topographical Surveys**

- A. Unless otherwise approved by Purchaser, minimum scale will be 1" = 20 feet.
- B. Show NORTH ARROW (True North) and place North at the top of the drawing, if possible.
- C. Drawings will note all dimensions and elevation by the English System.
- D. Include legend of symbols and abbreviations used on the drawing(s).
- E. Spot elevations on paving or other hard surfaces will be to the nearest 0.05 feet; on other surfaces to the nearest 0.10 feet.
- F. Boundary and Topographic information will be on the same drawing - unless otherwise requested by the Purchaser.
- G. State an elevation datum on each drawing. Use U.S.C.G.S. if available; otherwise, use an official town datum, or use an assumed elevation. Give location of the benchmark.
- F. Furnish the purchaser with one reproducible Mylar. The Licensed Land Surveyor or Professional Engineer will sign and seal each drawing, and will certify to Purchaser and Purchaser's Title Insurance Company that:
  - 1. The survey correctly represents the facts found at the time of survey.
  - 2. Except as shown on the survey map, there are no discrepancies between the boundary lines of the subject property as shown on the survey map and as described in the legal description of record.
  - 3. The boundary line dimensions as shown on the survey map form a mathematically closed figure within



approximately 0.01 feet.

4. Except as shown on the survey map, the boundary lines of the subject property are contiguous with the boundary lines of all adjoining parcels, roads, highways, streets or alleys as described in their most recent respective legal descriptions of record.
  5. The survey was made on the ground of the land.
  6. The survey was prepared in accordance with the 'Minimum Standard Detail Requirements for Land Title Survey' jointly established and adopted by ALTA and ASCM in 2012.
- G. Address all easements and/or reservations identified in the title report. Provide written certification of the resolution of these items in a letter signed by the responsible Licensed Land Surveyor or Registered Professional Engineer who signed and sealed the survey.

## **II. Boundary Survey Requirements**

- A. Show boundary lines, giving length and bearing (including reference basis) on each straight line; interior angles; radius, point of tangency, delta, arc, and length of curved lines.
- Set permanent iron pin, rebar, monument or other suitable permanent monument at all property corners and points of tangency of curves and deflections in boundary lines. Drive pins in ground adequately to prevent movement, mark with a wood stake, state on the drawing(s) whether corners were found or set, and describe each including its coordinates.
- B. Confirm or furnish a legal description that conforms to the Record Title Boundaries. Before making this survey, the Surveyor will, where possible, obtain, including, but not limited to, purchase contract descriptions, deeds, maps, certificates or abstracts of title, section line and other boundary line locations in the vicinity. Where the property to be purchased is assembled from two or more parcels, separate boundary descriptions of each component parcel, and a boundary description of the overall property will be provided.
- C. Give area of property in both square feet and acre units.

- D. Note identity, jurisdiction, and width of adjoining streets and highways with the width(s) and type(s) of pavements involved. Identify landmarks. Note anticipated street widening.
- E. Plot location of all structures, streets, etc., on the property and on adjacent property within 100 feet. State the character and number of stories of structures. Provide dimensions to property lines and other buildings to the nearest 0.05 feet.
- F. Describe fences and walls by location, height and material.
- G. Show encroachments and recorded or otherwise known easements and right-of-way; state the Owner of right of each.
- H. Show individual lot lines and lot block numbers; show street numbers of buildings, if available.
- I. Show zoning classification of the property; if more than one zoning class, show the extent of each.
- J. Show building line and setback requirements.
- K. Give names of owners of adjacent properties.
- L. Reconcile or explain any discrepancies between the survey and the recorded legal description.

### **III. Topographic Survey Requirements**

- A. All topographic surveys will be field-run unless otherwise requested by Purchaser. Photogrammetry will not be used where tree cover is significant.
- B. All lines of levels will be checked by separate check level lines or on previous turning points or benchmarks.
- C. Establish a minimum of one permanent benchmark on a site per four acres, each with description and elevation to nearest 0.01 feet.
- D. Unless otherwise directed by Purchaser, contours will be at 1 foot interval for generally flat sites 2 foot intervals for sloping sites. Error will not exceed one-half contour interval.
- E. If the site is generally level, provide spot elevations at the approximate intersections of a 50-foot square grid covering the

property and provide contour lines based on the spot elevations.

- F. Spot elevations at street intersections and at 25 foot centers on curb, sidewalk, and edge of paving - including the far side of paving and median, if any.
- G. Plot location of structures above and below ground, man made (e.g., paved areas) and natural features, all floor elevations and elevations at entrances of buildings on the property.
- H. Show location, size, depth, and pressure of water mains, gas mains, and other utilities.
- I. Plot location of fire hydrants on or available to the property and the size of the main serving each.
- J. Plot locations of power and communications systems above and below grade. Place and identify poles and guy wires.
- K. Plot the location, size and direction-of-flow for sanitary sewers, combination sewers, storm drains, and culverts serving, or on, the property; location of catch basins and manholes, and invert elevations of all pipes at each.
- L. Provide names of operating authority of each utility.
- M. Show mean elevation of water in any excavation, well, or nearby body of water.
- N. Provide certification that the Land does not lie within the 100-year flood plain. Otherwise, show the 100-year flood plain boundary, if on site, and flood level of streams or adjacent bodies of water. Show if the flood plain boundary was established by H.U.D. (will satisfy the requirements for Federal Flood Hazard Insurance).
- O. Plot the location of hardwood trees 12 inches and over (caliper 4' above ground). Plot only the perimeter of thickly wooded areas, except that the location of specimen hardwood trees should be shown.
- P. Place any ditches. Provide flow line elevations at 50' centers.

**END OF EXHIBIT A-2(d)**

## **EXHIBIT B**

### **SERVICES PERFORMED BY OWNER**

Without limiting the generality of this Agreement, the Owner and Consultant specifically agree the Owner will provide the following limited services:

#### **I. Project Administration**

##### **A. Project Management**

1. The Owner has executed a Development Consulting Agreement with **LCSD/SCD Partners, LLC** for Project related services (the “**Development Consultant**”). Under that Agreement, Development Consultant will provide all services to be performed by the Owner as described in this Exhibit.
2. Development Consultant will designate a **Project Development Manager** who will be responsible for any required regulatory approvals, and construction of the Project. Development Consultant will also designate a **Design Manager** who will be responsible for the overall management of the design process and engineering evaluation for the Project. Both the Design Manager and Project Development Manager have the authority to transmit instructions, receive information, interpret and define the Owner’s policies and make decisions with respect to design, materials, equipment, or elements and systems pertinent to the services covered by this Agreement.
3. Besides the overall management of the design process and engineering evaluation, the Design Manager will coordinate the provision of all Owner consulting services, monitor the progress of all Project activities, periodically review the Consultant’s work, and provide approval for the Consultant to proceed to each subsequent phase of the Project design.
4. The Design Manager will receive all Requests for Payment from the Consultant. All questions concerning payments must be directed to the Design Manager.
5. The Owner will revise the Project Schedule as necessary to reflect changes in circumstances not under the control of the Consultant.

##### **B. Criteria and Standards**

1. The Owner will provide the initial facilities program and project criteria. The Owner will update the facilities program and project criteria for any required adjustment or changes.
2. Any reports or studies relating to the Project in possession by the Owner will be made available to the Consultant for Consultant’s use in completing its work.

##### **C. Site Access**

The Owner shall arrange for access to and make provisions for the Consultant to enter upon public and private lands as is reasonably required for the Consultant to perform its services under this Agreement.



## **II. Owner Provided Services**

### **A. Public Approvals**

1. The Owner will direct and request approval of any governmental authorities having jurisdiction over the Project and request approval and consent from other individuals or bodies as may be necessary for the completion of the Project, except those approvals that are the responsibility of the Consultant.
2. The Owner will pay all approval application fees and permit fees to local authorities, if required.
3. The Owner will direct the Project financing.

### **B. Consultants Provided by Owner**

The Owner's consultants for the Project will provide the following design services:  
Architectural Design including exterior enclosure systems analysis

- Leadership in Energy and Environmental Design (L.E.E.D) Certification
- Food & Beverage Facilities Design
- Interior Design, Furniture Selection/Specification
- Structural Engineering
- Mechanical Engineering
- Energy Modeling and Analysis
- Fire Sprinkler System Engineering
- Analysis of rebate and other programs related to water and energy usage
- Plumbing Engineering
- Electrical Engineering
- Building code analysis
- Facilitator for building permit(s)
- Graphics Design (Project signage both interior and exterior)
- Construction Administration of all of the above.

### **C. Contingent Additional Services Provided by Owner**

1. If required for the Project, the Owner will provide Additional Services including but not limited to the following:
  - Peer Reviews
  - Acoustical Consulting
2. The Owner may determine that the Consultant best provides some of these Additional Services. If so, the Owner and Consultant will mutually agree on the scope and fee for such Additional Services.

### **D. Construction Related Services**

The Owner will provide the necessary direction to the Consultant for the completion of the construction contract documents. The Owner will receive the bids or proposals and negotiate the Agreement between the Owner and the construction manager or general contractor (the "**Contractor**"). The Owner will authorize the Contractor to proceed with construction of the Project. A schedule for site meetings will be established at which the Owner, Consultant, and Contractor will attend.

## **END OF EXHIBIT B**

## **EXHIBIT C**

### **DESIGN SCHEDULE**

#### **I. Design Schedule**

The Project Schedule as prepared by the Owner:

- Complete Conceptual/Master Plan (Phase A) by 4-30-2015
- Launch Priority Reservations program by 6-1-2015
- Complete initial schematic design (Phase B1) by 8-31-2015
- Complete final schematic design & the construction of Sales Center (Phase B2) by 5-2016
- Acceptance by the SEQRA lead agency (Purchase College) of the Draft Environmental Impact Statement by 5-2016
- Attain 150 Priority Reservations by 5-2016
- Begin sales (10% deposits) by 6-2016
- Attain 30% sales begin B3 phase of Design
- Attain 50% sales begin C1 Phase of Design
- Attain 70% sales, receive Building Permit and complete C2 Phase of Design by 1-2018
- Close Financing/commence construction by 3-2018
- Construction Administration Complete by 6-2019

**END OF EXHIBIT C**

**I. PROJECT SUMMARY**

**1. Introduction**

Project Statement

Provide a residential retirement facility consisting of approximately 200 apartment/townhome units, 36 Assisted Living apartment units, 18 Memory Care beds, wellness center , and common areas in Phase I. Phase II will consist of 113 apartment/townhome units, 18 Memory Care beds, and common dining area addition.

Total Master Plan Mix:

313	Independent Living Units
36	Assisted Living Beds
36	Memory Care Beds
<u>385</u>	Total Units

Compliance

The design for the Commons, Residential, Wellness, Assisted Living, and Memory Care shall comply with all rules and regulations set forth in the local and state health codes, building codes, life safety codes, and accessibility codes including the Americans with Disabilities Act and Fair Housing Act.

Topography

Strong consideration must be given to preserving as much of the natural site as possible.

Energy & Environment

The building shall be energy efficient. Thoughtful consideration shall be given to material selection for the envelope of the building and mechanical and lighting system to minimize operating costs. The project will pursue LEED certification.

Building Services

The regular day-to-day building service functions require as much separation as possible from the residents' daily activities. The moving in and out of residents to and from their apartments and the movement of trash and laundry from the apartments to the collection points must be thoroughly analyzed to avoid interference with the residents and their enjoyment of their home.

**PURCHASE COLLEGE - SENIOR LEARNING COMMUNITY  
PURCHASE, NEW YORK  
DESIGN PROGRAM**

Engineering RFP 10/01/14

**Accessibility**

All resident entrances to the buildings shall be without steps. Provide curb cuts at all locations where residents may move from streets and parking to sidewalks. Provide adequate space (18") to side of door latch to allow ease of entry. Grade transitions on site shall be handled with ramps.

**Flexibility**

Apartment design and layouts must be accomplished to allow for later adjustment of the unit mix during the design development phase should it be required to adjust to the marketplace demand. Units must be designed in a modular nature so that interchange and combination of unit types can take place without a major change in the overall building footprint.

**Marketability**

Units must be designed to be competitive with apartment/condominium design typical of the market area.

**Adherence to Program**

There shall be no deviation from the program gross square footage total without documented approval by the LCS Development Design Manager.

**Future Expansion**

Provide area on the site for the planned future expansions.

**2. Site Development**

**A. Buildings**

<b>Gross Square Footage Summary</b>	<b>Phase I</b>	<b>Phase II</b>	<b>Total GSF</b>
Residential Area	371,012	207,809	578,821
Under-building Parking Area	64,500	37,130	101,630
Surface Garage Area	16,130	8,060	24,190
Commons Area	52,117	3,604	55,721
Wellness Area	17,334	-	17,334
Assisted Living Area	38,852	-	38,852
Memory Care Area	10,793	9,808	20,601
Maintenance Building Area	-	1,740	1,740
<b>Total Gross Building Square Footage</b>	<b>570,738</b>	<b>268,151</b>	<b>838,889</b>

**EXHIBIT D**  
**PURCHASE COLLEGE - SENIOR LEARNING COMMUNITY**  
**PURCHASE, NEW YORK**  
**DESIGN PROGRAM**

Engineering RFP 10/01/14

**B. Parking**

1. The total residential parking requirement shall equal one parking space per apartment unit. The surface parking stalls shall have a minimum width of 10'0".

	SPACES		Total
	Phase I	Phase II	
Surface - uncovered parking spaces (for second car)	36	20	56
Surface - garages attached to cottages (total spaces)	56	28	84
Under-building parking spaces	172	99	271
All enclosed parking shall be accessible with garage door openers.			

2. Provide visitor parking with required handicap parking located near the main entry to Commons, Wellness, ALF, and MC. The parking stalls shall have a minimum width of 9'0".

Commons	40		40
Wellness	7		7
ALF	12		12
MC	6	6	12

3. Provide a staff parking area located separately from the Residential, Assisted Living and Memory Care parking. The parking stalls shall have a minimum width of 9'0".

60	30	90
----	----	----

4. Provide a covered parking area for the facility bus automobiles and pick-up truck. This should be included near the maintenance area. The typical 24 to 28 passenger facility bus is 24 feet long, 98 inches wide at the mirrors and 10 feet high.

3	2	5
---	---	---

5. Provide a covered ambulance loading zone at Assisted Living and Memory Care, not in direct view from the Commons and Residential areas.

2		2
---	--	---

6. Allow for temporary accommodation of moving vans at access points to elevator core areas.

2	2	4
---	---	---

TOTAL PARKING	396	187	583
---------------	-----	-----	-----



**C. Developed Areas**

1. Provide an automatic gate at the project service entrance if separated from the main project entrance. Provide intercom and CCTV camera at separate service entrance.
2. Provide a maintenance shed/area for the purpose of storing equipment, tools, and other items necessary for maintenance. The maintenance area will be designed to accommodate two 10'-0" high x 10'-0" wide overhead doors. Also include outside the maintenance area a wash down area for vehicles and other equipment.
3. Provide area designated for recreation by the residents. The type of recreational activities will be determined from market research during the B3 Phase of Design.
4. Provide a secure outside recreational area for the Assisted Living and Memory Care or large screened area if either is not on the first floor.

**D. Site Lighting**

Provide adequate lighting in parking areas, walks, streets, and by the building for security and direction. Avoid intrusion of lighting into resident living spaces.

**E. Site Graphics**

Provide good site signage which are readable by the residents and visitors and enable them to quickly locate appropriate areas such as residential entrances, commons, assisted living, memory care, wellness center, receiving, etc.

**F. Services Drive/Service Area**

1. Provide a truck service drive to receiving area separate from the facility main entry. The receiving area will be adjacent to the Commons kitchen. Provide a covered dock at the receiving area with a protected view from the residential area. Dock is curb height. Food service to the facility may be made via semi-trailer truck. Verify local delivery method and design accordingly.
2. Provide a service drive at the Health Center for ambulance usage.
3. Provide trash compactor for Residential and Commons trash within the receiving area. Provide special isolated trash areas for institutional occupancies.
4. Provide trash hopper for kitchen refuse.
5. Provide area for vehicle washing by staff and residents.

**G. Fire Department Access**

Fire Department access shall be provided in accordance with local code requirements.

**H. Site Landscaping**

1. Thought should be given to walkways, sitting areas, garden areas, berms, other areas of areas, garden areas, berms, other areas of interest, and for screening. Sidewalks shall be 5.5 feet minimum in width.
2. Landscaping should be used as a screen for mechanical equipment, and trash holding areas.

**I. Moving Access**

Provide area for temporary parking of moving vans at building access points to elevators for moving of residents. Moving shall not occur through main lobby area.

**3. Instructions to the Design Team**

- A.** The square footage of all functional areas, including apartments, is calculated from center line to center line of the party walls and from the inside of the outside wall to the corridor side of the corridor wall.
- B.** Provide with the schematic drawings furniture and equipment layouts for the Residential, Commons, Assisted Living and Memory Care areas.

**END OF EXHIBIT D**

**EXHIBIT E**  
**CONSTRUCTION COST BUDGET**

For Phase 1, the Owner has established the construction cost budget of \$13,557,377 in current US\$. The budget does not include contractor's fee, bond, general liability and builder's risk insurance, permits, or escalation to the start of construction. A 5% design contingency is included in the Sitework budget only.

<b>Area</b>	<b>Acre</b>	<b>Unit Cost</b>	<b>Total</b>
Sitework	25	\$ 365,400	\$ 8,557,377
Landfill Restoration	Lum Sum		\$ 5,000,000
<b>Total -</b>	25 Acres		\$ 13,557,377

**END OF EXHIBIT E**

**EXHIBIT F**  
**COMPENSATION SCHEDULE FOR SERVICES**

The Consultant will fill out this form for inclusion in the Agreement

	<u>Hours</u>	<u>Fees including Non-reimbursable Expenses</u>	<u>Estimated Reimbursable Expenses</u>
<b>Phase A - Conceptual Design &amp; Program Refinement</b>			
Architectural			
Other (Subconsultants - List)			
Subtotal	_____	_____	_____
<b>Phase B1 - Early Schematic Design</b>			
Architectural			
Interior Design			
Structural			
M.E.P.			
Other (Subconsultants - List)			
Subtotal	_____	_____	_____
<b>Phase B2 - Final Schematics &amp; Regulatory Submissions</b>			
Architectural			
Interior Design			
Structural			
M.E.P.			
Food & Beverage			
Other (Subconsultants - List)			
Subtotal	_____	_____	_____
<b>Phase B3 - Design Development</b>			
Architectural			
Interior Design			
Structural			
M.E.P. Food Facilities			
Other (Subconsultants - List)			
Subtotal	_____	_____	_____

**Phase C1 - Construction Documents**

Architectural  
Interior Design  
Structural  
M.E.P. (Including Fire Protection)  
Food Facilities  
Other (Subconsultants - List)

Subtotal

\_\_\_\_\_

**Phase C2- Bidding and Negotiation**

Architectural  
Interior Design  
Structural  
M.E.P. (Including Fire Protection)  
Food Facilities  
Other (Subconsultants - List)

Subtotal

\_\_\_\_\_

**Phase D - Construction**

Architectural  
Interior Design  
Structural  
M.E.P.  
Food Facilities  
Other (Subconsultants - List)

Subtotal

\_\_\_\_\_

**Summary by Discipline**

Architectural  
Interior Design  
Structural  
M.E.P.  
Food Facilities  
Other (Subconsultants - List)

**TOTAL**

\_\_\_\_\_

**Summary by Phase of Design**



Phase A - Conceptual Design &  
Program Refinement  
Phase B1 – Early Schematic Design  
Phase B2 - Final Schematics &  
Regulatory Submissions  
Phase B3 - Design Development  
Phase C1 - Construction Documents  
Phase C2 - Bidding and Negotiation  
Phase D - Construction

**TOTAL**

\_\_\_\_\_

**END OF EXHIBIT F**

**EXHIBIT G**

**CONSULTANT'S HOURLY RATE SCHEDULE**

The Consultant's and Subconsultants' hourly rate schedules are inserted here and made a part of the final Agreement.

**END OF EXHIBIT G**

**EXHIBIT H**

**CONSULTANT'S CERTIFICATES OF INSURANCE**

The Consultant's Certificates of Insurance are inserted here and made a part of the final Agreement.

**END OF EXHIBIT H**

**EXHIBIT I**

**CONSULTANT REPRESENTATION**

The Consultant will complete this form and submit it to the Owner with the completed construction documents.

---

(Date)

Owner \_\_\_\_\_  
c/o LCSD/SCD Development, LLC  
400 Locust Street, Suite 820  
Des Moines, Iowa 50309

Attention: (Design Manager)

RE: STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONSULTANT  
(LUMP SUM CONTRACT) Dated \_\_\_\_\_  
Project Name \_\_\_\_\_

Gentlemen:

Reference is made to Section 1.06 of the above Agreement. I hereby certify and represent that the final documents completed pursuant to the Construction Documents phase (Phase C) of the captioned Agreement have been coordinated with the work of all other Project consultants, and that to the best of my knowledge, information and belief no conflicts exist.

Very truly yours,

Firm Name \_\_\_\_\_

| By: \_\_\_\_\_

Responsible Party \_\_\_\_\_

**END OF EXHIBIT I**

## **EXHIBIT J**

### **FORM FOR REQUEST FOR PAYMENT**

#### **I. Instructions**

Your Request for Payment can be processed quickly if filled out correctly and accompanied with adequate backup documents. Incorrectly filled out Requests will be returned unpaid to the Consultant. To avoid this unnecessary time delay please follow these instructions when completing your Request for Payment form.

1. **To:** Address your Request for Payment to the Design Manager assigned to the Project.
2. **From:** Company name must match the name on the Agreement.
3. **Date:** Specify the closing date of services covered by the Request.
4. **Address:** Company address must match the address on the Agreement
5. **Request No.:** Begin with number 1 and number consecutively each month. Forward only one Request for Payment/month.
6. **Project Location:** City, State and must match the location on the Agreement
7. **Project Title:** Must match the project title on the Agreement.
8. **Original Contract Sum** - Contract Sum in Article III, paragraph 3.01 of the Agreement
9. **Net Approved Amendments** - The total sum of all signed amendments to the original Agreement. Do not include in the "Net Approved Amendments" blank any unsigned or proposed amendments.
10. **Total No. of approved Amendments** - 1, 2, 3, etc.
11. **Contract Sum to Date** - Total lines 8 and 9.
12. **Current Phase of Services** - Fill in as appropriate:  
Phase A - Conceptual Design/Programming  
Phase B1 - Early Schematic Design  
Phase B2 - Final Schematics/Regulatory Submissions  
Phase B3 - Design Development  
Phase C1 - Construction Documents  
Phase C2 - Bidding and Negotiation  
Phase D - Construction Phase
13. **Percent of Phase Completed** - Fill in the percentage of that phase of services listed in item #13 which is being billed as complete. It is especially important that your Design Manager concurs with your response to this item. Please note that your Design Manager will not authorize payment for more work than has been received as of the date of your invoice.
14. **1. Total Earned to Date** - Line 13 multiplied by the percentage of the Original Contract Sum for the current phase of Services plus the previous completed phase(s). Attach a calculation summary.
15. **Percent of Original Contract Sum Completed** - Total Earned to Date divided by the Original Contract Sum.
16. **2. Less Previous Invoices** - The running total of all previous fees requested on prior invoices for the



Original Contract Sum and must match the previous Request for Payment Total Earned to Date. This specifically excludes prior reimbursable expenses.

17. **3. Amount of Request for Contract Payment** – Line 15 minus line 16.
18. **4. Amendments to Original Contract** - Itemize each amendment including total value, Earned to Date, Previously Invoiced, and Due this Invoice.
19. **5. Amount of this Request for Payment** – Follow instructions on this line.
20. **6. Amount of Reimbursement Expenses** - The total of all expenses with receipts attached to the Request for Payment, which, according to the Agreement, are reimbursable outside of the Contract Sum and have been approved in advance by the Design Manager.
21. **7. Total Amount of this Request for Payment** - Follow instructions on this line.
22. Signature of an authorized company officer.
23. Date signed.
24. Do not fill out area designated for LCSD/SCD Partners, LLC Use Only.
25. Attach a complete partial waiver of lien form, indicating the total amount of all previous Requests for Payment (Sum of Line 7 for all previous Requests for Payment)

If you have any questions on any item, consult your Design Manager prior to submitting your Request for Payment.

## **II. Forms** (Attached)

Exhibit J1 - Request for Payment

Exhibit J2 - Standard Form of Affidavit for Consultant's Release and Waiver of Liens

**END OF EXHIBIT J**

TO: **LCS Development LLC.**  
Capital Square  
400 Locust Street, Suite 820  
Des Moines, Iowa 50309-2334

ATTN:

## **REQUEST FOR PAYMENT**

FROM:

DATE:

ADDRESS:

REQUEST NO.:

PROJECT LOCATION:

PROJECT TITLE:

---

**ORIGINAL CONTRACT SUM** (Article III, Paragraph 3.01) \$ \_\_\_\_\_

**NET APPROVED AMENDMENTS** \$ \_\_\_\_\_

(Total No. of approved Amendments \_\_\_\_\_)

**CONTRACT SUM TO DATE** \$ \_\_\_\_\_

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Current Phase of Services: \_\_\_\_\_ Percent of Phase Completed: \_\_\_\_\_%

---

**1. TOTAL EARNED TO DATE** (From Original Contract Sum) \$ \_\_\_\_\_  
Percent of Original Contract Sum Completed \_\_\_\_\_%

**2. LESS PREVIOUS INVOICE(S)** (Not including amendments and reimbursables) \$ \_\_\_\_\_

**3. AMOUNT OF REQUEST FOR CONTRACT PAYMENT** \$ \_\_\_\_\_  
(Not including reimbursable) (Line 1 minus Line2)

**4. AMENDMENTS TO ORIGINAL CONTRACT**

(Identify all Amendments on this request. Include total value, percent complete, earned to date, previously invoiced, and due this invoice)

	<u><b>Total Value</b></u>	<u><b>%</b></u>	<u><b>Earned to Date</b></u>	<u><b>Previously Invoiced</b></u>	<u><b>Due This Invoice</b></u>
Amend. No: <b>1</b> Description:					
\$ _____			\$ _____	\$ _____	\$ _____
Amend. No: <b>2</b> Description:					
\$ _____			\$ _____	\$ _____	\$ _____

**5. AMOUNT OF THIS REQUEST FOR PAYMENT** \$ \_\_\_\_\_  
(Line 3 plus all Lines of 4 Due This Invoice)

**6. AMOUNT OF REIMBURSEMENT EXPENSES** (This payment only) \$ \_\_\_\_\_  
(Attach backup information)

**7. TOTAL AMOUNT OF THIS REQUEST FOR PAYMENT** \$ \_\_\_\_\_  
(Including reimbursables) (Line 5 plus Line 6)

The Undersigned Consultant certifies that the work covered by this Request for Payment is complete in accordance with the Agreement and that the current payment shown is now due.

**CONSULTANT:**

**DATE:**

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For LCS/SCD Partners, LLC Use Only

PROJ. #: \_\_\_\_\_ COST/CODE/MILESTONE: \_\_\_\_\_ AMOUNT\$ \_\_\_\_\_

APPROVED:

DATE:

APPROVED:

DATE:

**STANDARD FORM OF AFFIDAVIT  
FOR CONSULTANT'S RELEASE AND WAIVER OF LIENS**

TO OWNER:

CONSULTANTS PROJECT NO.:

CONTRACT FOR: **Professional Services**

LCS PROJECT NO

PROJECT LOCATION:

PROJECT TITLE:

LEGAL DESCRIPTION:

TOTAL CONTRACT AMOUNT \$ \_\_\_\_\_

PAYMENTS MADE & RECEIVED TO DATE \$ \_\_\_\_\_

STATE OF:

project. The Consultant hereby represents and warrants that the above accounting and statement is a true, accurate and complete rendering as of the date hereof, and that no extra work or materials have been supplied, undertaken, performed or provided in connection therewith except as listed below. The Consultant further represents and warrants that all workmen used or employed by it or its subcontractors upon or in connection with the above-referenced project have been paid for all materials and services delivered and performed in connection therewith.

COUNTY OF:

The undersigned Consultant hereby acknowledges receipt of the full amount of Payments Made and Received to Date, as noted above, from the Owner, pursuant to the above referenced Professional Services Agreement. The Consultant, with full knowledge of its rights under the laws of the state of the Project Location, does waive and release any and all claims which it may now or hereafter have, known or unknown, upon the land and improvements described above, whether as a Mechanic's Lien or otherwise. The Consultant further subordinates all right to any lien for labor or materials to be supplied in the future to or for the land and improvements above described or for any other reason, to the right, title and interest of all persons claiming by, through, or under the Owner. The Consultant does further waive and release any and all claims, demands, motions and causes of action which it may now or hereafter have or assert against The Owner and its successors, assigns, sureties, officers, partners, stockholders, employees, directors, principles, or agents, or any of them, in connection with the construction and design of the improvements for the above described

The Consultant agrees that the Owner of the Project, as aforesaid, may rely upon the full and several representations, warranties, content and provisions of this Release and Waiver of Liens, and further, that the Consultant, by executing below, confirms its understanding of the provisions hereof, and intends to be fully bound hereby and agrees to indemnify and hold harmless the Owner and all persons claiming by, through or under the Owner for any breach hereof.

This form is designed to be used in multiple states and therefore if any provision or provisions, or if any portion of any provision or provisions is found by a court of law to be not included herein but required by or in violation of any local, state, or federal ordinance, statute, law, administrative or judicial decision, or public policy (Law), and if this form fails to include any required by the Law provision or provisions, and if such court shall declare such portion, provision or provisions required to be included herein, then it is the intent of all

parties hereto that such portion, provision or provisions shall be included as required by such Law and incorporated herein by this reference, or if any portion, provision, or provisions hereof are declared to be illegal invalid, unlawful, void or unenforceable as written, then it is the intent of all parties hereto that such portion, provision or provisions shall be given force to the fullest

extent that they are legal, valid, and enforceable, that the remainder hereof shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained herein and all the other rights, obligations, warranties, releases, contained herein and under the other provisions hereof shall continue in full force and effect,.

**EXCEPTIONS:**

**SUPPORTING DOCUMENTS ATTACHED:**

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**ACCEPTED AND AGREED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

CONSULTANT:

Company Name \_\_\_\_\_

\_\_\_\_\_  
By:

STATE OF NEW YORK :  
: ss.:

COUNTY OF \_\_\_\_\_ :

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted executed the instrument.

\_\_\_\_\_  
Notary Public