

**Weekly Town Board Meeting
July 22, 2020 7:30 p.m.
107 Glenclyffe Drive, Garrison, New York**

AGENDA

- 1. Resolution approving the draft License Agreement and authorizing Supervisor Shea to the Lease Agreement and any documents necessary for recording it, for the New Leaf Restoration Community Garden.**
 - 2. Resolution accepting Badey & Watson's Proposal for engineering services associated with the New Highway Department Garage.**
 - 3. Resolution accepting Carr Engineering's proposal for structural design engineering services associated with the New Highway Department Garage.**
 - 4. Resolution accepting Gerard Associates Consulting Engineers, P.C. proposal for mechanical and electrical engineering design services for the New Highway Department Garage.**
 - 5. Resolution authorizing Town Clerk Percacciolo to advertise for bidders for the Avery Road Culvert Repairs project.**
 - 6. Any other business that may come before the Town Board.**
 - 7. Adjournment.**
-

WHEREAS, New Leaf Restoration has requested approval from the Town to establish and operate a community garden on one-half acre of the Town-owned property located on Route 9D and Route 403 in the Town of Philipstown; and

WHEREAS, the Town has before it a draft License Agreement under which New Leaf Restoration would be allowed to establish and operate the proposed community garden on the Town's property; and

WHEREAS, the establishment and operation of a community garden constitutes a Type II action under SEQRA.

NOW, THEREFORE, BE IT RESOLVED as follows:

- 1. That the Town Board of the Town of Philipstown approves the draft License Agreement; and
- 2. That the Town Supervisor is hereby authorized to sign the License Agreement and any documents necessary for recording it and carrying out its terms.

_____ presented the foregoing resolution which was seconded by _____,

The vote on the foregoing resolution was as follows

- Judith Farrell, Councilwoman, voting _____
 - John VanTassel, Councilman, voting _____
 - Robert Flaherty, Councilman, voting _____
 - Michael Leonard, Councilman, voting _____
 - Richard Shea, Supervisor, voting _____
-

THIS REVOCABLE NON-EXCLUSIVE LICENSE is given and made this ____ day of July, 2020, by and between:

The TOWN OF PHILIPSTOWN, 186 Main Street, Philipstown, New York 10516,

GRANTOR,

and

NEW LEAF RESTORATION, 10 Morris Avenue, Cold Spring, New York 10516,

GRANTEE,

WHEREAS, GRANTOR is a municipal corporation duly organized and existing under the laws of the State of New York; and

WHEREAS, GRANTEE is a not-for-profit corporation maintaining an address of 10 Morris Avenue, Cold Spring, New York 10516; and

WHEREAS, the GRANTOR owns certain real property located on Route 9D and Route 403, Philipstown, New York , which is identified on the Tax Map as Section 71, Block 1, Lot 38 and which consists of a large parcel of land subject to a conservation easement held by the Open Space Institute Land Trust, Inc., ("OSI"); and

WHEREAS, GRANTEE, working in cooperation with the TOWN OF PHILIPSTOWN Recreation Department, wishes to operate and hold open to residents of the TOWN OF PHILIPSTOWN (i.e., residents of both the incorporated and unincorporated portions of the TOWN) a community garden, approximately one-half acre in size, on the aforesaid real property owned by the GRANTOR; and

WHEREAS, GRANTOR is willing to grant a revocable non-exclusive license to GRANTEE to allow the GRANTEE to establish and operate a community garden open to residents of the TOWN OF PHILIPSTOWN in the location recited below and under the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the GRANTOR does hereby grant a non-exclusive revocable license to the GRANTEE for use of the aforesaid property for the purposes of establishing and operating a community garden open to residents of the TOWN OF PHILIPSTOWN under the following terms and conditions:

1. **LICENSE AREA:** This license granted hereunder shall apply only to the portion of the GRANTOR's property described in Schedule "A" attached hereto (the "License Area"). Further, GRANTEE and persons using the community garden operated by GRANTEE shall have a right of reasonable ingress and egress on and over the GRANTOR's property to the License Area in such areas and under such conditions and terms as may be designated by the GRANTOR.

2. **TERM:** The term of this License shall be one (1) year from the date of execution hereof (the "anniversary date"). Unless terminated by the GRANTOR, this License shall automatically renew for one year terms on its anniversary date without further notice or action by the parties.

3. **PERMITTED ACTIVITIES:** The activities permitted within the License Area under this License are limited to operation of a community garden for use by residents of the TOWN OF PHILIPSTOWN. Such activity shall conform to and shall not violate the terms and provisions of the Conservation Easement held by OSI, a copy of which is attached hereto as Schedule "B". Prior to entering upon or making use of the License Area, and annually thereafter, GRANTEE shall submit for approval by the TOWN OF PHILIPSTOWN Recreation Department a statement of the activities proposed to be undertaken on the License Area.

4. **GRANTEE'S OBLIGATIONS:** The GRANTEE is obligated to comply with the terms and provisions of this License and may be held liable for any breach of it. However, it is expressly understood and agreed that while this License confers upon the GRANTEE the right to establish and operate a community garden, the GRANTEE is not under any legal obligation to do so and cannot be held liable for failure to establish and operate a community garden.

5. **INSURANCE:** GRANTEE shall maintain a general liability insurance policy in the amount of not less than One Million and 00/100 Dollars (\$1,000,000) upon which the GRANTOR shall be named as an additional named insured. Prior to GRANTEE entering upon the License Area, a certificate of such insurance listing GRANTOR as an additional named insured shall be provided to the GRANTOR by the GRANTEE. The certificate of insurance must state that the GRANTOR will received notice in the event that the insurance is cancelled or otherwise lapses.

6. **IMPROVEMENTS TO LICENSE AREA:** It is expressly understood and agreed that any and all improvements to the License Area must comply with the terms and provisions of the Conservation Easement held by OSI. Further, any goods, materials or fixtures placed or otherwise installed in the License Area by the GRANTEE shall remain the property and responsibility of the GRANTEE.

7. **HOLD HARMLESS:** The GRANTEE shall hold harmless and indemnify the GRANTOR for any and all claims, causes of action, lawsuits, damages, losses, fines, fees, dues, debts, costs and expenses of any kind, including attorneys' fees, arising from GRANTEE's use of the License Area, and such obligation to hold harmless and indemnify the GRANTOR shall extend also to any such claims, etc., arising from ingress and egress to the License Area and use of the License Area by third-parties as permitted by the GRANTEE,.

8. **TERMINATION:** This license may be revoked by GRANTOR on seven (7) days' written notice to the GRANTEE at the address listed above provided by certified mail or personal delivery. The said seven (7) day period shall run from the date of mailing or personal delivery, whichever occurs first.

9. **RESTORATION:** At such time as the GRANTEE ceases to use the License Area as a community garden or at such time as the GRANTOR terminates this license agreement, GRANTEE shall be obligated to restore and remediate the condition of the License Area in such manner and to such extent as is directed by the GRANTOR, provided that such restoration and remediation shall not extend beyond restoring the License Area to the condition it was in at the time of execution of this License.

10. **COMPLETE AGREEMENT:** This License fully expresses the entire agreement between the parties. The terms of this license agreement cannot be changed or modified except through a writing executed by both parties.

IN WITNESS WHEREOF, the parties have duly executed this instrument the day and year first above written.

IN PRESENCE OF:

THE TOWN OF PHILIPSTOWN

By: RICHARD SHEA, Town Supervisor
Authorized by Resolution of the Town Board dated July__, 2020

NEW LEAF RESTORATION

By:

STATE OF NEW YORK:
:ss.
COUNTY OF PUTNAM :

On the ____ day of July, 2020, before me, the undersigned, a notary public in and for said state, personally appeared RICHARD SHEA, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same on behalf of the TOWN OF PHILIPSTOWN in his capacity and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted executed the instrument.

Notary Public

STATE OF NEW YORK:
:ss.
COUNTY OF PUTNAM :

On the ____ day of July, 2020, before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same on behalf of the NEW LEAF RESTORATION in his capacity and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted executed the instrument.

Notary Public

LICENSE

TOWN OF PHLIPSTOWN

To

NEW LEAF RESTORATION

SECTION: 71
BLOCK: 1
LOT: 38
TOWN OF PHILIPSTOW, COUNTY OF PUTNAM,
STATE OF NEW YORK

RECORD & RETURN TO:
STEPHEN J. GABA, ESQ.
DRAKE LOEB PLLC
555 HUDSON VALLEY AVE, SUITE 100
NEW WINDSOR, NY 12553

SCHEDULE "A"

NYS ROUTE 403

Now or formerly Burke
T.M. = 71.5-1-14

ADVANCE COPY
THIS IS ROX FOR RO

CONCEPTUAL SITE PLAN
PROPOSED FOR
OPEN SPACE CONSERVANCY, INC.
SITING IN THE
TOWN OF PHILIPSTOWN
PUTNAM COUNTY
NEW YORK

SCALE 1 in. = 50 ft. JUNE 12, 2017
Reviewed on October 20, 2017. See Note 2

ADITYA WATERON
Secretary & Treasurer, FIC

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 07-28-2007 BY 60322 JAL/STP

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Now or formerly WIN
LAW - 11-7-20

Now or formerly Nelson
1900 - 1901

BARRY & WATSON

[illegible]

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© 2000 The McGraw-Hill Companies

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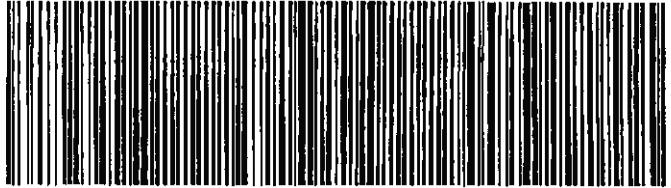
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SCHEDULE "B"



Michael C Bartolotti, County Clerk

Putnam County Office Building
40 Gleneida Avenue Room 100
Carmel, New York 10512



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Endorsement	Page
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Document # 1503351

Drawer # 07

Recorded Date: 12/29/2017

Document Type: EASEMENT TP584

Book 2066

Page 100

Recorded Time: 12:57:56 PM

Document Page Count: 24

Receipt # 21156

PRESENTER:

GOLDSAND AGENCY LLC
BOX 431

PEEKSKILL, NY 10566

RETURN TO:

OPEN SPACE INSTITUTE LAND TRUST INC
ATTN: ROBERT ANDERBERG
1350 BROADWAY STE 201
NEW YORK, NY 10018

PARTIES

GRANTOR ·

OPEN SPACE INSTITUTE LAND TRUST INC

GRANTEE

OPEN SPACE INSTITUTE INC

FEE DETAILS

1503351

EASEMENT TP584	24	140.00
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CULTURAL EDUCATION	15.00
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RECORD MANAGEMENT	5.00
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PROCESSING FEE	1	1.00
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TP-584	1	5.00
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AMOUNT FOR THIS DOCUMENT: 166.00

RETT # 000001116

RESERVED FOR CERTIFICATION

THIS DOCUMENT WAS EXAMINED PURSUANT TO S315
REAL PROPERTY LAW

EXEMPTIONS

RESERVED FOR CLERKS NOTES



Michael C. Bartolotti
Putnam County Clerk

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Conservation Easement" or "Easement") is entered into as of this ^{21st} day of December, 2017 ("Effective Date"), between the OPEN SPACE INSTITUTE LAND TRUST, INC., with an address of 1350 Broadway, Suite 201, New York, New York 10018 and THE SCENIC HUDSON LAND TRUST, INC., having an address at One Civic Center Plaza, Suite 200, Poughkeepsie, New York 12601 ("Grantor"), and OPEN SPACE INSTITUTE, INC., a New York not-for-profit corporation with an address of 1350 Broadway, New York, New York 10018 ("Grantee").

since ssur - in - interest to Open Space Conservancy, Inc.
WHEREAS, Grantee is a New York not-for-profit conservation organization within the meaning of Article 49, Title 3, of the Environmental Conservation Law of the State of New York (the "Conservation Law"), exists for the purpose of conserving real property, and is a "qualified organization" for holding conservation easements under the Conservation Law and Section 170(h) of the United States Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, Grantor is the owner in fee of approximately 10.77 acres of land, located on Route 9D and Route 403 in the Town of Philipstown, Putnam County, New York (the "Property"), as described in a deed dated of even date herewith and also identified as Tax Parcel 71-1-38, and more particularly described in Exhibit A, attached hereto, and as depicted on the map prepared by Badey & Watson Surveying & Engineering, PC; Jennifer W. Reap, License #50389, dated June 12, 2017 and revised on December 18, 2017, entitled "Conceptual Site Plan Prepared for Open Space Conservancy, Inc., Situate in the Town of Philipstown, Putnam County, New York", attached hereto as Exhibit B (the "Property Map"). The parties acknowledge that in the event of a discrepancy between the tax map and the description set forth in Exhibit A, the latter shall govern; and

WHEREAS, the Property possesses scenic open space, wetlands, natural beauty and other conservation values identified below and as described in the Baseline Documentation Report referred to in Section 3.2 below (collectively, the "Conservation Values"), which are of great importance to Grantor, Grantee, and the people of Putnam County and the State of New York, and the preservation of which will provide a significant public benefit; and

WHEREAS, the Property is within the watershed of the Hudson River and the Hudson Highlands long renowned for outstanding scenic and natural beauty, shoreline, geological and ecological character, as well as for significant historical, archaeological, architectural and cultural resources; and

WHEREAS, the Property (or portions thereof) lies within numerous governmentally designated areas promoting the conservation and preservation of the Hudson Highlands, including:

- the Hudson River Valley National Heritage Area, designated by Congress in 1996 as one of forty-nine federally recognized National Heritage Areas throughout the United States;
- the Highlands Region, a "nationally significant landscape" as codified in the federal Highlands Conservation Act signed into law on November 30, 2004;
- the Hudson Valley Greenway Area established pursuant to the Hudson River Valley Greenway Act of 1991, enacted to facilitate the development of a regional strategy for preserving scenic, natural, historic, cultural and recreational resources while encouraging

compatible economic development activities and remaining consistent with the tradition of municipal home rule;

- the 2016 New York State Open Space Conservation Plan, as an area deserving of broad public support for conservation protection in Regional Priority Conservation Project 32 - New York Highlands;
- The Route 9D Scenic Byway Corridor, as defined by the NYS DEC in 1985 and administered by the NYS DOT as a road corridor with resources of regional significance; and
- The New York State "Hudson Highlands: Garrison Four Corners" Scenic Area of Statewide Significance, as designated by the New York State Department of State Coastal Management Program's Scenic Areas of Statewide Significance study, which was authorized as part of the Waterfront Revitalization and Coastal Resources Act of 1981 (Article 42 of the Executive Law, Section 912);

WHEREAS, protection of the Property through this Easement will achieve the preservation of open space pursuant to clearly delineated governmental conservation policy that will yield significant public benefit, and is therefore consistent with the requirements of Section 170(h)(4)(A)(iii)(II) of the Code for the following reasons:

The conservation and preservation of the Property is pertinent to and would advance the policies and goals of other governmental programs, including:

- the New York State Comprehensive Wildlife Conservation Strategy Plan, identifying the Hudson Highlands as a relatively undeveloped corridor of forests, wetlands and grasslands of regional importance for the breeding and propagation of migratory birds, resident herptiles, and rare plants;
- the 2009 Statewide Comprehensive Outdoor Recreation Plan, identifying land conservation and open space protection as important for preserving the quality of life in New York State communities, and addressing environmental impacts from increasing development pressure on rural landscapes, open space and recreational areas;
- the New York Natural Heritage Program, recognizing the Property as located in an area with significant natural communities and rare plants or animals;
- the Town of Philipstown 2004 Comprehensive Plan; and

WHEREAS, protection of the Property's open space through this Easement will be for the scenic and recreational enjoyment of the general public and will yield significant public benefit, and is therefore consistent with the requirements of Section 170(h)(4)(A)(iii)(I) of the Code for the following reasons:

- the Property is located directly on State Routes 9D and 403, public roads;
- the Property is located near park lands of the State of New York;
- the Property is visible from several areas on New York State parkland (including but not limited to the Hudson Highlands State Park; and
- the Property contains riparian wetlands associated with Arden Brook, as well as a catchment area for the Garrison Landing Water District; and
- the Property is adjacent to other protected properties which further the above policies and goals as part of a concerted effort to conserve land within the jurisdiction of the Hudson River Valley Greenway; and

WHEREAS, subdivision and development pressures threaten the continued rural, scenic, ecological, and open space character of the Property and the surrounding area; and

WHEREAS, under the Zoning Code of the Town of Philipstown, New York, the Property may be subject to subdivision and development if not for the restrictions contained in this Easement; and

WHEREAS, Grantor shares the land conservation goals of Grantee and desires to ensure that the rural, scenic, and ecological and open space character of the Property will be preserved in perpetuity for the benefit of future generations; and

WHEREAS, Grantee has determined that acquiring a conservation easement pursuant to Article 49, Title 3, of the Conservation Law to restrict and limit the Property's development, management and use would further Grantee's charitable purposes by preserving and maintaining the area's scenic, open and natural condition and character; and

WHEREAS, this Conservation Easement will promote the conservation interests of the State of New York and its residents through the preservation of open space and protection of natural resources, and thus supports the purposes of the Conservation Law, the conservation and preservation policies and goals referred to above, and other legislatively declared policies; and

WHEREAS, Grantor has received independent legal and financial advice regarding this Conservation Easement to the extent that Grantor has deemed necessary and freely signs this Conservation Easement to accomplish its "Conservation Purposes" (as defined in Section 1.1 below); and

WHEREAS, in furtherance of the foregoing, Grantor and Grantee wish to execute and record this Conservation Easement.

NOW, THEREFORE, in consideration of the foregoing and the recited facts, mutual promises, undertakings, and forbearances contained in this Easement and other valuable consideration, the sufficiency and receipt of which is acknowledged, but as a donation nonetheless, and pursuant to the laws of the State of New York and in particular the Conservation Law, and in compliance with Section 170(h) of the Code, Grantor hereby voluntarily conveys in perpetuity to Grantee, and Grantee hereby accepts, this Conservation Easement, the parties intending to be bound by its terms:

1. **Grant.** Grantor hereby grants to Grantee this Conservation Easement over the Property, which shall run with and burden title to the Property in perpetuity and shall encumber the Property to the extent provided herein. As used hereinafter, the term "**Grantor**" includes all future parties bound by this Easement as set forth in Section 1.2 below.

1.1 Purpose. The "Conservation Purposes" of this Conservation Easement are to provide significant public benefit by conserving and protecting the Conservation Values of the Property, including:

- A. preserving open space for recreation and the scenic enjoyment of the general public;
- B. preserving open space pursuant to clearly defined federal, state and local governmental conservation policy;

- C. protecting and preserving the scenic integrity and rural character of the Property as enjoyed by the public from park lands and from public roads; and
- D. protecting and preserving the natural resources, wildlife habitat, and other ecological values of the Property;

in each case by limiting development and other activities inconsistent with the Conservation Values, policies and goals more particularly described in the above recital.

1.2 Implementation. The Conservation Purposes of this Conservation Easement shall be implemented by limiting and restricting the development and use of the Property in accordance with the provisions of this Conservation Easement. This Easement shall bind Grantor and all future owners, tenants, and holders of an interest in the Property and their successors, heirs, and assigns.

1.3 Reserved Rights. Grantor reserves to itself and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein or inconsistent herewith and the right to sell, transfer, grant access to, lease, mortgage, or otherwise encumber the Property, subject to the restrictions and covenants set forth in this Conservation Easement.

2.0 Restrictions Applicable to the Property. Grantor's use and development of the Property shall be consistent with the Conservation Purposes and compatible with the preservation of the Property's Conservation Values. Without limiting the generality of the foregoing, the following uses and activities, though not an exhaustive recital of inconsistent uses and activities, are inconsistent with the Conservation Purposes and Conservation Values of this Easement and, unless otherwise expressly permitted herein, are prohibited anywhere on the Property.

2.1 Inconsistent Use. Pursuant to Treasury Regulation Section 1.170A-14(e), Grantor shall not establish any agricultural, commercial, industrial, or other activity or use that is inconsistent with the Conservation Purposes of this Easement. The Baseline Documentation Report (described herein) includes those uses and activities that are ongoing on the Property as of the Effective Date and such uses and activities are consistent with the Conservation Purposes so long as they continue to be carried out in a manner that is consistent with the terms of this Easement, including but not limited to the Conservation Purposes.

2.2 Subdivision. The Property shall not be subdivided. This shall not preclude minor lot line revisions with adjoining landowners. Land so adjusted shall remain subject to the Conservation Easement herein.

2.3 Resource Protection Area. Structures and Improvements are expressly prohibited in the Resource Protection Area, except Improvements related to pre-existing water infrastructure within "Easement Area" as shown on Exhibit B, for otherwise permitted improvements on the Property, or otherwise as permitted by said Easement Area. Recreational activities, vegetation management, water infrastructure improvements, or other activities related to the Conservation Purposes may be permitted with prior

approval of the Grantee, under Grantee's sole discretion. The Resource Protection Area is comprised of approximately 7.3 acres and encompasses the "Wetland Buffer" adjacent to Arden Brook, a DEC-designated Class B protected stream, as shown on the Property Map, as well as the Water Quality Protection Area also shown as the "Catchment Area" on the Property Map and described in the Easement Agreement held by the Garrison Landing Water District.

2.4 Structures and Improvements. Except as otherwise expressly provided in this Conservation Easement, no Structure or Improvement (as defined below) may be constructed, installed, erected, placed or maintained on the Property. "**Structures**" are defined as buildings or objects constructed, installed or placed upon the ground whether temporarily or permanently. Structures shall include, but are not limited to, residential units, garages, sheds, pool houses, cabanas, greenhouses, barns, animal "run-in" shelters, chicken coops, sap-boiling houses, sap storage structures, farm markets/stands, silos, grain drying facilities, equestrian facilities, observation towers, deer stands, studios, ski cabins, tree houses, hunting cabins, moveable buildings, and garden features such as arbors, pergolas, gazebos and landscape "follies." "**Improvements**" are defined as anything that is constructed, installed erected, placed or maintained upon, under, or over the ground or on a Structure that is not a Structure and includes but is not limited to, driveways, parking areas, gardens, ponds, wells, septic systems, drainage ways, utility lines, solar panels, fences, stone walls, paths and walkways, and signs.

Except as otherwise expressly provided in this Conservation Easement, all Structures and Improvements shall be constructed entirely within the "**Build Area**", as defined and described on the Property Map, attached hereto as Exhibit B.

To ensure compliance with this Conservation Easement, prior to beginning any construction, replacement or expansion of any permitted Structure or Improvement on the Property (other than immaterial modifications or alterations thereto), Grantor shall provide notice to, and obtain the prior written approval of, Grantee, as outlined in Section 3.3.

2.5 Permitted Structures and Improvements. Grantor may construct, erect, place, maintain, repair and improve one (1) non-residential structure with a maximum footprint of 50' x 80', that is no more than 25' tall at the highest point of the structure. This structure shall be used for the purpose of providing public restroom facilities, storage for recreational or agricultural equipment, and/or a concession. In addition, the Grantor may construct one (1) "tool shed" which shall not exceed 200 square feet in size. Grantor may maintain temporary structures for seasonal use including but not restricted to goal posts, waste receptacles, and backstops, however, bleachers or other viewing stands are prohibited.

2.6 General Design and Construction Guidelines. The location, construction and use of any new permitted Structure or Improvement shall be consistent with the Conservation Purposes and shall not impair the Conservation Values. The roofing and exterior surfaces of any Structure or Improvement on the Property shall be 'earth toned colors'. In the context of this Easement, earth tones refer to a muted color scheme comprised of

browns, tans, warm grays, and greens, which emulate clay or soil, moss, trees, and rocks. Colors outside of the 'earth tone' range are only permitted with prior written approval of the Grantee, which may be granted or withheld in Grantee's sole and absolute discretion. Furthermore, any antenna or outdoor fixture shall be located so as to minimize its visibility by the public. The foregoing restrictions shall not be construed so as to prohibit the installation on the roof of any Structure or Improvement within the Build Area of photovoltaic panels, shingles or film or of solar hot-water units.

2.7 Lighting. Searchlights, laser source lights, and any similar high-intensity lighting are prohibited, including lighting of ballfields.

2.8 Utilities. Grantor may install, maintain and replace wells, water lines, septic systems, electrical and other utility distribution lines that are reasonably related to Structures and uses that are expressly permitted by the terms of this Easement and may construct such utility facilities outside of the "Build Area" only if reasonably necessary and with the prior written approval of Grantee.

Grantor may also construct, install, maintain, operate, repair and replace renewable electrical generation improvements on the Property but only with the prior written approval of Grantee, which may be granted or withheld in Grantee's sole and absolute discretion. Grantor may sell to or exchange with third parties any surplus electricity that is generated by such renewable electrical generation improvements in excess of that needed for on-Property use, but commercial-scale renewable electrical generation is prohibited. Such renewable electrical generation improvements and associated transmission lines may be located outside of the "Build Area" only if reasonably necessary and only with the prior written approval of Grantee, which may be granted or withheld in Grantee's sole and absolute discretion.

2.9 Signs. No billboards and no signs shall be permitted on the Property except (a) an entrance sign (or signs) that indicate the name of the property or owner and/or the road number; (b) signs or notices customarily used for posting by a security company or against trespassing and hunting; (c) signs or notices of a temporary nature, such as in connection with the sale or lease of the Property, an activity occurring at the Property; (d) signs or notices required by law; and (e) signs that provide information about the recreational and storage uses on the Property. No sign shall be more than six (6) square feet in size, shall be illuminated, or shall impair any of Conservation Values of the Property; provided, however, signs greater than six (6) square feet may be installed on the Property upon review and prior approval in accordance with Section 3.3 herein if Grantee determines in its sole and absolute discretion that the sign's effect on the Conservation Values of the Easement is *de minimus*.

2.10 Walls. Existing stone walls may be maintained and repaired but shall not be removed, except as reasonably necessary for the construction of permitted Structures or Improvements or as required by law. New stone walls may be constructed, provided that any newly constructed wall that is not part of a Structure shall be constructed in a manner that:

(a) blends with the natural landscape;

- (b) does not obstruct the public's visual access to the Property;
- (c) is not inconsistent with the Conservation Purposes and does not have a material adverse effect upon any of the Conservation Values of the Property or the Conservation Purposes of the Easement, and
- (d) unless other approved by Grantee, is composed mainly of stone.

2.11 Fencing and Gates. Any fencing or gate on the Property shall be constructed in a manner that:

- (a) blends with the natural landscape;
- (b) does not obstruct the public's visual access to the Property;
- (c) does not have a material adverse effect upon any of the Conservation Values; and
- (d) is of a type and design that, in Grantee's opinion, does not unreasonably interfere with movement, nesting, or forage of wildlife on the Property (other than that wildlife the fence is intended to exclude – e.g. deer fencing).

2.12 Driveways, Trails, and Drainage Ways. Without Grantee's prior written approval, the construction of a driveway to access the Property off Route 403 (see Exhibit B) is permitted provided that it is constructed and maintained in a manner that minimizes damage to the Conservation Values of the Property. A Parking Area for 30 cars with a porous, unpaved surface is permitted, as is a secondary unimproved Parking Area for an additional 30 cars (both as shown on Exhibit B) with a grass surface, the intention being to limit said secondary parking area to occasional use during peak periods of visitation to the Property. The construction and maintenance of unpaved footpaths is permitted provided that any such footpath is constructed and located in a manner that is not inconsistent with the Conservation Purposes of this Conservation Easement.

Construction should minimize erosion and other adverse impacts to the Conservation Values by proper use of drainage facilities, water bars, culverts, and other such erosion-control devices. Use of motorized vehicles (other than a mobility device used by an individual with a disability) is prohibited on any portion of the Property except on driveway and parking areas, or in connection with maintenance of the Property or other expressly permitted uses thereof.

2.13 Dumping of Waste, Vehicles, Equipment and Storage. No dumping, burying, storage or release of sewage, garbage, refuse, scrap materials, construction debris, vehicles, appliances, sediment discharge, petroleum or its by-products, leached compounds, toxic fumes, or other unsightly, hazardous or offensive material shall be allowed on the Property; provided, however, that Grantor may conduct the following activities so long as such activities are conducted in a manner that is consistent with the Conservation Purposes of this Conservation Easement and in accordance with applicable local, state, and federal laws and regulations: (a) the storage and use of biodegradable materials generated, utilized, and/or processed on the Property to further the permitted uses of the Property while maintaining the Conservation Purposes described herein; (b) the routine and temporary storage of garbage and waste from permitted uses of the Property pending transport for permanent disposal; (c) the routine storage and use of

petroleum and other products consistent with the permitted uses on the Property; and (d) the flow of waste through underground pipes into proper septic, sewer or other appropriate waste-disposal systems.

2.14 Chemicals. No pesticide, herbicide, fertilizer or other chemical treatment for land, water, vegetation or animals shall be used if the use shall have a material adverse impact on the Conservation Values or violate any applicable state, local or federal law or regulation.

2.15 Vegetation Management. Structures and Improvements described as permitted in this Conservation Easement shall only be permitted if and to the extent that screening is provided as described in this section. Hedges shall be installed and maintained as shown on Exhibit B as a condition to construction and use of such Structures and Improvements. [Grantor must plant and maintain hedges as shown on Exhibit B.] In managing vegetation within and around the "Build Area", Grantor shall preserve and maintain to the maximum extent practicable sufficient evergreen vegetation to screen any Structures or Improvements (specifically the aforementioned parking areas) from public vantage points including but not limited to NYS Route 9D. Grantor may maintain fields for active recreation as shown on Exhibit B. All management of vegetation shall be performed in a manner so as to minimize soil erosion and adverse impacts on the Property's Conservation Values, in particular, its wetlands, streams, steep slopes, and other natural resources.

2.16 Mining, Landfills, and other Detrimental Uses. No surface or subsurface mining or quarrying shall be allowed on the Property. There shall be no placement of landfills, cellphone or other communication towers, transmission lines and pipelines, (other than utilities coming on to the Property or lines or pipes that link areas within the Property), or other land uses detrimental to the Conservation Values of the Property, except (i) any such placement resulting from the lawful exercise of eminent domain and (ii) with Grantee's prior written approval, the placement of underground lines or pipelines, provided that the installation of such lines and pipelines will not have a material adverse impact on the Conservation Values and that the site is restored to the condition existing prior to such installation. In the event that any mining or mineral rights claim is asserted by any person or entity, or any person or entity attempts to claim rights to place non-permitted transmission lines, pipeline or landfills anywhere on the Property, Grantor shall, in accordance with Section 3.4, provide written notice of such claim and claimant's identity to Grantee within ten (10) days of Grantor's knowledge thereof. Grantee may take or authorize Grantor to take appropriate action, including negotiation or litigation to protect the Conservation Values of this Conservation Easement and secure its perpetuity.

2.17 Agricultural Activities. Grantor shall have the right to engage in any and all types of commercial and non-commercial agricultural activity as that term is defined in Section 301 of the New York State Agriculture and Markets Law, provided that such activity shall be conducted in accordance with the Conservation Purposes and other terms and conditions of this Easement, and in accordance with then-accepted Sound Agricultural Practices (SAPs) as established by the New York State Department of Agriculture and Markets pursuant to Section 308 of the New York State Agriculture and Markets Law,

or any successor statute, and any guidelines or guidance documents issued by the New York State Department of Agriculture and Markets, Cornell Cooperative Extension, or any successor agencies.

2.17.1. Agricultural Structures and Improvements (including irrigation wells, pumps and pump covers, trellises, a tool shed, and other improvements as are reasonably necessary for the allowable agricultural activities are permitted; provided that any such improvement is (i) compatible with the preservation of the Property's prime soils, agricultural production, open-space and scenic vistas, and other Conservation Values, (ii) otherwise consistent with the Conservation Purposes of this Easement, (iii) constructed outside the wetland buffer shown on Exhibit B, and (iv) in accordance with the following provisions:

a) The location and use of any Improvement permitted to be constructed hereunder shall be constructed in a manner that minimizes disturbance to the Conservation Values and other natural resources of the Property; and

b) The excavation or filling of the Property to the extent necessary to construct and maintain the permitted Improvements on the Property is permitted, provided that Grantor shall employ erosion- and sediment-control measures to minimize stormwater runoff, including but not limited to employing the least possible removal of vegetation, minimal movement of earth, and minimal clearance of access routes for construction vehicles.

2.17.2 Grantor shall provide written notice to Grantee prior to constructing or placing any agricultural Structure or Improvement permitted by the terms of this Easement; erection of a replacement of comparable size, bulk, use, and general design to the destroyed or damaged Structure or Improvement is permitted within the same location provided that prior written notice thereof is given to Grantee.

3 Additional Covenants.

3.1 **Ownership; Taxes.** Grantee shall not have any responsibility for any costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property. Nothing in this Conservation Easement shall be construed as giving rise to any right or ability in Grantee to exercise physical or managerial control over the operations of the Property, or any of the activities of Grantor, or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, ("CERCLA") and any corresponding state statute. Neither Grantee nor its agents shall be liable to Grantor or other person or entity in connection with consents given or withheld, or in connection with any entry upon the Property pursuant to this Easement.

Grantor shall continue to pay all taxes, levies, and assessments and other governmental or municipal charges, which may become a lien on the Property, including any taxes or levies imposed to make those payments, lawfully assessed against the Property. If Grantor fails to make any such payment, Grantee is authorized to make such payments (but shall have

no obligation to do so) upon ten (10) days' prior written notice to Grantor, according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy thereof. That payment, if made by Grantee and if permitted by applicable law, shall become a lien on the Property of the same priority as the item if not paid would have become, and shall bear interest until paid by Grantor at three (3) percentage points over the prime rate of interest from time to time charged by Citibank, N.A., or its corporate successor, but in no event to exceed the highest legal interest rate.

3.2 Existing Conditions: Baseline Documentation Report. In order to evidence the present condition of the Property (including both natural and man-made features, current activities and the Conservation Values) so as to facilitate Grantee's future monitoring and enforcement of this Conservation Easement, a Baseline Documentation Report, including one or more maps, photographs, narratives of currently existing features, improvements and activities, and other documentation, describing the condition of the Property as of the Effective Date hereof has been prepared and subscribed by both parties (the "**Baseline Documentation Report**") and a copy thereof has been delivered to Grantor and is kept on file with Grantee. By their signatures below, the parties acknowledge and verify that the Baseline Documentation Report is an accurate representation of the condition of the Property as of the Effective Date of this Easement. By its execution of this Conservation Easement, Grantee acknowledges that Grantor's present uses of the Property as described in the Baseline Documentation Report are compatible with the Conservation Purposes of this Conservation Easement so long as such uses continue to be carried out in a manner that is consistent with the terms of this Easement, including but not limited to the Conservation Purposes.

Any characterization of the terms of this Conservation Easement contained in the Baseline Documentation Report shall not be interpreted so as to alter, amend, or otherwise modify this Conservation Easement. In any conflict or inconsistency between the terms of this Conservation Easement and the Baseline Documentation Report, the terms of this Conservation Easement shall prevail. The parties agree that, in the event a controversy arises with respect to the condition of the Property or a particular resource or use thereof, the parties shall not be foreclosed from utilizing any other relevant document, survey, or report to assist in the resolution of the controversy. Grantee has the right to update the Baseline Documentation Report with a Current Conditions Report if and when a significant change has occurred on the Property.

3.3 Notice and Approval. With respect to any proposed use or activity under Sections 2 or 3 that requires the prior notice to, and/or written approval of, Grantee, or in the event Grantor proposes to undertake a use or activity that is not explicitly prohibited hereby but which might have a deleterious effect on the Conservation Values, Grantor shall, in writing pursuant to Section 3.4, provide 45 days' notice to Grantee and, if applicable, request Grantee's prior approval and shall include therewith information identifying the proposed activity and the reasons for, and other details of, the proposed activity with reasonable specificity. The notice for approval shall describe the nature, scope, location, timetable, and any other material aspect of the proposed activity (including, if appropriate, sketch plans or scaled drawings of the site(s) of the proposed activity) in sufficient detail to permit Grantee to evaluate such activity. The notice shall also include information

evidencing the conformity of such activity with the requirements of the applicable section under which notice is given and/or approval is requested hereunder.

Grantee's review of a proposed activity shall take into account the following considerations:

- (a) the extent to which the proposed activity or use of the proposed site for the proposed activity would impair the scenic qualities of the Property that are visible from Hudson Highlands State Park, Castle Rock Unique Area, Routes 9D and 403;
- (b) the extent to which the proposed activity or use of the proposed site for the proposed activity would otherwise impair the Conservation Values of the Property; and
- (c) the extent to which the proposed activity or use of the proposed site for the proposed activity is consistent with the Conservation Purposes.

Grantor and Grantee shall cooperate and shall act in good faith to arrive at agreement on suitable sites and activities in connection with any determinations that are necessary to be made by them (either separately or jointly) under this section. Notwithstanding the foregoing, Grantee's approval of a proposed site or activity shall be withheld if the use of the site for the proposed activity would interfere with the scenic quality of the Property, impair the Conservation Values of the Property, or would otherwise be inconsistent with the Conservation Purposes of this Easement. Except in cases where Grantee's approval is expressly provided herein to be in its sole and absolute discretion, Grantee's approval shall not be unreasonably withheld, conditioned, or delayed.

Grantee shall approve, conditionally approve, or withhold approval of the proposed use or activity in writing pursuant to Section 3.4 within forty-five (45) days of receipt of Grantor's written request therefor. Grantee agrees to evaluate Grantor's requests under this Easement based on its good-faith exercise of professional judgment. Notwithstanding the foregoing, if in good faith Grantee requires more than forty-five (45) days to undertake a sufficient and thorough review of the documentation provided, or determines that it requires further documentation, Grantee shall so notify Grantor within the original forty-five (45) day period of the additional time and/or documentation it reasonably requires to respond to Grantor's request hereunder; provided, however, that in no event shall the maximum amount of time taken by Grantee to respond to Grantor's request hereunder exceed ninety (90) days unless otherwise agreed upon by the parties. Grantor may not commence the proposed activity or use until it has received Grantee's written response or at such time that approval is deemed granted subject to the terms of this section.

Notwithstanding the foregoing, at Grantee's sole and absolute discretion, Grantee may permit commencement of the activity less than forty-five (45) days after receiving Grantor's written notice. In the case of withholding of approval, Grantee shall notify Grantor in writing with reasonable specificity of the reasons for withholding of approval and the conditions, if any, on which approval might otherwise be given. Failure of Grantee to deliver a written response to Grantor

within such forty-five (45) days (as extended, as discussed above) shall be deemed to constitute written approval by Grantee of any request submitted for approval that is not contrary to the express provisions hereof, including but not limited to the Conservation Purposes, and whose implementation would not impair the Property's Conservation Values. Once approval is received, Grantor may commence the proposed use or activity, but must do so exactly as provided in Grantor's written notice and, if applicable, supplemental documentation, including any requirements contained in Grantee's written approval.

Grantee agrees that, within thirty (30) days after receipt of a request from Grantor (subject, however, to weather or other conditions making inspection unfeasible), Grantee will execute and deliver to Grantor a written statement addressed to Grantor (and to any parties designated by Grantor), identifying this Conservation Easement, stating that this Conservation Easement has not been amended and is in full force and effect (or, if there have been amendments, that the Easement is in full force and effect as so amended), confirming that based on a visual inspection of the Property, Grantee has not observed a default on the Grantor's part under this Conservation Easement (or, if Grantor is in default, specifying such default(s)), and containing such other information or confirmations as Grantor may reasonably request.

- 3.4 Notices and Other Communications.** Any and all notices, demands, requests, or other communications hereunder which may be or are required to be given by either party to the other shall be in writing and shall be deemed effective (i) upon receipt thereof, if delivered in person, (ii) on the following business day, if sent by recognized overnight courier or (iii) on the third business day after mailing, if mailed via certified U.S. mail postage prepaid, to the appropriate party, at the following address (or to such other address as may have been furnished in writing by such party to the party giving notice):

If to Grantors:

Open Space Institute Land Trust, Inc.
1350 Broadway, Suite 201
New York, New York 10018

The Scenic Hudson Land Trust, Inc.
1 Civic Center Plaza, Suite 200
Poughkeepsie, NY 12601

If to Grantee:

Open Space Institute, Inc.
1350 Broadway, Suite 201
New York, NY 10018

Any owner succeeding to the interests of Grantor shall provide to Grantee the address to which notices under this Conservation Easement shall be sent. Notices and communications may also be made by facsimile or electronic means, but only as the parties may periodically agree and consent to the receipt of such communications at specified currently operative

numbers or addresses. Either party may terminate the acceptance of communications by such means at any time by written notice to the other.

- 3.5 Enforcement.** The Grantee may enforce this Conservation Easement in law or equity pursuant to the provisions of Article 49, Title 3, of the Conservation Law against any or all owners of the Premises. If there is a violation, or threatened violation, of any of the provisions of this Conservation Easement, the Grantee shall notify the party in violation, who shall promptly cure the violation by (i) ceasing the violation, or (ii) restoring the Premises to the condition before the violation, or (iii) both, or in the case of a threatened violation, refraining from the activity that would cause the violation. If the violation or threatened violation continues after thirty (30) days' notice thereof by Grantee (or after such lesser or no notice with respect to any breach, default or violation which, in Grantee's reasonable judgment, requires immediate action in order to enforce the provisions of this Conservation Easement, or within thirty (30) days after notice by Grantee that the Grantor has not commenced to remedy the violation and thereafter use due diligence to remedy such violation, the Grantee shall have the right, but not the obligation, after giving reasonable notice, to cure it by direct action. Failure to enforce any restriction or covenant herein contained shall in no event be deemed a waiver of a right to do so thereafter as to the same violation or breach, or as to one occurring prior to or subsequent thereto.
- 3.6 Acts Beyond Grantor's Control.** This Conservation Easement shall not be construed to entitle Grantee to bring any legal action against Grantor for any injury or change in the Property resulting from natural events beyond the control of Grantor. Such natural events include fire, flood, storm, earthquake, tornado, landslide or other natural occurrence, or from any action taken in good faith by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. This paragraph shall not be construed to relieve Grantor of the obligation to restore the Property from disturbances or violations incurred by third parties such as littering, dumping, trespass, etc. or otherwise to maintain the Property in a condition that is consistent with the Conservation Purposes of this Conservation Easement. Grantee has the right, either together with Grantor or independently, in its sole and absolute discretion, to pursue legal action against any third party responsible for damage caused to the Property.
- 3.7 Entire Agreement; Amendment.** This Conservation Easement, its Exhibits and the Baseline Documentation Report contain the entire understanding between Grantor and Grantee and supersede all previous agreements between Grantor and Grantee regarding the Property, whether oral or in writing. This Conservation Easement may be amended only with the written consent of Grantor and Grantee, which consent of Grantee is at Grantee's sole and absolute discretion, and by a recorded instrument signed by both of them. Grantor and Grantee recognize that circumstances may arise that would justify the modification of certain of the restrictions contained in this Conservation Easement. To that end, Grantee shall have the right to enter into amendments to this Conservation Easement with the Grantor that are in accordance with Grantee's then applicable policies and procedures, provided that no amendment shall be inconsistent with the Conservation Purposes or result in a material adverse effect on the Conservation Values that are

protected by this Conservation Easement. Furthermore, Grantee shall have no right or power to enter into any amendments with the Grantor that would result in this Conservation Easement failing to qualify as a valid conservation easement under the Conservation Law, or any regulations issued pursuant thereto. To be effective an amendment to this Easement must be recorded in the Office of the Putnam County Clerk.

3.8 Further Acts. Each party shall perform any further acts and execute and deliver any documents, including amendments to this Conservation Easement, which may be reasonably necessary to (a) carry out the provisions of this Conservation Easement, (b) qualify this instrument as a conservation easement under Article 49, Title 3, of the Conservation Law or any regulations promulgated pursuant thereto.

3.9 Encumbrance by Conservation Easement. Grantor shall have the right to convey, mortgage, or lease all of its remaining interest in the Property, but only subject to the terms of this Easement. Grantor shall notify Grantee at least 30 days prior to any conveyance of any interest in the Property, including the full name and mailing address of any transferee, and, in the case of a transfer to an entity, the individual principals thereof. The instrument of any such conveyance shall specifically set forth that the interest thereby conveyed is subject to this Easement, without modification or amendment of the terms of this Easement, and shall incorporate this Easement by reference, specifically setting forth the date, office, liber and page of the recording hereof. To such end, any subsequent conveyance including, without limitation, the transfer, lease or mortgage of the Property, shall be subject to this Conservation Easement, and any deed or other instrument evidencing or effecting such conveyance shall contain language substantially as follows: "This [conveyance, lease, mortgage, easement, etc.] is subject to a Deed of Conservation Easement dated as of December __, 2017 and recorded on _____, 20__, in the Office of the Putnam County Clerk at Liber _____ of Deeds, Page _____." The failure to include such language in any deed or instrument shall not affect the validity or enforceability of this Conservation Easement in any way.

3.10 Severability. Invalidation of any provision of this Conservation Easement, by court judgment, order, statute, or otherwise, shall not affect any other provisions, which shall be and remain in force and effect.

3.11 Binding Effect. The provisions of this Conservation Easement shall run with the Property in perpetuity and shall be binding and enforceable against Grantor and its successors and assigns. Upon a transfer of title to the Property or any portion thereof in accordance with Section 3.9, the transferor shall have no further responsibility for liability hereunder for acts done or conditions arising thereafter on or with respect to the Property or portion transferred, but the transferor shall remain liable for acts and conditions done or occurring during the period of his, her or its ownership or conduct.

3.12 Continuity – Assignable Only to Qualified Successor in Interest. Grantee agrees that it will assign this Conservation Easement only to an entity that is either a qualified not-for-profit conservation organization or public body as those terms are defined in §49-0303 of the Conservation Law, and which is a qualified organization pursuant to Code Section 170(h)(3). Such assignee must be willing and able to monitor and enforce, and

otherwise uphold the obligations of Grantee under, this Conservation Easement. In the event that Grantee ceases to exist or is no longer qualified to hold conservation easements and fails to designate an assignee of this Conservation Easement, the Charities Bureau within the Office of the New York State Attorney General is authorized to designate a qualified assignee. Upon assignment of this Easement to a qualified assignee, or upon designation of a qualified assignee by the Charities Bureau of the New York State Attorney General, such qualified assignee shall succeed to the interests of Grantee under this Conservation Easement.

- 3.13 **Perpetuation of Easement.** This Easement shall be of perpetual duration, and no merger of title, estate or interests shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion thereof, to Grantee, it being the express intent of the parties that this Conservation Easement not be extinguished by, or merge into, any other interest or estate in the Property now or hereafter held by Grantee.

Furthermore, the fact that any use of the Property that is expressly prohibited by the terms of this Conservation Easement may become more economically valuable than uses permitted by the terms of the Conservation Easement, or that neighboring properties may in the future be put entirely to uses that are not permitted by this Conservation Easement, have been considered by Grantor in granting this Conservation Easement and by Grantee in accepting it. Grantor and Grantee believe that any such changes in the use of neighboring properties will increase the benefit to the public of the continuation of this Conservation Easement, and Grantor and Grantee intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Conservation Easement. In addition, the inability of Grantor to conduct or implement any or all of the uses permitted under the terms of this Conservation Easement, or the unprofitability of doing so, shall not impair the validity of this Conservation Easement or be considered grounds for its termination or extinguishment.

- 3.14 **Inspection.** Grantee, its employees, designees, and/or authorized representatives shall have the right to enter the Property at reasonable times, in a reasonable manner, and where practicable, after giving reasonable advance notice to Grantor, (i) to inspect for compliance with the terms of this Conservation Easement, (ii) as necessary in connection with conducting an investigation for approval pursuant to Section 3.3, or (iii) to investigate the need to pursue or oversee legal remedies pursuant to Section 3.5 above.

- 3.15 **Extinguishment; Condemnation.** This Easement gives rise to a property right and interest immediately vested in Grantee. For purposes of extinguishment, the fair market value of Grantee's right and interest in this Easement shall be determined at the time of extinguishment by dividing the fair market value of this Easement by the fair market value of the Property unencumbered by this Easement, as of the date of extinguishment. The resulting ratio shall hereinafter be referred to as the "**Proportionate Share.**" The values of the Property, this Easement and the Proportionate Share shall be determined through an independent appraisal completed by a "qualified appraiser," as defined in Treasury Regulations section 1.170A-13(c)(5), who is mutually agreeable to Grantor and Grantee, the cost of which appraisal shall be shared equally by Grantor and Grantee. Upon such

extinguishment, Grantor shall pay Grantee an amount equal to the Proportionate Share of the then-fair market value of the Property (minus any amount attributable to the value of improvements made by Grantor after the effective date of the appraisal in which the Proportionate Share was determined). Grantee shall use such proceeds actually received by it in a manner consistent with the Conservation Purposes of this Easement.

If circumstances, other than those described in Section 3.13, arise in the future that render the Conservation Purposes of this Easement impossible to accomplish, this Easement may be terminated or extinguished, but only as to that portion of the Property where accomplishment of the Conservation Purposes is impossible and only by judicial proceedings in a court of competent jurisdiction and in accordance with the common and statutory laws of the State of New York. In the event a material change in the conditions of or surrounding the Property makes impossible its continued use for the purposes contemplated hereby or makes impossible the protection of the Conservation Values protected by this Easement, resulting in an extinguishment or partial extinguishment of this Easement by a judicial proceeding, Grantor shall pay Grantee an amount equal to the Proportionate Share of the then-fair market value of the Property (minus any amount attributable to the value of improvements made by Grantor after the Effective Date of this Conservation Easement) at the time of the extinguishment. Such fair market value shall be established by an arm's-length sale of the Property (or such portion of which as to which this Easement is extinguished) consummated within ninety (90) days of the extinguishment, subject to Grantee's approval of the sale price as fairly representing fair market value; otherwise, fair market value shall be determined by independent appraisal.

If the Grantor initiates the Easement termination or extinguishment, Grantor shall pay Grantee an amount equal to the Proportionate Share of the then-fair market value of the Property (minus any amount attributable to the value of improvements made by Grantor after the Effective Date of this Conservation Easement) at the time of the extinguishment. Such fair market value shall be established by an arm's-length sale of the Property (or such portion of which as to which this Easement is extinguished) consummated within ninety (90) days of the extinguishment, subject to Grantee's approval of the sale price as fairly representing fair market value; otherwise, fair market value shall be determined by independent appraisal.

Notwithstanding the foregoing, if Grantee initiates or joins with Grantor to seek termination or extinguishment of the Easement, Grantee shall, on a subsequent sale, exchange or involuntary conversion of the Property, be entitled to a portion of the proceeds at least equal to its Proportionate Share of the Property's fair market value at the time of such sale, exchange or involuntary conversion, which amount due Grantee Share shall become a lien on the Property until paid.

If all or any part of the Property is taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, so as to abrogate the restrictions imposed by this Easement or otherwise effectively to frustrate the Conservation Purposes hereof, Grantor and Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of their respective interests in the Property subject to the taking and all incidental or direct

damages resulting from the taking. All expenses reasonably incurred by the parties to this Easement in connection with such taking shall be paid out of the recovered proceeds. Grantee shall be entitled to the Proportionate Share of the remaining recovered proceeds. Grantee shall use such proceeds actually recovered by it in a manner consistent with the Conservation Purposes of this Easement. Grantor shall notify Grantee promptly upon Grantor's receipt of any notification or other information related to the exercise or threatened exercise of any power of eminent domain or proposed in-lieu purchase.

3.16 **Density and Lot Yield.** The parties agree that the Property's acreage may not be used to calculate permissible density or lot yield under the Zoning Ordinance for any other land not restricted by this Conservation Easement.

3.17 **Indemnification.** Grantor acknowledges that Grantee has neither possessory rights in the Property nor any responsibility or right to control, maintain, or keep up the Property and that Grantor has and shall retain all responsibilities and shall bear all costs and liabilities of any nature related to the ownership, operation, upkeep, improvement, and maintenance of the Property. Grantor hereby releases and agrees to hold harmless, indemnify, and defend Grantee and Grantee's members, directors, officers, employees, legal representatives, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively, including Grantee, the "**Indemnified Parties**") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the active negligence or willful misconduct of Grantee; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement by any person, other than Grantee, in any way affecting, involving, or relating to the Property; (3) any obligations of Grantor under Section 4.1 of this Easement; but in no event shall the foregoing indemnification limit the right of Grantor, under applicable law, to make any claim for indemnification or contribution against any prior owner; (4) tax benefits or consequences of any kind which result or do not result from entering into this Conservation Easement; (5) the presence or release, discharge, remediation or removal of Hazardous Materials (as defined below) on, under, from or about the Property; and /or (6) any other obligation, requirement or liability related to or arising from the presence of Hazardous Materials on the Property.

Grantor's obligations to hold harmless, indemnify and defend Grantee as specified in this Conservation Easement shall survive indefinitely and shall not be abrogated if Grantee transfers this Conservation Easement to another party. Grantee shall have no liability to Grantor or any other owner for Grantee's acts, taken in good faith, in connection with the administration of this Conservation Easement.

3.18 **Interpretation.** This instrument is intended to create a conservation easement as defined in Article 49, Title 3 of the New York Environmental Conservation Law, and shall be interpreted consistently with such intention. In the event that any provision has been omitted from this instrument necessary to qualify the interest hereby granted as such a

conservation easement or a qualified conservation contribution, such provision shall be deemed incorporated herein to the extent necessary to be so qualified. If any provision of this Conservation Easement is deemed contrary to the requirements of Article 49, Title 3 of the New York Environmental Conservation Law, such provision shall be modified or excluded to the extent necessary to cause the interest hereby granted to be so qualified.

Regardless of any contrary rule of construction, no provision of this Easement shall be construed in favor of one of the parties because it was drafted by the other party or the other party's attorney. No alleged ambiguity in this Easement shall be construed against the party which drafted it or against the party whose attorney drafted it. If any provision of this Easement is ambiguous or is subject to two or more interpretations, one of which would render that provision invalid, then that provision shall be given such interpretation as would render it valid and consistent with the Conservation Purposes of this Easement. Any rule of strict construction designed to limit the breadth of the restrictions on use of the Property shall not apply in the construction or interpretation of this Easement, and this Easement shall be interpreted broadly to effect the Conservation Purposes of this Easement as intended by the parties. The parties intend that this Easement, which is by nature and character primarily negative in that Grantor has restricted and limited its right to use the Property, except as otherwise recited herein, be construed at all times and by all parties to effectuate its purposes.

- 3.19 **Severability.** Any provision of this Easement restricting Grantor's activities that is determined to be invalid or unenforceable by a court of competent jurisdiction shall not be invalidated; instead, that provision shall be reduced or limited to whatever extent that a court of competent jurisdiction determines will make it enforceable and effective. Any other provision of this Easement that is determined to be invalid or unenforceable by a court of competent jurisdiction shall be severed from all other provisions, which shall remain enforceable and effective.
- 3.20 **Subordination of Mortgages to Conservation Easement.** At the time of this grant, the Property is not subject to any mortgage. If at a later time the Property becomes subject to a mortgage, Grantor and Grantee agree that such mortgage and the rights in the Property of any mortgagee are and shall be subject and subordinate at all times to the rights of Grantee to uphold and enforce this Conservation Easement. Nothing contained herein shall be construed to give any mortgagee the right to terminate or extinguish this Conservation Easement by taking title to the Property by foreclosure or otherwise.
- 3.21 **Applicable Law.** The Property will at all times remain subject to all applicable local, state and federal laws and regulations, including those of the Town of Philipstown. The terms and provisions of this Conservation Easement shall be governed by and construed in accordance with the laws of the State of New York.
- 3.22 **Counterparts.** The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be deemed to be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
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3.23 Exhibits and Recitals. All Exhibits and Recitals are incorporated herein by this reference.

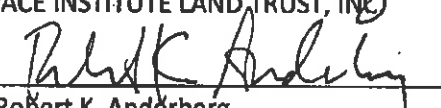
IN WITNESS WHEREOF, the parties have executed this instrument as of the day and year first above written.

GRANTOR:



OPEN SPACE INSTITUTE LAND TRUST, INC.


By:



Robert K. Anderberg
Its Senior Vice President and General Counsel

THE SCENIC HUDSON LAND TRUST, INC.

By:




Steve Rosenberg, its Executive Director

By:




Seth McKee, its Land Conservation Director

GRANTEE:



OPEN SPACE INSTITUTE, INC.

By:



Robert K. Anderberg, its Senior Vice President and General Counsel

Attachments:

Exhibit A (Description of Property)
Exhibit B (Map of Property)

STATE OF NEW YORK)
COUNTY OF Dutchess ss:

On the 22nd day of December 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared Steve Rosenberg, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of whom the individual acted, executed the instrument.

Gail L. Krein Clearwater
NOTARY PUBLIC

GAIL L KREIN CLEARWATER
Notary Public, State of New York
No. 01KR6111621
Qualified in Ulster County
Commission Expires June 14, 2020

STATE OF NEW YORK)
COUNTY OF Putnam ss:

On the 27th day of December 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared ~~Robert K. Amadorberg~~ Seth McKee, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of whom the individual acted, executed the instrument.

[Signature]
NOTARY PUBLIC

ROBIN SUE GOLDSAND
Notary Public, State of New York
No. 4902818
Qualified in Westchester County
Commission Expires August 24, 2021

STATE OF NEW YORK)
COUNTY OF Putnam ss:

On the 27th day of December 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared Robert K. Amadorberg, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of whom the individual acted, executed the instrument.

[Signature]
NOTARY PUBLIC

ROBIN SUE GOLDSAND
Notary Public, State of New York
No. 4902818
Qualified in Westchester County
Commission Expires August 24, 2021

EXHIBIT A

DESCRIPTIVE BOUNDARY
Of Conservation Easement to be conveyed to
Open Space Institute, Inc.

All that certain parcel of land situate in the Town Philipstown, County of Putnam, and State of New York, more particularly bounded and described as follows:

Beginning at a point which is on the easterly line of New York State Route 9D where the center of a stream crosses the said line, which point occupies coordinate position

North 500398.61 (y)
East 606397.41 (x)

of the New York State Coordinate System, East Zone (NYSCS) and is the northwesterly corner of lands heretofore conveyed by William H. Osborn, Jr. to Christine Giuliani by deed dated Sept. 21, 1981 and recorded in the Putnam County Clerk's Liber 780 of deeds at page 142 on Oct. 22, 1981 and is the following courses:

North 34°-54'-39" East	194.20 feet;
North 43°-08'-11" East	301.59 feet; and
North 27°-37'-49" East	28.91 feet

as measured along the easterly line of the said N.Y.S. Route 9D from a concrete highway monument marking the easterly line of Route 9D and occupying coordinate position

North 499993.67 (y)
East 606066.65 (x)

of the aforesaid NYSCS.

Thence from the said point of beginning northerly along the easterly line of the said Route 9D, the following courses:

North 27°-37'-49" East	165.91 feet;
North 33°-15'-50" East	89.20 feet;
North 28°-45'-50" East	298.97 feet;
North 21°-59'-25" East	91.86 feet;
North 17°-37'-22" East	160.06 feet; and
North 07°-47'-04" East	99.22 feet;

to a point at the line of lands now or formerly of Adams and known as "The Birches"; thence along the said lands, first

South 73°-48'-31" East	254.41 feet; then
North 34°-03'-15" East	24.87 feet

to a point at the line of lands now or formerly of the New York Telephone Company; thence along the said lands, first

South 55°-56'-45" East	125.00 feet and
North 34°-03'-15" East	153.66 feet

to a point on the southerly line of New York State Route 403 (the Cat Rock Road) then easterly along the southerly line of said Route 403

South 57°-29'-32" East	89.27 feet and
South 58°-29'-20" East	51.34 feet;

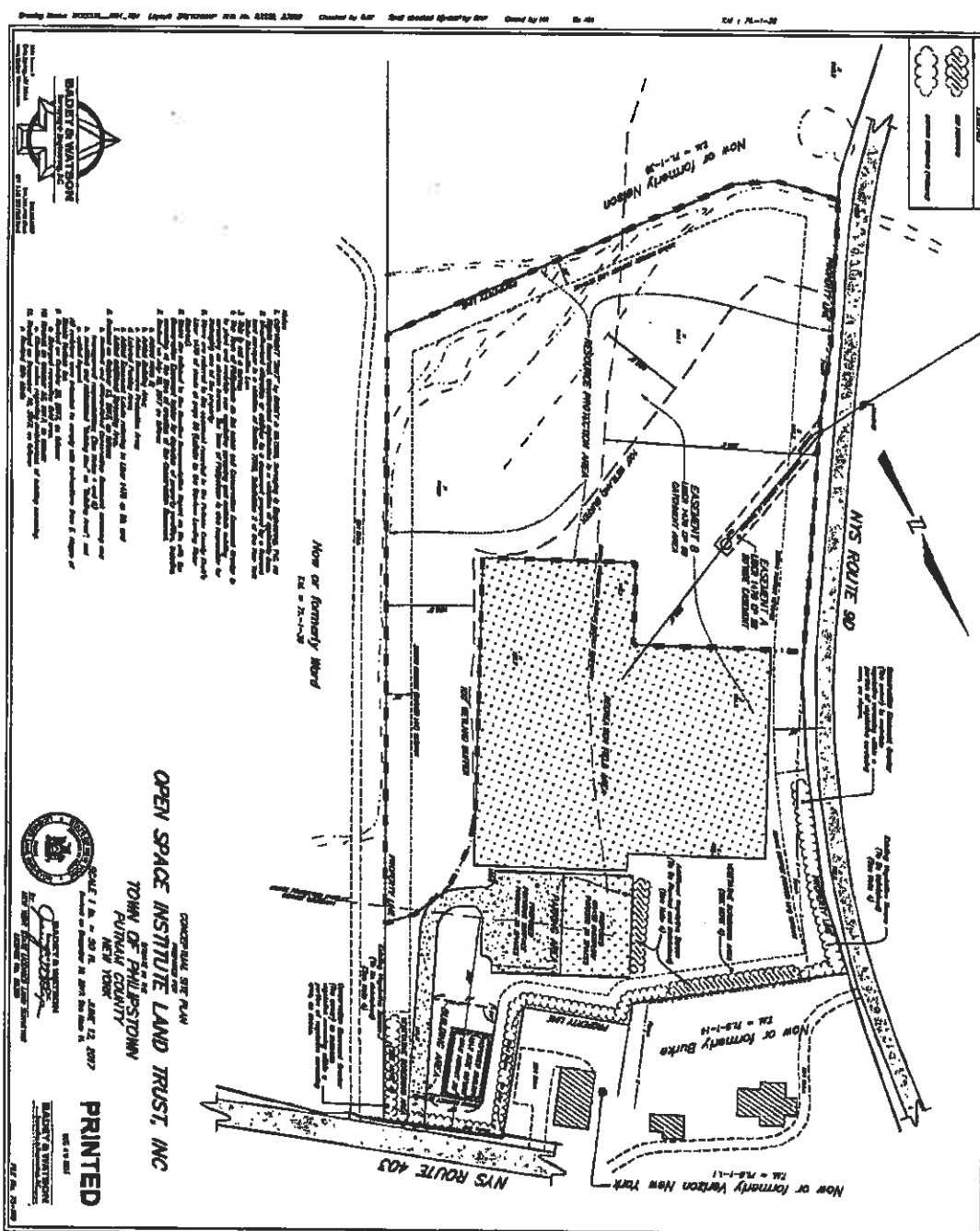
to a point in the line of lands heretofore conveyed by William H. Osborn, Jr. to D.H. Ward, Trustee, Garrison Realty Trust of 1979 by deed dated November 6, 1979 and recorded in the Putnam County Clerk's Liber 765 of deeds at page 965 on November 13, 1979; thence southerly along said lands

South 25°-00'-00" West	916.49 feet
------------------------	-------------

to a point at the line of lands now or formerly of the aforesaid Giuliani; thence along the said lands and partly along the center of a stream, the following courses:

North 88°-28'-44" West	442.05 feet;
North 70°-02'-50" West	50.31 feet; and
North 48°-32'-22" West	75.31 feet

to the easterly side of Route 9D and the point or place of beginning, containing 10.765 acres.



RESOLUTION #-2020

The following Resolution was presented by _____, seconded by _____ and
unanimously carried;

RESOLVED, that the Town Board hereby accepts Badey & Watson's proposal for Civil &
Sitework engineering services for the new Highway Department Garage and authorize
Supervisor Shea to sign said proposal.



Proposal

To: Richard Shea, Supervisor, Philipstown Town Board
From: Glennon J. Watson, L.S.
CC: Q:\Q10986_JustinKacur_HighlandsArchitecturePLLC\Q10986.docx
Date: June 22, 2020
Re: Town of Philipstown Highway Department Headquarters

Dear Supervisor Shea and Members of the Board:

Following is our proposal to provide the engineering services that you need in connection with the construction of a new highway garage. Thank you for the opportunity to present it.

WHAT WE UNDERSTAND

We understand that you have contracted with Highlands Architecture PLLC to develop a set of construction documents for a new Town of Philipstown Highway Department Headquarters. The new construction will take place at the site of the existing garage and office, located in the Village of Nelsonville. The existing garage will be razed, the mobile trailer office will be relocated, and the Highway Department will operate at an alternate site during construction.

WHAT WE PROPOSE TO DO

We propose to provide the Site Civil Engineering drawings to be included in Highlands Architecture's construction and bidding documents. These drawings shall account for the following elements of the project:

- Existing conditions, demolition [areas of] and areas of protection/limits of work.
- Environmental constraints.
- Demonstration of the project's conformance with the Code of the Village of Nelsonville.
- Proposed land grading with regard to existing ground contours.
- Proposed surface and subsurface drainage.
- Proposed stormwater conveyance to existing and proposed drainage systems.
- Post-development stormwater treatment [non-regulated stormwater mitigation].
- Siting of proposed underground electric.
- Coordinate with MEP Engineer for design of storm and wash-water reclamation system.
- Secure septic repair permit from Putnam County Health Department (PCHD) for replacement of sewer to existing tank.

- Inspect new septic components and file as-built with PCHD.

As you are well aware, this list may vary as the process progresses, but we believe that it is reasonably complete.

WHAT WE DO NOT PROPOSE

Our proposal does not include surveying services, which are not anticipated. The plans shall utilize the existing survey data and topographic information. Should surveying services become necessary, a separate proposal shall be prepared for your approval. We do not anticipate the need for approvals from any other agencies. We do not anticipate preparing a construction specifications booklet. We anticipate that the design drawings themselves will provide the necessary detail for construction and bidding purposes.

WHEN WE WILL DO IT

We are prepared to start the design development process with the other professionals within 10 business days of receipt of your notice to proceed. We expect it will take 12 weeks to prepare the construction documents in conjunction with the Architect and other Engineers.

WHAT IT WILL COST

We estimate that the fee for the services described above will be **sixteen thousand one hundred (\$16,100) dollars**. This is an estimated fee. The actual fee will be charged in accordance with the attached rate sheet. For your edification, we have attached a copy of the spreadsheet that was developed to arrive at our estimate.

INVOICING & PAYMENT

You will be invoiced monthly for any work completed in the previous month. Our terms are NET 30.

AUTHORIZATION

You may authorize the work by signing the place provided below and returning the signed proposal page to us. The signature page may be scanned and emailed to NTompkins@Badey-Watson.com or faxed to (845) 265-4428. Alternatively, the Town's standard purchase order is acceptable, provided it makes appropriate reference to this proposal.

This proposal is subject to change if not accepted within 60 days of the date hereof.

INSURANCE

We represent that we carry all required insurance coverage including Workman's Comp, Unemployment and Vehicular Liability Insurance, as well as General and Professional Liability Coverage. Insurance Certificates will be provided upon request.

BUSINESS STATUS

We represent that we are a Professional Service Corporation (PC) duly registered with the State of New York and authorized to practice Land Surveying and Professional Engineering by the NYS Department of Education. We are also a Women Owned Business certified by the State and City of New York and the NY-NJ Port Authority. Certificates are attached.

We were established in 1973 and have been in the full-time practice of Land Surveying since. We have completed well over 20,000 projects focused primarily on surveying. Our expertise covers a broad range of the profession both geographically (Urban, Suburban & Rural) and technically (land surveying, topographic surveying & mapping, geodetic control, terrestrial LIDAR, construction layout, etc.).

We added Professional Engineering in 1986. Our experience in this field is in Civil Engineering and includes minor roadway design, sanitary and stormwater sewer design, including preparation of SWPPP's, and





BADEY & WATSON
Surveying & Engineering, P.C.
3063 Route 9
Cold Spring, NY 10516
(845) 265-9217 Voice
(845) 265-4428 FAX

RATE SCHEDULE
for Professional Services
2020

Professional Staff	Per Hour
Licensed Professional/Principal -- Professional Time	\$175
Licensed Professional/Principal -- Technical Time	\$145
Licensed Professional -- Professional Time	\$145
Licensed Professional -- Technical Time	\$115
Technical Staff	Per Hour
Staff /Engineer/Surveyor	\$115
Senior Technician	\$90
Technician	\$75
Junior Technician	\$60
Survey Crew - 1 Person	\$130
Survey Crew - 2 Person	\$185
Survey Crew - 3 Person	\$225
Survey Crew - 2 Person (Prevailing Wage, Consulting Rates) *	\$275
Survey Crew - 3 Person (Prevailing Wage, Consulting Rates) *	\$325
Survey Crew - 2 Person (Prevailing Wage, Heavy Highway Rates) *	\$370
Survey Crew - 3 Person (Prevailing Wage, Heavy Highway Rates) *	\$455
Chargeable Clerical Time **	\$55

Disbursements - reimbursable at cost plus 10%
Representation/Attendance at Agency/Board Meetings - \$400.00 min. per meeting
All Agency/Board Fees are the responsibility of the Applicant

* Rates apply in Bronx, Kings, Nassau, New York, Putnam, Queens, Richmond, Suffolk, Westchester and southern Dutchess (That part in Dutchess County lying South of the North City line of Poughkeepsie); other areas may vary.



ESTIMATE FOR: Town of Philipstown
FILE NO: 96-100
MUNICIPALITY: (V) Nelsonville
TASK ID: 38.4-1-13
DATE: 22-Jan-20
SERVICES TO BE PROVIDED: Engineering
TYPE OF ESTIMATE: Time & Materials
NOTE: Address to Richard Sher, Town Supervisor

Estimates prepared by: **Gleason J. Wiseman**
BADEY & WATSON
Surveying & Engineering, P.C.
3043 Route 9
Cold Spring, NY 10516
(945) 245-9217
(945) 245-4428 Fax
GJWiseman@Badey-Watson.com

Enc: 214

Ex: 214

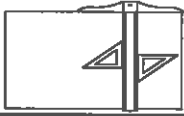
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[illegible]

RESOLUTION #-2020

The following Resolution was presented by _____, seconded by _____ and unanimously carried;

RESOLVED, that the Town Board hereby accepts Carr Engineering’s proposal for Structural engineering services for the new Highway Department Garage and authorize Supervisor Shea to sign said proposal.



MICHAEL P. CARR P.E.
Consulting Engineer

13 Woodland Drive
Garrison, NY 10524
Phone: (845) 424-6119
email: carrm@cyberchron.com

Date: June 23, 2020

Mr. Richard Shea, Supervisor
Town of Philipstown
238 Main Street
Cold Spring, NY 10516

cc:

Mr. Justin Kacur
Highlands Architecture
3212 Route 9
Cold Spring, NY 10516

Reference: Structural design services for a foundation with integral retaining wall, slab, interior steel mezzanine stairs, and exterior steel egress stairs for the proposed new highway department garage and office to be built at 50 Fishkill Road, Cold Spring, NY

I propose the following services to be provided as set forth below:

PROGRAM:

The work shall consist of providing structural drawings for the foundation for a new prefabricated steel highway garage and office to be built approximately in the same location as the existing highway garage at 50 Fishkill Road, Cold Spring, NY. The foundation will be a perimeter foundation with the top of the exterior concrete support walls at or near grade. The rear wall of the foundation will be a 12' high (+/-) reinforced concrete retaining wall to retain the hill behind the garage. The garage will include a mezzanine, designed by the steel building manufacturer. I will provide drawings for an interior mezzanine steel staircase and an exterior egress steel staircase. The roof for the exterior stair should be designed and constructed by the building manufacturer.

SCOPE:

The structural drawing will include all footings (including rock pinning as required), frost walls, slabs, piers, and anchor bolts. The foundation will be designed per the loads and reactions provided by the prefabricated steel building manufacturer. The rear of the foundation will be designed as a 12' high (+/-) steel reinforced concrete retaining wall to retain the hill behind the garage. Also included will be construction drawings for (2) steel stairs, one inside the garage and one along the side of the building. The roof structure over the exterior stair is not included and should be made part of the building manufacturer's scope of work.

(3) site visits will be included within proposed amount. Should additional visit be required, I will be available at my hourly rate.

Note: No Board of Health, Planning, or Zoning work is included.

Payment / Fee:

- a. Prepare drawing assistance and direction as listed in the scope section above: \$6750. Final payment will be due upon completion of direction conveyance to you.
- b. Should any additional work be required, such as sub-pool foundation drawings, I will be available at my hourly rate of \$175 per hour.

Should you wish to proceed please sign and date the last page, and return.

1. Construction Administration

The Engineer has no duties and obligations during the course of construction to perform periodic inspections to determine if the construction is being performed in general compliance with the design intent. Owner understands and acknowledges that the design professional is not present on a daily basis and has not been retained to determine if every aspect of the construction is performed in strict conformance with the plans and specifications. Owner acknowledges that it is the general contractor/construction manager who is responsible for constructing the project in accordance with the plans and specifications. If, at any time, it is determined that construction was not performed in accordance with the plans and specifications, the owner will look solely to the general contractor and/or the construction manager and/or the subcontractors to correct such work and that any damages flowing therefrom will be the responsibility of said general contractor/construction manager and/or subcontractors

2. Site Safety

Neither the professional activities of the ENGINEER, nor the presence of the ENGINEER or its employees and subconsultants at the site shall relieve the General Contractor and any other entity of their obligations, duties and responsibilities including,

2

Michael P. Carr, P.E.

Consulting Engineer

but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the work of construction in accordance with the Contract Documents and any health or safety precautions required by any regulatory agencies. The ENGINEER and its personnel have no authority to exercise any control over any General Contractor or other entity or their employees in connection with their work or any health or safety precautions. The Client agrees that the General Contractor is solely responsible for job site safety, and warrants that this intent shall be made evident in the Client's Agreement with the General Contractor. The Client also agrees that the Client, the ENGINEER and the ENGINEER's consultants shall be indemnified and shall be made an additional insured under the General Contractor's general liability insurance policy. It is further understood and agreed that the ENGINEER has no responsibility for job site safety pursuant to §§200, 240 and 241(6) of the New York Labor Law.

3. Limitation of Liability

Owner agrees that in any claim by the owner against the Engineer including, but not limited to, claims for negligence, professional malpractice, breach of contract, regarding direct, or indirect damage to the owner or any consequential damages sustained by the owner as well as any claim for contribution or indemnification that the owner is seeking against the Engineer, any and all claims whatsoever against the design professional shall be limited to: \$250,000.

4. Indemnification

To the fullest extent permitted by law, the ENGINEER agrees to indemnify and hold harmless the Owner, the Owner's representatives and any affiliated or related entities against loss, liability and damage, including reasonable attorney's fees, arising out of or resulting from the performance of the ENGINEER's services under the Agreement to the extent caused solely by the negligent acts or omissions of the ENGINEER, its agents, consultants, employees or representatives. The Owner's rights to such indemnification shall not arise unless and until a full trial has been concluded adjudging that such loss, liability and damages had been caused solely by the negligence of the ENGINEER, or the ENGINEER's agents, consultants, employees or representatives.

5. Standard of Care

Services provided by the design professional under this agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised

by members of the same profession currently practicing under similar circumstances and with due and reasonable diligence consistent with the practice of their profession.

6. Lost Profits/Consequential Damages

Notwithstanding any other provision of the agreement, neither party shall be liable to the other for any consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by the client or the design professional, their employees, agents, subconsultants or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

7. Failure to Pay

If owner fails to make payments for any amounts within 45 days from when payment is due, consultant may suspend performance of services upon five (5) business days' written notice to owner. The consultant shall have no liability whatsoever to owner for any costs or damages as a result of such suspension caused by nonpayment of such undisputed amounts due from owner.

No deductions shall be made from the consultant's compensation on account of penalty, liquidated damages, pending or potential claims against the ENGINEER, or other sums withheld from payments to contractors, or on account of the cost of changes in the work other than those for which the architect has been adjudged to be liable by a court of competent jurisdiction.

8. Shop Drawings, Cost of Construction, Designing to Budget

a) Shop Drawing Review

The ENGINEER shall review and approve contractor submittals, such as shop drawings, product data, samples and other data, as required by the ENGINEER, but only for the limited purpose of checking for conformance with the design concept and the information expressed in the contract documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the contractor. The ENGINEER's review shall be conducted with reasonable promptness while allowing sufficient time in the ENGINEER's judgment to permit adequate review. Review of a specific item shall not indicate that the ENGINEER has reviewed the entire assembly of which the item is a component. The ENGINEER shall not be responsible for any deviations from the contract documents not brought to the attention of the ENGINEER in writing by the contractor. The ENGINEER shall not be

required to review partial submissions or those for which submissions of correlated items have not been received.

9. Venue for Claims

a) Courts

All claims, disputes or other matters in question between the parties to this agreement arising out of or in any way relating to this agreement shall be brought in a court of competent jurisdiction in the county in which the engineer maintains its principal place of business.

b) Arbitration

Claims, disputes or other matters in question between the parties to this agreement arising out of or relating to this agreement or breach thereof shall be subject to and decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise. The arbitration forum shall be located in the county in which the ENGINEER maintains its principal place of business.

10. Statute of Limitations

Owner agrees that any claim by the owner against the ENGINEER including, but not limited to, claims for negligence, professional malpractice, breach of contract, regarding direct, or indirect damage to the owner or any consequential damages sustained by the owner as well as any claim for contribution or indemnification that the owner is seeking against the ENGINEER, shall be commenced within two years from the earliest of the following: (1) completion of the design professionals services, (2) completion of construction, or (3) receipt of final invoice from the design professional.

Mr. Richard Shea

Date

RESOLUTION #-2020

The following Resolution was presented by _____, seconded by _____ and unanimously carried;

RESOLVED, that the Town Board hereby accepts Gerard Associates Consulting Engineers, P.C. proposal for MEP & FP engineering services for the new Highway Department Garage and authorize Supervisor Shea to sign said proposal.



July 7, 2020

Mr. Richard Shea, Supervisor
Town of Philipstown
P.O. Box 155
Cold Spring, NY 10516

Re: New Highway Garage for Town of Philipstown

Mr. Shea:

Gerard Associates is pleased to provide this proposal for mechanical and electrical engineering design services for the new highway garage for the Town of Philipstown. Our proposal is based on schematic design drawings prepared by Highland Architecture, and our exchange of information with Mr. Justin Kacur, Architect. It is our understanding that the building will be single story, approximately 7,680 square feet plus a 1,000 square foot mezzanine, and will house a vehicle maintenance garage as well as storage and an administrative area.

Our proposed scope of design work shall include the following:

HVAC

- Load calculations for heating, ventilation and air conditioning (administration area only) for all spaces.
- Design of heating systems for all spaces and air conditioning for administration area.
- Design of general ventilation for all spaces and independent ventilation for all toilet rooms.
- Design of gas detection system for vehicle maintenance area.
- Design of controls for all HVAC systems.

Plumbing

- Design of all sanitary plumbing including fixtures, supply piping and drainage piping for all toilet rooms and break room.
- Design of all water supply and drainage systems for vehicle maintenance areas.
- Coordination with wash bay system vendor to provide appropriate water supply and drainage systems.
- Design of hot water heater and piping distribution system.
- Design of gasoline and diesel fuel storage and dispensing systems.
- Design of oil separator system for maintenance area drainage.
- Design of backflow preventer system for domestic water service.
Preparation of application for submission to Putnam County Health Department.
- Coordination with vehicle fluid dispensing systems vendor and compressed air system vendor.
- Design of LP gas system tank and distribution piping.
- Design of water service and sanitary discharge shall be to 5' – 0" beyond building.

223 MAIN STREET
GOSHEN, NY 10924
(845) 291-1272

info@GerardAssociates.com

Fire Protection

- Design of wet pipe fire protection sprinkler system for all areas, and/or foam water system if required in high hazard areas.
- Design will include sprinkler head specifications and locations, and water service details. It is anticipated that the installing contractor will provide hydraulic calculations and pipe sizing as part of shop drawing submission.
- It is assumed that the municipal water supply has sufficient flow and pressure and that a fire pump is not required.
- Design of backflow preventer system for sprinkler water service. Preparation of application for submission to Putnam County Health Department.

Electrical

- Design of lighting and control systems for all spaces.
- Design of general power distribution and circuitry for HVAC equipment, shop equipment and vendor supplied equipment.
- Design of service entrance from utility company and standby generator.
- Coordinate with utility company for new electrical service.
- Design of fire alarm system.

General

- Coordination with Highland Architecture, Town of Philipstown and the Town's designated vendors to insure inclusion of all necessary design elements.
- Code review of all systems to insure compliance with New York State Building Code and all other applicable standards.
- Preparation of CAD based drawings and specifications suitable for permitting, bid and construction.
- Documents shall be provided in electronic format, all printing shall be charged as a reimbursable expense.
- Construction administration services (shop drawing review, field observations, punch list, etc.) are specifically excluded but may be provided with compensation to be based on our standard rate schedule (copy attached).

We propose to provide services as outlined for a lump sum fee of \$37,500.00. If this agreement is acceptable, please sign and return a copy for our file.

Thank you for the opportunity to be of service.



07/07/20

Gerry Hluchan, P.E.

Date

Richard Shea

Date

Enclosure



2020 RATE SCHEDULE

Hourly Rates

Principals	\$ 180.00
Senior Engineer	\$ 150.00
Design Technician	\$ 115.00
CAD Operator	\$ 85.00
Administrative Support	\$ 60.00

Reimbursable Expenses

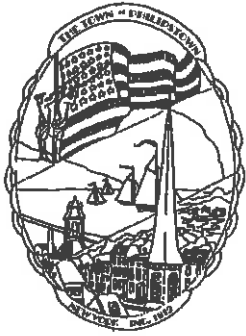
Travel	\$ 0.575/mile, plus tolls
Printing	
Paper Drawing Prints	\$ 0.35/square foot
8.5" x 11" BW Copies	\$ 0.10/sheet

Rates are subject to change upon notice by the Engineer

RESOLUTION # - 2020

The following Resolution was presented by _____, seconded by _____ and unanimously carried;

RESOLVED, that the Town Board hereby authorizes Town Clerk Percacciolo to advertise for bidders for the Avery Road Culvert Repairs Project.



Town of Philipstown

HIGHWAY DEPARTMENT
50 Fishkill Road
Cold Spring, New York 10516
(845) 265-3530
Fax (845) 265-7886

Carl Frisenda
Highway Superintendent

TO: Tara Percacciolo, Town Clerk
FROM: Carl Frisenda, Highway Superintendent
DATE: July 7, 2020
RE: Avery Road Culvert Repairs project

The Highway Department's 2020 budget includes repairs to the Avery Road Culvert, which conveys the roadway over Philipse Brook. The present waterway opening consists of a concrete roadway deck with integral steel support beams, supported by concrete abutment walls which form the stream channel under the roadway. The existing roadway and reinforced concrete culvert remain structurally sound; however, some deterioration along the base flanges of the integral steel beams is visible, as is some spalling along the exterior of the concrete culvert slab.

The existing concrete culvert walls within the stream channel, and concrete wingwalls, will remain. In this way, the existing stream bottom shall not be disturbed in any way by the proposed construction. The project scope encompasses the following general items of work:

- Cleaning and repainting of all exposed metal surfaces of I-beams
- Re-securing any loose guide rail elements to the concrete deck slab
- Deteriorated/spalled/unsound concrete on both sides of the existing concrete deck slab will be removed, and replaced with Class "D" Structural Concrete

This work falls within the scope of the DEC-Region 3 Municipal and County General Permit Number GP-3-17-001, and at this time we have just received the necessary permit so as to allow the construction project to be bid. Further, the Town Attorney has reviewed the proposed Bid Documents, and has provided comments which will be incorporated into the documents prior to bidding.

Therefore, at this time I respectfully request that the matter be placed on an upcoming Town Board agenda so that the Town Board may formally authorize the release of the project to bid, allowing the repairs to the structure to occur this year. Should you have any questions, please don't hesitate to contact my office.

Sincerely,

Carl Frisenda
Highway Superintendent

cc: Richard Shea, Supervisor
Ronald J. Gainer, PE, PLLC
Stephen Gaba, Esq.