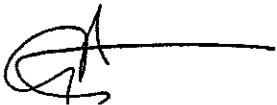


MASON, GRIFFIN & PIERSON

A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW

MEMORANDUM

To: Mayor and Council of Princeton
via e-mail & hand-delivery

From: Edwin W. Schmierer, Esq. 
Princeton Attorney

Date: April 17, 2013

Re: **Princeton - Trustees of Princeton University: Arts, Education and Transit
Project Developer's Agreement**

On December 19, 2012, the then Regional Planning Board of Princeton memorialized its approval of the above-referenced project. The approval contained certain specific requirements with regard to sanitary sewer connection fees, inspection fees, landscaping, etc. I have been working with Princeton Engineer Jack West, P.E. and representatives of the University in preparing a Developer's Agreement setting forth the legal requirement to satisfy these conditions of approval.

The Developer's Agreement is now complete and attached. I have also prepared a Resolution authorizing its execution by Princeton.

We would appreciate your considering this request at your meeting on April 22, 2013.

EWS:jv
attachs.

cc: Robert W. Bruschi, Administrator (w/attachs.)
Kathy Monzo, Assistant Administrator (w/attachs.)
Linda S. McDermott, Clerk (w/attachs.)
Robert V. Kiser, P.E., Princeton Engineer (w/attachs.)
Jack M. West, P.E., Princeton Land Use Engineer (w/attachs.)
Richard S. Goldman, Esq., Princeton University Attorney (w/attachs.)
Kristin S. Appelget, Director of Community and Regional Affairs, Princeton University (w/attachs.)

V:\USERS\Edwin\PRTP2013 Agreements\Memor\Mayor & Council - Trustees of Princeton University - Arts, Education and Transit Project Developer's Agreement 041713.wpd

COUNTY OF MERCER

PRINCETON

STATE OF NEW JERSEY

RESOLUTION NO. 13-

WHEREAS, the Trustees of Princeton University received approval from the Regional Planning Board of Princeton on December 18, 2012 to construct the Arts and Transit Neighborhood (see File Nos. PT129946P and PB120880P); and

WHEREAS, the Planning Board Resolution of Memorialization dated December 19, 2012 requires that The Trustees of Princeton University enter into a Developer's Agreement with the Municipality in order to satisfy all conditions of approval; and

WHEREAS, the Princeton Engineering Department has reviewed the attached Developer's Agreement and recommends its adoption.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of Princeton, as follows:

1. The Mayor and Clerk of Princeton are hereby authorized and directed to execute a Developer's Agreement with The Trustees of Princeton University for the aforementioned Arts and Transit Neighborhood Project. The Agreement authorized by this Resolution is on file in the Office of the Municipal Clerk and may be inspected during regular office hours.
2. A certified true copy of this Resolution and the Agreement shall be furnished by the Municipal Clerk upon its adoption to the attorney for Princeton University, Richard S. Goldman, Esq., Drinker Biddle & Reath, LLP, P.O. Box 627, Princeton, New Jersey 08540-0627 and to Kristin S. Appelget, Director of Community and Regional Affairs, Princeton University, 22 Chambers Street, Princeton, New Jersey 08542.

CERTIFICATION

I, Linda S. McDermott, Clerk of Princeton, do hereby certify that the foregoing Resolution was considered and adopted by the Princeton Council at its regular meeting held on the 22nd day of April, 2013.

Linda S. McDermott, Clerk
Princeton

**DEVELOPER'S AGREEMENT
TRUSTEES OF PRINCETON UNIVERSITY
BLOCK 43.01, LOTS 4, 5, 6, 9
BLOCK 44.01, LOTS 17.02
BLOCK 44.02, LOTS 1, 2, 3, 41, 42
BLOCK 45.01, LOTS 1, 4, 39
BLOCK 10701, LOT 2
BLOCK 10801, LOTS 1, 3, 9-15, 17-28
PRINCETON TAX MAP
(FILE NOS. PT129946P & PB120880P)**

This Agreement entered into on this ____ day of April, 2013, by and between:

PRINCETON, a municipal corporation of the State of New Jersey, with offices located at 400 Witherspoon Street, Princeton, New Jersey 08540 (hereinafter referred to as the "Princeton"), and

THE TRUSTEES OF PRINCETON UNIVERSITY, One Nassau Hall, Princeton, New Jersey 08540 (hereinafter referred to as the "Developer")

WITNESSETH:

WHEREAS, the Developer received preliminary and final major site plan approval from the Regional Planning Board of Princeton for the construction of a development known as the Arts & Transit Neighborhood on land situate in Princeton, County of Mercer, State of New Jersey, and designated on the Princeton Tax Map as Block 43.01, Lots 4, 5, 6, 9; Block 44.01, Lot 17.02.; Block 44.02, Lots 1, 2, 3, 41, 42; Block 45.01, Lots 1, 4, 39 (hereinafter referred to as the "Development") (see File Nos. PT129946P and PB120880P); and

WHEREAS, said approvals were granted for the Development on December 18, 2012 with said approvals having been memorialized by Resolution adopted December 19, 2012; and

WHEREAS, said approval require that the Developer enter into a Developer's Agreement Agreement with Princeton in order to satisfy conditions of approval; and

WHEREAS, Princeton and Developer wish to enter into this Developer's Agreement to address the conditions of approval.

NOW, THEREFORE, in consideration of such approval and the mutual undertakings as set forth hereinbelow, Princeton and Developer agree as follows:

1. **LANDSCAPE PLAN:**

Developer will plant the additional trees and shrubs as proposed in the landscape area adjacent to the convenience store service dock to buffer views of service elements. Additional plantings will be installed in the island at the transit plaza to discourage pedestrians cutting through this island area.

Tree protection measures for existing trees must be carefully laid out and maintained during the entire construction period to actually preserve trees specified to be saved in the face of the extensive work that is proposed. This aspect of construction should be analyzed and reviewed by the Municipal Arborist and chain link and other fencing shall be installed where required to prevent the unintended loss of existing trees.

The Developer's Landscape Plan shall be subject to the review and approval of the Board's Landscape Subcommittee and the Landscape Consultant. This shall include consideration for the location of one Mercer Oak seedling to be planted within the project area.

2. **TRAFFIC:**

A follow-up traffic study at selected intersections shall be provided to verify projected traffic traffic and parking conditions. This project's parking demand for University uses should be included included in the annual parking and transit report for three years after the improvements for this project are completed. Any new right-of-way and land dedication for proposed roadway improvements shall be subject to the review and approval of the Municipal Engineer. The Developer

Developer shall make an offsite traffic improvement contribution to the Township in an amount computed by AECOM, consistent with the Municipal Land Use Law. To assure itself as to the safety safety of the circulation in the transit plaza area and safe ingress and egress for vehicles, pedestrians pedestrians and bicycles, the Developer shall after a year's worth of operating experience after the convenience store and station are opened, study the actual operating conditions and submit a report report to the Board identifying any unsafe conditions at the transit plaza and its related facilities and and propose any necessary modifications. The Developer will own and maintain the new traffic signal at the entrance to the transit plaza, and the new flashing pedestrian signal on Alexander Street. Street.

3. **ACCESS EASEMENTS:**

The Developer shall provide the nonexclusive easements generally as depicted in Exhibit A (subject to field adjustments as built) permitting public pedestrian access from University Place to the rail station and pedestrian and vehicular access from Alexander Street to the rail station in form subject to the approval of the Municipal Attorney, consistent with the easement to be granted to NJ Transit.

4. **LIGHTING:**

Developer will continue to refine the lighting plan with municipal professionals' input so that no variances will be required. Developer will work with staff to identify which lights are most suitable for being turned off when not needed. The final plan will comply with the ordinance requirements. The Developer shall own and maintain all of the new street lights along University Place and Alexander Street that are not standard PSE&G fixtures.

5. **SANITARY SEWERS:**

The Developer shall obtain all permits required from the Princeton Sewer Operating Committee ("PSOC"), Stony Brook Regional Sewerage Authority ("SBRSA") and a Treatment Works Approval ("TWA") from NJDEP to provide sanitary sewers for the Property. The Developer shall also make a payment to the sewer trust fund of **\$198,723.70** and sanitary sewer construction permit fees as required by PSOC and/or SBRSA, as applicable to this project as set forth on Exhibit B attached hereto and made a part hereof. The Developer shall furnish to PSOC a utility plan showing the location of the sanitary sewers which will privately be owned and maintained by the Developer or its successor on the Property. The sewer trust fund payments shall be made when a building permit is issued for the building. For purposes of this Agreement, early start work and the issuance of footing and foundation permits for the buildings will not trigger the requirement for the above-referenced sewer trust fund payments.

6. **SAFE DRINKING WATER PERMIT:**

The Developer shall obtain from NJDEP Bureau of Safe Drinking Water ("BSDW") a permit for the Property and a copy of same shall be filed with the Municipal Engineer.

7. **OTHER APPROVALS:**

The Developer shall obtain approvals from the Mercer County Planning Board, NJDEP and the Delaware and Raritan Canal Commission. Proof of obtaining approvals from these outside agencies shall be filed by the Developer with the Municipal Engineer.

8. **HAUL PLAN:**

Prior to commencement of construction, the Developer shall provide an updated cut-and-fill plan, and shall comply with the Haul Plan annexed hereto as Exhibit D, which has been approved by the Municipal Engineer.

9. **WORK HOURS**

All construction work shall only be performed between 7:00 a.m. and 6:00 p.m., Monday through Friday, and between 8:00 a.m. and 4:00 p.m., Saturdays (no work on Sundays) unless otherwise authorized by the Municipal Engineer.

10. **CONSTRUCTION TRAFFIC PLAN:**

Prior to the commencement of construction, the Developer shall provide to the Municipal Engineer a construction traffic plan. Contractor parking shall be either within the Site, or at remote locations in the area of the fields in West Windsor, as shown on the Off Site Parking Plan annexed hereto as Exhibit C, with shuttle service to/from the Site. No contractor shall park on a municipal road or municipal parking lot.

11. **PERFORMANCE BONDS:**

The Developer shall post with Princeton performance guarantees in the following amounts as determined by the Municipal Engineer: (i) 90% Performance Bond - \$5,423,337.27; and (ii) 10% Cash - \$602,593.03

12. **INSPECTION FEES:**

Pursuant to the Municipal Code, the Developer shall post reasonable inspection fees determined by the Municipal Engineer in the amount of \$301,296.51, for required inspections of the Property. Twenty-five (25%) percent of the fees shall be paid prior to the construction plans being approved with the remaining fees escrowed by Princeton pursuant to *N.J.S.A. 40:55D-53h*.

13. **EARLY START:**

The Developer was given authorization for certain early start elements including soil erosion erosion and sediment control measures, demolition, utility demolition and installation, constructing constructing footings and foundations for all buildings, geothermal field installation, commuter

parking lot, temporary train platform and support facilities and roadway improvements subject to the approval of the Municipal Engineer. The Engineer's approval may be related to the Developer's progress in satisfying the conditions of the approval. The Municipal Engineer is authorized to require any performance or restoration bonds deemed by them to be appropriate. In addition, the University shall submit to the Engineering department its plans of the parking of construction vehicles.

14. **MISCELLANEOUS:**

The Developer shall satisfy all of the remaining conditions of approval as set forth in the Regional Planning Board of Princeton Resolution of Memorialization dated December 19, 2012, and particularly including but not limited to the following:

(s) The signal timing at Alexander Street and Faculty Road shall be reviewed once all the improvements are constructed.

(t) The traffic projections rely on shifting University staff population and parking demand to other areas of the campus. The University's annual parking and transit report shall include data on these changes so that the assumptions can be verified.

(u) A follow-up traffic study at selected intersections should be required to verify projected traffic and parking conditions. This should be included in the annual parking and transit report for three years after the improvements for this project are completed.

(fff) The applicant shall make an off-site traffic improvement contribution to the Township in an amount computed by AECOM consistent with the Municipal Land Use Law. The Planning Board recommends to the governing body that this contribution be used toward the acquisition of additional right of way necessary to replace the existing Alexander Street Bridge over Stony Brook.

(jjj) To assure itself as to the safety of the circulation in the transit plaza area and safe ingress and egress for vehicles, pedestrians and bicycles, the applicant shall after a year's worth of operating experience after the Wawa and station are opened, study the actual operating conditions and submit a report to the Board identifying any unsafe conditions at the transit plaza and its related facilities and propose any necessary modifications. The municipal staff including the police department will also monitor and review safety issues during this period.

(mmm) The University shall be responsible for the operations and maintenance of the proposed new traffic signal, the proposed warning device and the the in the road median signage at the pedestrian cross walk.

(nnn) The necessary infrastructure shall be put in place that will enable the two (2) proposed traffic signals/devices to be linked and coordinated with the existing traffic signals at Faculty Road and Lawrence Drive. The sequence and timing of these signals shall be established so as to optimize and balance the movement of vehicles and pedestrians, as approved by the Borough and Township Engineers.

(ooo) The proposed pedestrian cross walk warning device will allow for the "free flow" of pedestrians across Alexander Street. The device will utilize motion detectors to sense the presence of pedestrians and all for the crossing of the street independent of the existing and proposed traffic signals. The operation of this type of crossing in close proximity to the proposed traffic signal is questioned. The operation of this crosswalk along with the existing and proposed traffic signals along Alexander Street shall be studied and evaluated and a report with recommendations be provided to the Municipal Engineers and Police Departments after installation and annually each year until one year after the completion at all improvements, recommending any adjustments that may be necessary to best optimize the operation of the various traffic control devices. Any adjustments recommended shall be completed by the applicant as approved by the Municipal Engineers. The "free flow" pedestrian crossing shall be replaced with a conventional pedestrian signal if determined necessary, by the Municipal Engineers in consultation with the Police Departments.

This Agreement sets forth all of the promises, agreements, conditions and understandings between the parties hereto relative to the subject matter set forth herein. Except as herein otherwise specifically provided, no subsequent alterations, amendments or changes to this Agreement shall be binding upon either party unless reduced to writing and signed by each party.

All the terms, covenants and conditions herein contained shall be for and shall inure to the benefit of and shall be binding upon the respective parties hereto and their successors and assigns.

All notices hereunder shall be in writing and shall be given by personal delivery or by certified mail, return receipt requested, postage prepaid, addressed to the parties at the addresses set set forth hereinbelow:

TO PRINCETON:

Princeton
400 Witherspoon Street
Princeton, New Jersey 08540
Attention: Municipal Clerk

With a copy to:

Mason, Griffin & Pierson, P.C.
101 Poor Farm Road
Princeton, New Jersey 08540
Attention: Edwin W. Schmierer, Esq.

- and -

TO THE DEVELOPER:

Trustees of Princeton University
116A MacMillan Building
Princeton, New Jersey 08540
Attention: Michael E. McKay

With a copy to:

Drinker Biddle & Reath LLP
105 College Road East, Suite 300
Princeton, New Jersey 08542-0627
Attention: Richard S. Goldman, Esq.

[signatures on following page]

IN WITNESS WHEREOF, the parties have hereunto set their hand and seals the day and date

first written above.

ATTEST:

PRINCETON

Linda S. McDermott, Clerk

By: _____
Liz Lempert, Mayor

WITNESS:

**THE TRUSTEES OF PRINCETON
UNIVERSITY**

Mary E. Banfield
Executive Assistant

By: _____
Michael E. McKay
Vice President for Facilities

Acknowledgments

State of New Jersey :
County of Mercer :ss.

I certify that on the ___ day of April, 2013, Linda S. McDermott personally appeared before me, the subscriber, and acknowledged under oath, to my satisfaction, that: (a) this person is the Clerk of Princeton, the municipal corporation and body politic, named in this document; (b) this person is the attesting witness to the signing of this document by the proper officer who Liz Lempert, the Mayor of Princeton; (c) this document was signed and delivered by Princeton as its voluntary act duly authorized by a proper resolution of the Princeton Council; (d) this person knows the proper seal of Princeton which was affixed to this document; and (e) this person signed this proof to attest to the truth of these facts.

Linda S. McDermott

Signed and sworn to before me this
day of _____, 2013.

Edwin W. Schmierer, Esq.
Attorney-at-Law of the State
of New Jersey

State of New Jersey :
County of Mercer :ss.

I certify that on the ____ day of April, 2013, Michael E. McKay, Vice President for Facilities of Princeton University, personally appeared before me, the subscriber, and acknowledged under oath, to my satisfaction, that this person (or if more than one person, each person): (a) is named in and personally signed this document as authorized by Princeton University as its Vice-President for Facilities; and (b) this person signed and delivered this document as his/her voluntary act and deed for the uses and purposes expressed therein on behalf of Princeton University.

Notary Public

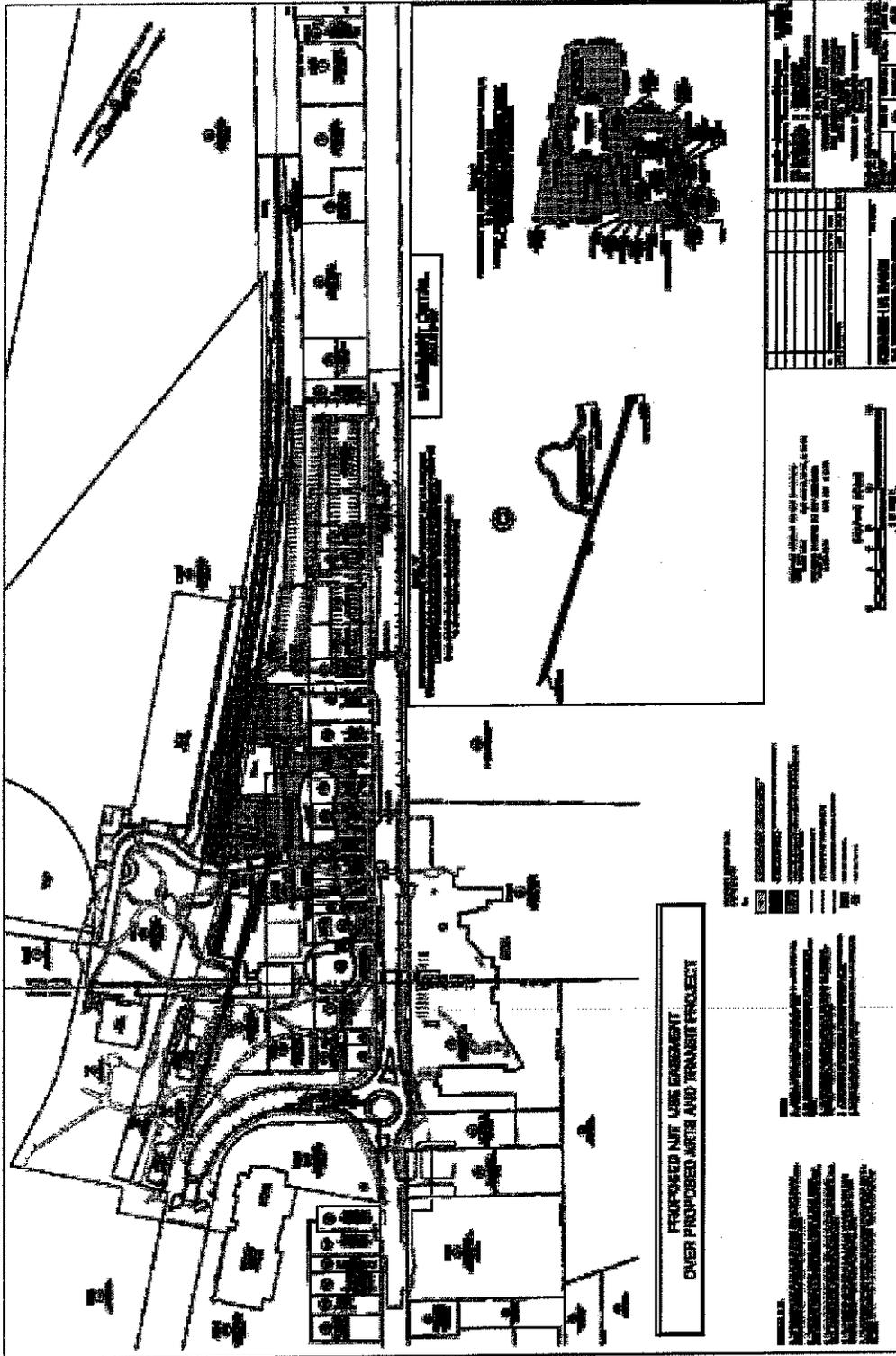


EXHIBIT B

PSOC SEWER TRUST FUND AND CONSTRUCTION PERMIT FEES

* Single sewer trust fund payment: **\$198,723.70**

*Construction Permit Fees as applicable.

EXHIBIT C

OFFSITE PARKING PLAN

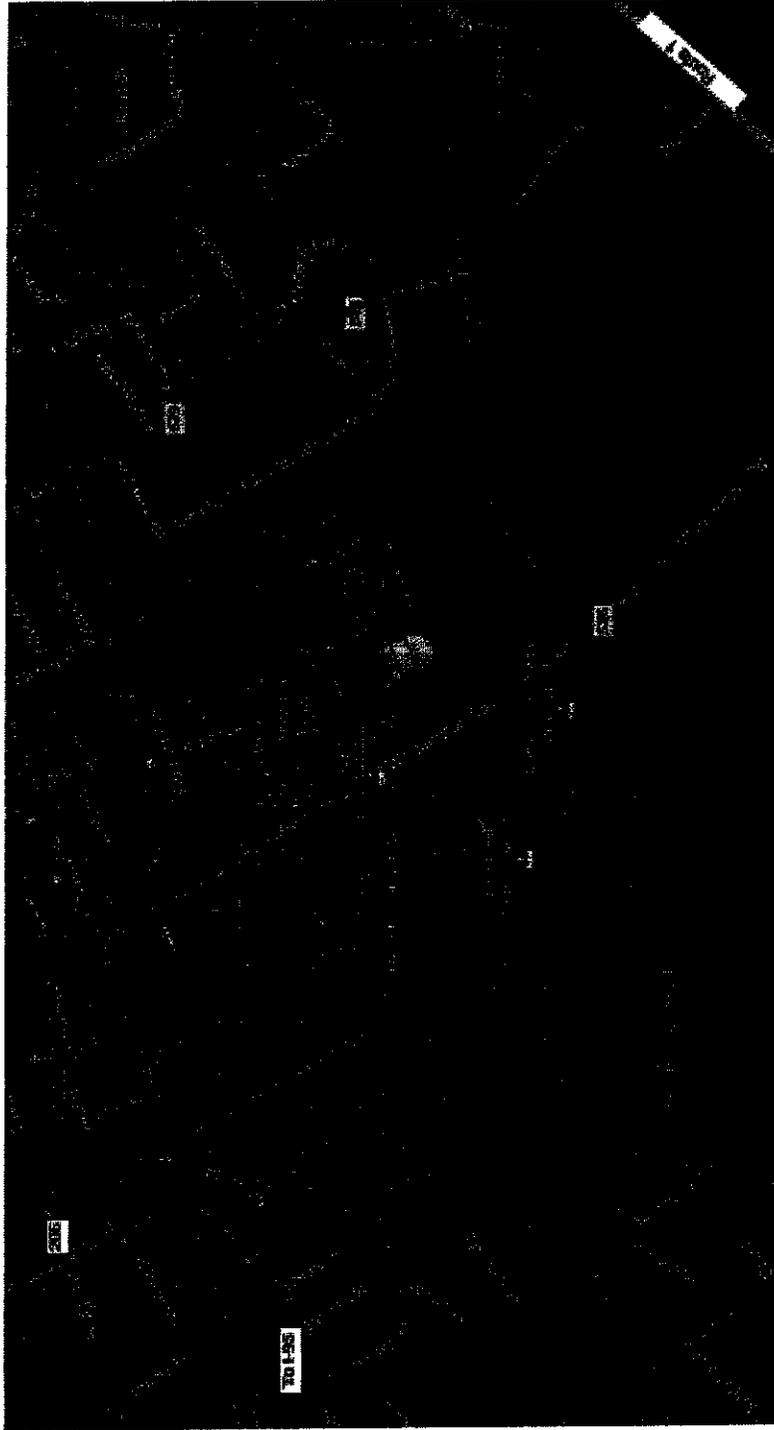
Princeton Arts & Transit Busing Plan
(2013-03-14)



EXHIBIT D

HAUL PLAN

**Princeton Arts & Transit Haul Plan
(2013-03-14)**



- 1. Primary Haul Route: (Over Harrison St. Bridge to Route 1 for loads up to 40 tons)
- 2. Haul Route for Oversize Deliveries and other University Pre-Approved Transporters (University Place to 206 South to I-95)
- 3. Secondary Haul Route for North Transport (University Place to 206 North)

Arts/arts