If you have a disability that will require special arrangements to be made for you to fully participate in the meeting, please contact the City Clerk at 274-6570 at least 48 hours before the meeting.

This meeting can be viewed via livestream on:  
https://www.youtube.com/channel/UC7RtJN1P_RFaFW2IVCnTrDg
3. Finance, Budget and Appropriations

.1 Capital Project Engineering Phase for Boiler Room Evaluation at the Ithaca Area Wastewater Treatment Facility (IAWWTF)

WHEREAS, the Ithaca Area Wastewater Treatment Facility is in need of reliable boilers used for comfort heating of indoor spaces and for process heating of the anaerobic digesters, and

WHEREAS, the current boilers are reaching the end of their useful service life and are increasingly unreliable and maintenance intensive, and

WHEREAS, an evaluation of heating requirements and energy sources for current as well as future anticipated plant and process needs is necessary, and

WHEREAS, an Engineering Evaluation Cost Estimate has been prepared by MRB Group for a lump sum of $18,500 which includes:

A. Boiler Evaluation -
   a. Assess existing boilers.
   b. Identify replacement boiler options (number, styles, sizes, duel fuel options).

B. Energy Evaluation –
   a. Evaluate Biogas and Natural Gas usage at plant.
   b. Evaluate redundancy needs.
   c. Evaluate biogas use in microturbines with heat recovery vs. use for heating.
   d. Consider potential heating needs for future sludge processing projects.
   e. Check for current grant funding opportunities to see if either the study/design phase or construction phase might be eligible, and

WHEREAS, the Special Joint Committee (SJC) approved said Capital Project at their regular meeting of March 18, 2020; now, therefore, be it

RESOLVED, That Common Council hereby establishes the IAWWTF Capital Project 423J Boiler Room Evaluation in an amount not to exceed $18,500, and be it further

RESOLVED, That Common Council hereby recommends to the IAWWTF Owners that this project be authorized and funded from the IAWWTF Capital Reserve fund in an amount not to exceed $18,500 for the Engineering costs required for Ithaca Area Wastewater Treatment Facility Boiler Room Evaluation.
February 11, 2020

Mr. Carl Kilgore, Jr.
Chief Operator
Ithaca Area WWTP
525 Third Street
Ithaca, NY 14850

RE: PROPOSAL FOR PROFESSIONAL SERVICES
BOILER ROOM EVALUATION
ITHACA AREA WWTP

Dear Mr. Kilgore:

We are pleased to present our proposal for assistance in evaluating the existing condition of the equipment in the boiler room at the WWTP, and identifying what equipment will be most useful in the future.

I. Background

The boiler room at the WWTP has a number of boilers used for comfort heating of indoor spaces and for process heating of the anaerobic digesters. After the major WWTP upgrade in 1987 the boiler room contained one biogas boiler, one natural boiler and one dual fuel boiler. In 2015 the natural gas boiler was replaced with two new high efficiency CAMUS Model DRNH-2000-MSI natural gas boilers. The biogas boiler and the dual fuel boiler have been in service for 32 years and are approaching the end of their useful lives, as evidenced by frequent water leaks. Both of the newer high efficiency boilers have proved to be maintenance intensive and one may already be approaching the end of its useful life.

More recent improvements, installed as part of the microturbine and biogas upgrade project in 2007-2009, resulted in the installation of biogas monitoring, pressurization, and storage systems. These improvements have allowed for higher utilization of biogas in both the boilers and microturbines in recent years. A study is needed to determine if the
biogas produced is more valuable when used in boilers to produce heat, or in the microturbines to produce heat and electricity, or a combination of both.

II. Scope of Services and Compensation

MRB Group will assist the City in performing the following services:

Boiler Evaluation: Our sub-consultant, Jade Stone Engineering, will visit the boiler room and assess the condition of the existing boilers based on visual inspection. Jade Stone will then:

A. Identify what large, durable, cast iron or other design sectional boilers are commercially available for WWTP boiler room service, and obtain pricing quotations for these items sized to replace the existing dual fuel boilers (2 boilers or different sizes). Obtain pricing quotations from 3 different vendors, if that many vendors exist.

B. Identify what high efficiency natural gas boilers are commercially available for WWTP boiler room service and obtain pricing quotations from 3 vendors for these boilers based on the same heat input as for the dual fuel boilers in item A above.

C. Identify commercially available boilers with dual fuel (natural gas or biogas) burners and comment on how the blower controls on these dual fuel boilers must be changed in order to switch between fuels. If such boilers are commercially available, obtain pricing quotations from 3 vendors for equipment sized to replace the existing dual fuel boilers.

D. Provide a letter report:
   1. Describing the current condition of the existing boilers and a priority order for replacement of the boilers if that is indicated
   2. Including the information gathered as part of items A-C above.

Energy Evaluation: MRB Group staff will provide the following services:

E. Gather the records of the last three years of biogas production and usage to determine how much biogas has been produced, how much has been used in microturbines, how much has been used in boilers, and how much has been flared. A table reflecting the
monthly biogas usage will be prepared to allow the City to observe the seasonal changes in how biogas is used.

F. Gather the records of the last three years of natural gas usage and prepare a table showing this data on a monthly basis. We will verify that all of the natural gas used at the plant is used for comfort and process heating.

G. Evaluate the existing comfort and process heating loads at the WWTP to determine how much boiler capacity is required currently and make estimates of future heat needs which will be affected by the sludge thickening project and other planned projects.

H. Determine the current cost of electricity and natural gas based on monthly utility bills and identify the billing rate structure for each energy source. Understanding the demand/usage billing rate for electricity is critical in the analysis of energy usage, and will be described in the report prepared for this project.

I. Quantify the cost to own and operate the boilers and the microturbines by determining the ongoing capital costs for each item, including the cost to operate the biogas cleaning skid, and the cost of contract maintenance on the boilers and microturbine systems.

J. Use the data gathered on biogas production, utility costs, and operation and maintenance costs to determine the most economically beneficial biogas usage plan.

K. Evaluate redundancy/back-up provisions. The original design had a form of redundancy with a single dual fuel boiler being available as a back up to either the natural gas boiler or the biogas boiler. We will comment on what redundancy makes sense for an updated boiler room arrangement.

L. Evaluate the effect of using high efficiency boilers versus lower efficiency (more robust) boilers on both fuel and maintenance costs. The lower efficiency boilers have lasted over 30 years in the existing boiler room and clearly have certain advantages over the higher efficiency boilers. Our report will quantify the economic cost of fuel usage and maintenance of low and high efficiency boilers.

M. Check the current NYSERDA PON schedule, and WIAA list of grant opportunities, to see if either the study, design work, or the construction phase of a future boiler room project might be eligible for grant funding.
N. Prepare a report containing the information gathered during the project and provide the City with 3 paper copies of the report plus an electronic copy.
O. Meet with you and other City staff to discuss the draft findings and respond to any questions or comments in our draft report.
P. Provide you with 3 paper copies and a pdf copy of our final report.

We propose to perform the scope of services described on a lump sum fee basis.

**Boiler Room Study Report (Lump Sum)........................................... $18,500.00**

The cost figures shown above represent our lump sum amount. Any additional work beyond this fee and outside the scope of this proposal would be reviewed with the Client. MRB Group shall submit monthly statements for services rendered during each invoicing period based on the efforts performed during that period. MRB Group Standard Rates are subject to annual adjustment.

### III. Additional Services

The following items, not included in the above services can be provided on an hourly basis, but would only be performed upon receipt of the City’s authorization.

A. Detailed design work for boiler, pumping, or piping systems.
B. Preparation of construction documents for the boiler room project.
C. Preparation of grant funding applications.
D. Additional review meetings beyond those described.
E. Preparation of drawings of the boiler room.

### IV. Commencement of Work

Upon receipt of the signed proposal, MRB Group will begin work on the project. We anticipate completing the project in 3-4 months from starting the work.
V. Standard Terms and Conditions

Attached hereto and made part of this Agreement is MRB Group’s Standard Terms and Conditions.

If this proposal is acceptable to you, please sign where indicated and return one copy to our office. We have included an additional copy for your records. Thank you for your consideration of our firm. We look forward to working with you on this project.

Sincerely,

Timothy P. Carpenter, P.E.
Project Manager

James J. Oberst, P.E., LEED AP
Executive Vice President/C.O.O.

Enclosure
MRB GROUP, ENGINEERING, ARCHITECTURE, SURVEYING, D.P.C.
AGREEMENT FOR PROFESSIONAL SERVICES
STANDARD TERMS AND CONDITIONS

A. TERMINATION

This Agreement may be terminated by either party with seven days’ written notice in the event of substantial failure to perform in accordance with the terms hereof by one party through no fault of the other party. If this Agreement is so terminated, the Professional Services Organization (hereinafter referred to as P.S.O.) shall be paid for services performed on the basis of his reasonable estimate for the portion of work completed prior to termination. In the event of any termination, the P.S.O. shall be paid all terminal expenses resulting therefrom, plus payment for additional services then due. Any primary payment made shall be credited toward any terminal payment due the P.S.O. If, prior to termination of this Agreement, any work designed or specified by the P.S.O. during any phase of the work is abandoned, after written notice from the client, the P.S.O. shall be paid for services performed on account of it prior to receipt of such notice from the client.

B. OWNERSHIP OF DOCUMENTS

All reports, drawings, specifications, computer files, field data and other documents prepared by the P.S.O. are instruments of service and shall remain the property of the P.S.O. The client shall not reuse or make any modification to the instruments of service without the written permission of the P.S.O. The client agrees to defend, indemnify and hold harmless the P.S.O. from all claims, damages, liabilities and costs, including attorneys’ fees, arising from reuse or modification of the instruments of service by the client or any person or entity that acquires or obtains the instruments of service from or through the client.

C. ESTIMATES

Since the P.S.O. has no control over the cost of labor and materials, or over competitive bidding and market conditions, the estimates of construction cost provided for herein are to be made on the basis of his experience and qualifications, but the P.S.O. does not guarantee the accuracy of such estimates as compared to the Contractor’s bid or the project construction cost.

D. INSURANCE

The P.S.O. agrees to procure and maintain insurance at the P.S.O.’s expense, such insurance as will protect him and the client from claims under the Workmen’s Compensation Act and from claims for bodily injury, death or property damage which may arise from the negligent performance by the P.S.O. or his representative.

E. INDEPENDENT CONTRACTOR

The P.S.O. agrees that in accordance with its status as an independent contractor, it will conduct itself with such status, that it will neither hold itself out as nor claim to be an officer or employee of the client, by reason hereof, and that it will not by reason hereof make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the client, including, but not limited to, Workmen’s Compensation coverage, unemployment insurance benefits or Social Security coverage.
F. **SUCCESSORS AND ASSIGNS**

The client and the P.S.O. each binds himself and his partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither the client nor the P.S.O. shall assign, submit or transfer his interest in this Agreement without the written consent of the other.

G. **P.S.O. NOT RESPONSIBLE FOR SAFETY PROVISIONS**

The P.S.O. is not responsible for construction means, methods, techniques, sequences or procedures, time of performance, programs, or for any safety precautions in connection with the construction work. The P.S.O. is not responsible for the Contractor's failure to execute the work in accordance with the Contract Drawings and/or Specifications.

H. **INVOICES AND PAYMENT**

Client will pay MRB Group, Engineering, Architecture, Surveying, D.P.C. for services in respect of the period during which Services are performed in accordance with the fee structure and work estimate set forth in the proposal. Invoices will be submitted on a periodic basis, or upon completion of Services, as indicated in the proposal or contract. All invoices are due upon receipt. Any invoice remaining unpaid after 30 days will bear interest from such date at 1.5 percent per month or at the maximum lawful interest rate, if such lawful rate is less than 1.5 percent per month. If client fails to pay any invoice when due, MRB may, at any time, and without waiving any other rights or claims against Client and without thereby incurring any liability to Client, elect to terminate performance of Services upon ten (10) days prior written notice by MRB to client. Notwithstanding any termination of Services by MRB for non-payment of Invoices, Client shall pay MRB in full for all Services rendered by MRB to the date of termination of Services plus all interest and termination costs and expenses incurred by MRB that are related to such termination. Client shall be liable to reimburse MRB for all costs and expenses of collection, including reasonable attorney’s fees.

I. **FEES REQUIRED FROM JURISDICTIONAL AGENCIES**

MRB Group, D.P.C. is not responsible for nor does the Compensation Schedule established in the Agreement include fees or payments required of jurisdictional agencies. The client herein agrees to pay all application, entrance, recording and/or service fees required by said agencies.

J. **P.S.O. NOT AN EMPLOYEE**

The P.S.O. agrees not to hold himself out as an officer, employee or agent of the Owner, nor shall he make any claim against the Owner as an officer, employee or agent thereof for such benefits accruing to said officers, employees or agents.

K. **INDEMNITY**

The Owner will require any Contractor and Subcontractors performing the work to hold it harmless and indemnify and defend the Owner and P.S.O., their officers, employees and agents from all claims resulting from the Contractor's negligence in the performance of the work.
3. Finance, Budget and Appropriations

.2 Capital Project for Replacement Pumps and Piping for the Actiflow High Rate Sand Ballasted Tertiary Treatment Phosphorus Removal System at the Ithaca Area Wastewater Treatment Facility (IAWWTF)

WHEREAS, the Ithaca Area Wastewater Treatment Facility requires tertiary treatment for phosphorus removal to meet discharge permit limits; and

WHEREAS, the current system has lost redundancy due to sand pump and chemical pump failures; and

WHEREAS, the current style and age of pumps have contributed to redundancy and reliability concerns, and

WHEREAS, piping associated with the system has worn thin in places due to the abrasive sand pumped in the system; and

WHEREAS, electronic and control systems associated with the chemical feed system do not meet current standards; and

WHEREAS, Koester Associates are the exclusive local representative for the Kruger ActiFlow system; and

WHEREAS, a proposal has been provided by Koester Associates for $93,350.00 which includes:

A. Supply and install 2 McLanahan 3X3 Sand Pumps,
   a. Removal/demo of old pumps and piping.
   b. Provide all material and labor for the purpose of replacing and installing new pumps.

B. Supply and install 2 Verder 5000 peristaltic chemical feed pumps
   a. Provide skid with valves, pressure dampeners and calibration column.
   b. Provide all PVC valves, unions, piping required to retrofit into existing process.
   c. Includes labor, start up and training.

WHEREAS, a contingency fund of 10% ($9,335.00) is necessary to allow for replacement of piping discovered to be deteriorated/failing that is not covered by the above work, subject to a time and material proposal, in addition to electrical/instrumentation work associated with new pump installation; and

WHEREAS, the Special Joint Subcommittee (SJC) approved said project at their regular meeting of April 15, 2020; now, therefore be it
RESOLVED, That Common Council hereby establishes the IAWWTTF Capital Project 4xxJ Replacement Pumps and Piping for the Actiflow Tertiary Treatment Phosphorus Removal System in an amount not to exceed $102,685, and be it further

RESOLVED, That Common Council hereby recommends authorization of this project contingent upon action by all wastewater partners committing their percentage of reimbursement shares to the Joint Activity Fund allocated per the Joint Sewer Agreement as follows:

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<thead>
<tr>
<th>Municipality</th>
<th>Percentage</th>
<th>Project Cost</th>
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<tbody>
<tr>
<td>City of Ithaca</td>
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<tr>
<td>Town of Ithaca</td>
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<td>$41,977.63</td>
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<td>Town of Dryden</td>
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<tr>
<td></td>
<td></td>
<td><strong>$102,685.00</strong></td>
</tr>
</tbody>
</table>
I. Kruger Inc

MUNICIPAL MANUFACTURER’S REPRESENTATIVE AGREEMENT

This Agreement (the “Agreement”) is made and entered into as of the 1st day of September, 2008 (the “Effective Date”), by and between I. Kruger Inc. (“Company”), a Veolia Water Solutions & Technologies company, with principal offices at 401 Harrison Oaks Boulevard, Suite 100, Cary, NC, 27513, and Koester Associates, Inc., a NY corporation (“Representative”), with principal offices at RR#5 Box 020 Madison Blvd. Suite 7.

In consideration of the covenants contained herein and intending to be legally bound, the parties agree as follows:

Section 1. Appointment.

A. The Company appoints Representative, and Representative accepts the appointment by Company of Representative, as the exclusive representative of the Company for the solicitation of orders and sale of “Products” to customers both located in the “Territory” and serving the “Market”, as defined in Schedule “A” and Schedule “B”, a copy of which is attached hereto and incorporated herein by this reference (as the same may be amended by agreement of the parties in writing from time to time).

B. Representative represents and warrants to the Company that it has the necessary and appropriate experience and expertise to fully perform its obligations under this Agreement, that Representative has the power and authority to enter into and perform its obligations under this Agreement, and that the execution, delivery and performance of this Agreement by Representative does not constitute a breach or default under or otherwise conflict with any other agreement or obligation of Representative.

C. Representative understands and agrees that the Company shall be permitted (i) to sell Products in the Territory in "non-assigned" markets; (ii) to sell “non-assigned” Products in the Territory and/or the Markets; and (iii) to appoint other representatives in the Territory for “non-assigned” Products and/or for “non-assigned” markets, and that Representatives shall not be entitled to any compensation arising out of such sales by Company or such other representatives of the Company. Notwithstanding the foregoing, the Company shall also be permitted to sell Products in the Territory in assigned Markets, provided that the Company pays to Representative its commission, if any, which would otherwise be earned and payable pursuant to the terms of the Agreement; and provided further that if such sale is made by the Company or its other representative(s) as part of a bundled offering of both "Products" and "non-assigned" products (a "Bundled Offering"), Representative shall only be entitled to receive a commission on the Products sold as part of the Bundled Offering, and the Company shall have no duty to pay Representative a commission on the "non-assigned" products sold as part of the Bundled Offering. By way of illustration and not limitation, if the Company sells, directly or indirectly through another representative, a Bundled Offering consisting of $300,000 of Products and $200,000 of "non-assigned" products in the Territory, Representative would be entitled to receive a commission on the $300,000 of Products, but he would receive no commission on the sale of the $200,000 of "non-assigned" products included in the Bundled Offering.
D. Company and Representative acknowledge that Representative’s efforts hereunder will, unless otherwise agreed by the parties, involve only those Products of the Company listed on Schedule B.

E. In undertaking its obligations under this Agreement, Representative shall communicate and work with the Company and its assigned Sales Manager(s), it being the intent of the parties that the Representative primarily will be working with the Company and assigned Sales Manager(s) to obtain orders for its Products.

Section 2. Representative’s Duties.

A. Representative agrees that in carrying out its appointment and obligations under this Agreement, it will, at its own cost and expense:

1. diligently promote, solicit, and obtain orders for Products in the assigned Territory and Markets;

2. promptly transmit all inquiries, estimates or preliminary proposals or other such documentation to the Company;

3. make available to Company the names and addresses of all purchasers and prospective purchasers;

4. perform all acts reasonably necessary and desirable to establish a market and to provide adequate coverage for Products;

5. maintain an adequate and efficient sales force properly and adequately trained in the Company’s Products;

6. furnish the Company with such reports, information, and data relating to its performance under this Agreement as the Company shall from time to time request; such as correspondence on projects, budget quotes, customer lists, etc.

7. furnish the Company with such market data relating to the Products as the Company shall from time to time request;

8. notify the Company immediately upon its receipt of any information adversely affecting or likely to adversely affect the credit status of any customer;

9. communicate and assign, and hereby does assign to Company or Company’s nominee any and all inventions, improvements, trade secrets, trademarks and developments conceived by Representative solely or jointly with others relating to the Products, equipment or processes manufactured or owned by the Company and arising out of his services as a representative of Company under this Agreement. Representative further agrees to execute, at all times, upon request and at the expense of Company or its nominee, any and all papers necessary or desirable to apply for and obtain letters of patent of the United States or foreign countries and vest complete title thereto in Company or its or nominee;
10. provide, from time to time, sales booking forecasts, projects in the forecast and Products included. Representative will work with the Company to provide annual sales booking forecast(s) that will be used as a measure of performance of the Representative;

11. carry out its appointment and perform its duties in such a way as to protect the business name, interests and reputation of the Company;

12. assist as specifically requested and directed, from time to time, by the Company in the collection of receivables and settlement of disputes;

13. cooperate with the Company to promote and facilitate cross-selling of the Products and other products and services offered by the Company; and

14. provide such other marketing services reasonably requested by the Company, such as the distribution of promotional and product information.

B. Representative shall submit to the Company for the Company’s prior written approval, all promotional materials proposed to be used by Representative in relation to the Products, other than those promotional materials supplied by the Company.

C. The Company reserves the right to send technical or sales personnel into the Territory to visit or contact potential customers, solicit business, and promote the sale of the Products. The Representative will be notified in advance, when appropriate, of such visits.

Section 3. Authority.

A. Representative’s authority to act for the Company shall be limited to that authority expressly granted within this Agreement.

B. Except as expressly authorized herein, Representative is not authorized to bind the Company in any manner or to incur any obligation, expenditure or liability on behalf of or against the Company or to make any representation or warranty on behalf of the Company. Representative shall not in any way hold itself out as being an agent with authority to bind the Company.

C. Representative shall not misrepresent the status of its relationship with the Company pursuant to this Agreement.

Section 4. Independent Contractor.

A. Representative is and shall conduct all of its business hereunder as an independent contractor and in its own name.

B. Neither Representative, nor any employee, agent, or any other person affiliated with Representative shall be deemed to be an employee of the Company for any purpose whatsoever.
C. Representative shall not be entitled to act as a "distributor" or "buy-reseller" of Products without the prior approval of the Company, which approval shall be within the sole discretion of the Company.

D. Should Representative be authorized by the Company to startup or service the Company’s equipment, systems or processes, a separate written contract shall be required, and Representative shall be required to have and furnish proof of the proper liability insurance(s) and workman’s compensation insurance as required by the Company.

Section 5. Orders.

A. All Product orders solicited or obtained by Representative shall be in writing and shall be issued by the customer directly to the Company in the Company’s name and sent to the Company or to Representative, who shall promptly forward them to the Company at an address designated by the Company.

B. All orders solicited and obtained by the Representative are subject to acceptance or rejection by the Company. The Company reserves the right, without liability to Representative for the payment of any commission, to reject any order for any reason or no reason whatsoever.

C. The Company shall communicate its acceptance of all Product orders to the customer and the Representative, and the Company shall render all invoices directly to the relevant customer.

D. The Company shall solely determine all delivery and production schedules.

E. Representative shall use its best efforts to restrict its activities to accounts of good financial standing and shall provide the Company with any information available to Representative with respect to the financial standing of all customer accounts.

Section 6. Terms and Conditions of Sale.

A. Representative shall solicit and obtain all Product orders at the Company’s scheduled prices, at the applicable prices appearing in the applicable Company proposal or as provided on the Company’s sales order acknowledgment, or at such other prices as the Company may from time to time direct in writing.

B. Products may not be quoted at lower prices than those specified above without the Company’s specific written approval, which approval shall be within the sole discretion of the Company.

C. Each order shall be subject to the Company’s terms and conditions appearing in Company’s proposal and sales order acknowledgment in effect at the time the Company accepts the order. Representative shall have no power or authority to modify or amend any such terms and conditions without the prior written approval of the Company.
D. The Company shall bear all expenses of invoicing and collection from the customers for sales made pursuant to orders obtained by Representative, and the Company shall bear all credit risks for such sales within the credit limits established by the Company in its sole and absolute discretion.

E. The Company shall not be responsible to Representative for payment of any commissions, damages, expenses, or otherwise for the failure of the Company to make delivery, to make collection of payments due, or perform under any accepted orders.

Section 7. Payment for Products Sold. Terms of Payment.

A. All payments for the Products sold by Representative shall be paid directly by the customer to the Company by deposit or wire transfer into an account to be established by the Company or its designated agent. Each invoice for Products sold shall instruct the customer to effect payment accordingly.

B. In the event that any customer makes payment to Representative for Products sold hereunder, Representative agrees to endorse any such checks received for deposit into the Company’s account or to promptly remit to the Company account any such wire transfer within 2 working days after its receipt of such payment from the customer.

C. Terms of payment shall be net thirty (30) days from the date of invoice or as otherwise defined on the invoice or as described in the order acknowledgment.

Section 8. Compensation.

A. The Company shall pay to Representative as full compensation for its services performed hereunder a commission as determined pursuant to the Commission Schedule attached hereto as Schedule "C", and incorporated herein by this reference, for the sale of the Product(s). Such commission will be calculated based upon the net invoice amount of the order for the Products, excluding any discounts, adjustments, freight charges, export crating, taxes, bonding fees, interest, duties and, as determined by the Company, other non-commissionable costs such as royalties, returns and other direct pass-through charges, other than back charges incurred through no fault of the Representative.

B. Representative shall bear all of the expense incurred by it in performing its services hereunder and shall not be entitled to any reimbursement thereof, nor to any other payment whatsoever, except for the commissions provided for in this Section 8.

C. In the event of a change in the Commission Schedule, the Commission Schedule in effect at the time of the bid submission shall govern the calculation and amount of the commission.

D. When the Representative and one or more other representatives of the Company are involved in obtaining a change order for Products, systems or services and/or providing post-order engineering details, the commission shall be allocated in accordance with Schedule C.
E. Commissions are earned as and when the company receives payment for the product. Company shall make payment of commissions to Representative no later than the last day of the month following the month in which the Company receives payment from the customer for the Product(s). As payments are received from the customer, commissions will be paid to the Representative pro-rata in the same ratio as the payment received bears to the total contract price.

F. The Company shall have the right to offset against commissions earned by Representative any claim the Company may have against the Representative.

G. Unless otherwise agreed to by the parties in writing, the Company shall not owe any commission to Representative on any sale to Representative for its own use or for "resale" by Representative, whether acting as a "distributor" or otherwise.

H. Company reserves the right to exclude from the Representative's appointment, customers that Company or its affiliates have designated as Company accounts or customers ("House Accounts"). Schedule "D" attached hereto and incorporated herein by this reference designates current House Accounts for the assigned Territory and Markets. Company may change the list of House Accounts at any time, at its sole discretion, upon written notice to Representative.

I. No commission shall be earned by Representative or paid by Company on sales to "House Accounts", unless, Representative and Company agree in writing beforehand, on the extent of Representative involvement and the amount of commission to be paid by Company in the event the sale is consummated.

J. No commission shall be paid on sales between the Company and any of its affiliates, unless, Representative and Company agree beforehand, in writing, signed by both, on the extent of Representative involvement and the commission schedule to be applied in the event the sale is consummated. For purposes of this agreement an "affiliate" is any company that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the Company.

K. Representative acknowledges and agrees that neither the Company nor any officer, director, employee, agent or other representative of the Company has made or is making any guaranty, representation or warranty to Representative of any nature whatsoever regarding the Products, the Company or any of its affiliates, any of the Company's other products or services, or the level of business, commissions or other compensation that shall or might be attained by the Representative hereunder or otherwise.
Section 9. Competing Products.

Attached to this Agreement as Schedule “F”, is a complete and accurate listing of the principal(s) other than Company that the Representative represents as of the Effective Date, together with a list of the products involved in connection with such representation(s). Representative understands and acknowledges that it is the responsibility of the Representative to notify the Company in writing within ten (10) days of any additions, deletions or modifications to list of principals and/or products set forth on Schedule “F”. During the term of this Agreement, Representative shall not act as a distributor or agent for, or represent the interests of, any firm, company or person who sells products in competition with the Products of the Company, as determined by the Company in its sole and absolute discretion, except for an affiliate of the Company, without the prior written permission of the Company. Acceptance by the Company of the Representative’s current product line sheet in conjunction with the signing of this Agreement constitutes acceptance of any product line conflicts existing as of the Effective Date.

Section 10. Assistance in Adjusting Complaints.

A. Representative is not authorized by Company to adjust any customer complaint or to agree to pay or settle any claim or dispute.

B. Representative shall keep the Company fully informed of any discussions with customers concerning any customer complaints, claims or disputes, shall promptly advise the Company of any proposed or practicable basis for adjustment that Representative deems appropriate, and shall recommend to the Company such course of action as the Representative reasonably believes to be in the Company’s best interest. Representative shall communicate to the customer any offer by the Company for adjustment, payment or settlement or any complaint, claim or dispute, only upon its receipt of and in accordance with the specific written instructions of the Company.

C. No additional compensation shall be due to Representative for any such services.

Section 11. Confidentiality.

A. All drawings, blueprints, price and data sheets, technical and engineering data, product manuals, advertising and sales promotion items, and other sales aids, and all other information pertaining to the Products or the Company or any of the Company’s other products or services (“Confidential Information”) provided to or prepared by Representative shall be and remain the property of Company.
B. Representative shall maintain the confidentiality of such Confidential Information, shall not use it for any purpose other than fulfillment of its obligations under this Agreement, and shall not disclose it to any third party except as authorized in writing by the Company or as otherwise compelled pursuant to a subpoena, regulatory demand or similar process or applicable law; provided that prior to disclosing such Confidential Information, Representative shall to the extent legally permissible give Company notice of such request or requirement to afford Company the opportunity to seek a protective order or other appropriate relief should Company elect to do so.

C. Upon request of the Company at any time, or on cancellation or termination of this Agreement, Representative shall provide to the Company all Confidential Information in Representative’s possession, without retaining a copy of any such Confidential Information.

Section 12. Indemnity.

A. Representative releases and agrees to defend, indemnify and hold the Company harmless from and against claims, damages, losses, costs (including without limitation attorneys fees), and liability arising out of or in any way connected with the negligent or wrongful performance or nonperformance by Representative of any obligation of Representative under this Agreement or the making by Representative of any unauthorized representation or misrepresentation concerning the Products or the relationship between the Company and Representative.

Section 13. Advertising and Promotion.

A. Representative shall aggressively promote the sale of Products to customers in the Markets in the Territory and shall at its own cost and expense, and subject to the prior written approval of the Company, engage in promotional activities to actively promote the sale of Products. The Company shall make available to Representative reasonable quantities of available advertising and promotional materials concerning the Products.

B. The Company may from time to time authorize and grant Representative a limited license to use the Company’s trademarks as provided herein. Representative shall first submit to the Company for the Company’s approval proofs of its intended use of the trademarks on stationary, printing, in advertising copy or other media. The Company may, in its sole and absolute discretion, approve or reject Representative’s proposed use of the trademarks. Representative may utilize the trademarks as submitted to the Company only after such time as it receives written approval from the Company.
C. For guidance, the Company will not approve a use in which: (1) there is not a prominent statement that Representative is a representative of the Company for the sale and promotion of the Products; (2) the trademarks are larger than or are given a more prominent position than the name or symbol of the Representative; (3) the trademarks are used together with that of any of the Company’s competitors; or (4) the impression is created by use of the trade-marks that Representative’s relationship with the Company is any other than as set forth in this Agreement.

D. Representative agrees that upon the giving of written notice by the Company to Representative to cease use of the trademarks or upon expiration or termination of this Agreement, Representative will immediately discontinue any use of and obliterate all display of the trademarks. Notice to cease or modify use of the trademarks may be given independently of continued performance by the parties under this Agreement. Such authorization to use Company’s tradenames and trademarks shall not confer nor be construed as transferring any ownership in such trade names and trademarks to Representative.

E. The Company, at its sole discretion, may include Representative’s name and address in its promotional efforts and materials.

Section 14. Representative’s Conduct.

A. In carrying out its appointment hereunder, Representative shall not make any payment of money or anything of value to any customer or representative of a customer in return for or to secure any order. No money, property, or thing of value shall be offered or used by Representative, directly or indirectly, to influence improperly or unlawfully any decision, judgment, action, or inaction of any official, employee, or representative of any government agency, or instrumentality thereof, or of any other person or entity, in connection with or relating to the subject matter of this Agreement. Representative shall at all times comply with all national, provincial and local laws, regulations, customs and policies.

B. Should Representative breach the terms of this Section 14, the Company shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement immediately without any liability or, at its discretion, to deduct from the commissions to be paid to Representative or to otherwise recover from Representative the full amount of any consideration used by Representative in violation of this Section 14.

C. On or before the Effective Date, Representative shall sign and return Schedule “E”, policy statement for avoidance of questionable transactions as part of this Agreement.

Section 15. Term and Termination.

A. The initial term of this Agreement shall be for one year, commencing as of the Effective Date.
B. This Agreement may be terminated by either party hereto without cause at any time by providing to the other party at least 30 days prior written notice of its intent to terminate the Agreement. Either party may terminate this Agreement immediately if the other party materially breaches this Agreement and fails to commence and diligently pursue to cure such breach within five days of its receipt of written notice from the non-breaching party specifying in reasonable detail the nature of the breach.

C. This Agreement may also be immediately terminated by either party, by written notice, if the other party shall be adjudicated bankrupt or if any receiver or trustee is appointed for it or for a substantial portion of its assets, or if it shall make an assignment of substantially all of its assets, or if it shall make an assignment of substantially all of its assets for the benefit of its creditors, or shall become insolvent in either law or equity or cease operations.

D. This Agreement shall be automatically renewed on an annual basis, subject to the parties termination rights set forth above.

Section 16. Rights at Termination.

A. Subject to the provisions of this Section 16 and Schedule “C-T” attached hereto, no termination of this Agreement shall affect any rights or obligations of either of the parties that shall have accrued prior to the effective date of such termination, including Representative’s right to receive, in accordance with the provisions of this Agreement and subject to any claim or setoff of the Company, any commissions under this Agreement on sales made before such termination pursuant to orders obtained by Representative in accordance with this Agreement.

B. In the event of the termination of this Agreement by either party, with or without cause, Representative shall be entitled to those commissions calculated in accordance with Schedule “C-T” and to no other commissions or compensation whatsoever. The payment by the Company of commissions in accordance with Schedule “C-T” shall be the sole liability of Company to Representative and the exclusive remedy of Representative in the event of the termination of this Agreement for any reason.

Section 17. NON-Assignment.

A. This Agreement shall be binding upon the Company and Representative and their respective successors and permitted assigns. This Agreement may not be assigned by Representative, whether by operation of law, through the sale of assets, stock, change in control or otherwise, nor shall Representative delegate any of its duties hereunder without the prior written consent of the Company. Any attempted assignment of this Agreement by Representative in violation of this provision shall be null and void and of no legal effect.

B. The Company may assign this Agreement to any affiliate, or to any successor to its business, in whole or in part (whether by operation of law, through the sale of assets, stock, change in control or otherwise), without the consent of Representative. The Company shall, in such event, provide Representative with prompt written notice of such assignment.
Section 18. **Notices and Communications.**

Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed sufficiently given (a) upon the delivery date received by the intended recipient if delivered by hand; or (b) when sent by registered or certified mail, postage prepaid, or by reputable overnight courier service, facsimile, email or other similar electronic transmission device, addressed to the party to whom it was sent at the address of such party set forth below or at such other address as the party shall subsequently designate to the other in writing by notice given in accordance with this section.

TO: COMPANY:

I. Kruger Inc.
401 Harrison Oaks Boulevard, Suite 100
Cary, NC 27513

ATTN: Robert Clay

TO: REPRESENTATIVE:

Name: Koester Associates, Inc.
Address: RR#5 Box 620 Madison Blvd.
         Suite 7
         Canastota, NY 13032

ATTN: Mark Koester

Section 19. **Integration, Modification and Waiver.**

A. This Agreement, including the Schedules attached hereto and made a part hereof, constitutes the final complete and fully integrated understanding between the parties and supersedes any previous oral or written understandings with respect to the subject matter hereof.

B. This Agreement may not be amended or modified except in writing signed by an authorized signatory of each of the parties.

C. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.

D. Unless expressly provided to the contrary herein, all remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.
Section 20. **Attorney’s Fees.**

If either party commences or is made a party to any action or proceeding to enforce or interpret this Agreement, the prevailing party in such action or proceeding shall be entitled to recover from the other party all attorneys’ fees, costs and expenses (including the allocated costs of in-house counsel) incurred in connection with such action or proceeding or any appeal or enforcement of any judgment obtained in any such action or proceeding.

Section 21. **Counterparts.**

This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument.

Section 22. **Governing Law and Severability.**

This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. Nothing contained herein shall be construed so as to require the commission of any acts contrary to law, and wherever any provisions of this agreement are invalid or there is a conflict between any provisions of this agreement and any present or future statute, law, ordinance or regulation, such provisions shall (i) be curtailed, limited and/or deemed not to be a part of this agreement only to the extent necessary to make it comply with such statute, law, ordinance or regulation, and (ii) not affect the validity or enforceability of the remaining provisions.

Section 23. **Further Assurances.**

The parties covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out this Agreement.

Section 24. **No Consequential Damages.**

Company shall not be liable to Representative, whether directly or indirectly through an obligation of indemnification or otherwise, for any consequential, incidental, punitive or other items of indirect damages, including without limitation lost profits, resulting from the performance or non-performance by Company of any of its obligations under this Agreement, whether arising in law, equity, tort or any other theory of liability.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate as of the day and year first written above.

WITNESS:

Lisa R. Cochran
Date: 8/13/2008

COMPANY:
I. Kruger Inc

Name: Michael Gutshall
Signature:
Date: 8/13/08
Title: President

WITNESS:

REPRESENTATIVE

Firm Name: Koester Associates, Inc.
Principal: Mark Koester
Signature:
Date: 9/4/08
SCHEDULE A

I. KRUGER INC.
DOMESTIC MANUFACTURER'S REPRESENTATIVE AGREEMENT
"MARKETS AND TERRITORY"

REPRESENTATIVE: Koester Associates is authorized to promote the sale of PRODUCTS (as defined in Schedule "B") to the MARKET or MARKETS in the TERRITORY or TERRITORIES defined below:

1. Market Covered:
   a. Exclusive Municipal
   b. The "Market" shall not extend to any Industrial customer or application. Representative must obtain the prior written approval to participate in an Industrial Market sale from the Company's Vice President of Sales. Whether to grant such approval and the commission payable, if any, pursuant to an approved sale will be determined in the sole discretion of the Company on a case by case basis.

2. Territory defined as:
   NY The portion of the State of New York north and west of and including the counties of Delaware, Greene and Columbia

Note: DEFINITION OF MARKETS

Market is defined as MUNICIPAL or INDUSTRIAL as follows:

Municipal: Equipment or services provided for use by a municipal or governmental entity (village, town, city, state, federal agency, district, private public utility etc.); by an authority or other similar public body primarily constituted to serve one or more such entities; by organizations principally funded by tax revenues local, state or federal; by non-profit organizations or by organizations who sell products or services generally construed for use in providing potable drinking water services, domestic wastewater treatment services or domestic biosolids management services. This includes engineering organizations, contractors or others involved in studies, design, construction, retrofit, maintenance and operation of facilities for the above.

Industrial: Equipment or services provided for use by an entity manufacturing or producing a product or service for sale. This includes engineering organizations, contractors or others involved in studies, designs, construction, retrofit, maintenance and operation of facilities for the above.
3. Finance, Budget and Appropriations
.3 Establishment of Fee for Use of Right of Way and to Authorize Approval of a Master License Agreement for Small Cell Facilities with 4G and 5G capability.

WHEREAS, Verizon has expressed interest in installing small cell or wireless facilities with 4G and 5G capability on poles primarily situated within the City’s right of way; and

WHEREAS, through the Master License Agreement and design guidelines, the City will retain ultimate control and authority over installations within the City’s right of way, including small cell or wireless facilities; now therefore be it

RESOLVED, That Common Council authorizes the following fees, which may be updated from time to time, for small cell or wireless facilities using poles within the right of way:

One-Time Pole License Application Fees: $500.00 for an application for attaching to up to 5 facilities, and $100.00 for each additional attachment beyond 5, and $1,000.00 for an application for a new pole.

City-owned Poles Recurring Fee: $270.00 - per pole per year

Privately Owned Poles Previously Permitted for Installation Recurring Fee: $135.00 – per pole per year; and

RESOLVED, That the Mayor, subject to the advice of the City Attorney, is authorized to enter into an agreement substantially similar to the Master License Agreement included herewith requiring that Verizon comply with the included preliminary design guidelines, which guidelines may be updated at any time on the determination of the Director of Planning.
SMALL WIRELESS COMMUNICATIONS FACILITIES
MASTER LICENSE AGREEMENT

THIS SMALL WIRELESS COMMUNICATIONS FACILITIES MASTER LICENSE AGREEMENT ("Agreement") is entered into this ____ day of _______________, 20__, ("Effective Date"), by and between the City of [CITY] ("City"), and [VERIZON ENTITY] ("Licensee"). City and Licensee are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

RECITALS

A. City owns, operates, maintains or otherwise controls the public rights-of-way situated within its jurisdictional boundaries and owns as its personal property a certain number of poles located in the public rights-of-way.

B. Licensee owns and/or controls, maintains and operates a wireless communications network, for which Licensee desires to install, attach, operate and maintain Small Wireless Facilities (as defined below) in the public rights-of-way as provided herein.

C. City recognizes that Small Wireless Facilities, including facilities commonly referred to as “small cells” and “distributed antenna systems,” are critical for the City's population to access advanced technologies wirelessly and are often deployed most effectively in the public rights-of-way.

D. The Parties acknowledge and agree that the purpose of this Agreement is to permit the deployment of Small Wireless Facilities within the public rights-of-way, subject to the all applicable Laws (as defined below), including but not limited to the rules, regulations and orders of the Federal Communications Commission, as further described herein.

ACCORDINGLY, in consideration of the covenants of this Agreement and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties agree as follows:

1. Grant. Subject to Laws (defined in Section 15) and this Agreement, City grants Licensee a nonexclusive license to (i) access, use and occupy the City’s ROW (as defined below) 7 days a week, 24 hours a day, for the installation, construction, use, maintenance, operation, repair, modification, replacement and upgrade of equipment, technologies, frequencies and related fiber and materials reasonably necessary to access, connect, operate and provide power to its equipment ("Equipment") that enables Licensee’s wireless communications ("Licensee Use"); (ii) use and/or replace City owned or controlled poles for Licensee’s Use (“City Owned Poles”); (iii) use privately owned or controlled poles, including replacement poles, for Licensee’s Use in the ROW pursuant to agreement with the entity owning the poles ("Privately Owned Poles") in which Licensee shall be solely responsible for any costs or fees assessed by the private owner or otherwise associated with Licensee’s use of the Privately Owned Poles (iv) install, replace or remove Licensee, Licensee affiliate or, for Licensee benefit, third-party owned poles in the ROW
for Licensee’s Use (“Licensee Owned Poles”) (collectively the poles identified in subclauses (ii), (iii) and (iv) are referred to as “Poles”). For purposes of this Agreement, the “ROW” means the public rights-of-way owned, managed or controlled by the City. Licensee’s Use of Poles shall, in accordance with Section 4, require the City’s approval of a Pole License (as defined below). Licensee’s Use for attachments to support structures in the ROW owned by Licensee or by a third party shall not require a Pole License; however, upon request, Licensee shall provide the City a certification of authorization to attach to such third party structure. The City expressly reserves for itself the rights and uses of the ROW for its public purposes and for the public’s health, safety and general welfare.

2. **Term of Agreement.** The term of this Agreement shall be for 5 years beginning on the Effective Date (the “Term”). Unless either Party provides written notice to the other Party at least ninety 90 days prior to expiration of the Term that such Party will not renew the Term (either with or without cause), the Term will automatically renew for each of 5 consecutive additional 5 year periods, each subject to the same notice of non-renewal. After the expiration or earlier termination of this Agreement, it shall apply to all Pole Licenses entered into hereunder. Notwithstanding the foregoing, any Pole License approved within the last two years of the initial term or any renewal term shall remain in effect for no less than 3 years.

3. **Fees.** Licensee shall pay to the City the Fees set forth in the “Fee Schedule” attached hereto and made a part hereof as Exhibit A. Licensee shall pay the one-time application fee with submission of the Pole Application (defined in Section 4(a)). Licensee shall pay the initial recurring fee within ninety (90) days of the Commencement Date (defined in Section 4(e)) and pay subsequent recurring fees on or before each anniversary of the Commencement Date. Before any recurring fees are paid, City shall provide Licensee a completed, current Internal Revenue Service Form W-9 and state and local withholding forms if required. Licensee may make payments by check made out to the order of the City of [CITY] and sent to the following address or through electronic transfer subject to the City’s approval and necessary bank routing instructions.

```
City of [CITY]  
[DEPARTMENT]  
[Attn: [NAME/TITLE]]  
[ADDRESS]  
```  

4. **Pole License.**

   (a). Prior to installing any Equipment, new Licensee Owned Poles or replacement City Poles or Privately Owned Poles, Licensee shall file an application with the form attached hereto and made a part hereof as Exhibit B (“Pole Application”) for one or more poles. Within 90 days of receipt of a Pole Application for Equipment or replacement of City Poles or Privately Owned Poles or 90 days for new Licensee Owned Poles, the City shall, in writing, approve or reject the Pole Application, otherwise the Pole Application shall be deemed approved. If the City timely rejects the Pole Application, the review period will be suspended until Licensee cures the non-compliance. Upon approval, a Pole Application shall be deemed to be a separate pole license (“Pole License”) for each pole included in the Pole Application. With each Pole
Application, Licensee agrees to the following:

i. Licensee shall submit a list and drawings, with all information required by City’s ordinances or Laws, including safe distance specifications for Equipment, of all preferred locations for installation of its Equipment, new Poles, and of Poles to be replaced by Licensee, to the City Office of Engineering (“City Engineer”) for approval prior to commencement of any work. Approval of work in the ROW shall be reasonably based on considerations of the impact to any City Owned Poles, the impact (including disruption and damage) of the Equipment or Poles on the ROW or on other City property or operations.

ii. If the installation of a Small Wireless Facility results in the creation of a double pole, Licensee agrees that it will cooperate in good faith with the City in efforts to get the utilities and other companies having attachments on the original pole to relocate the attachments to the new pole so that a double pole can be eliminated as soon as practicable.

iii. The City may in its sole discretion, with advance written notice to Licensee, retain a consultant with expertise in telecommunications technology and related issues to assist the City in its review of any application submitted under this License.

iv. Based on the complete applications, the City will verify that the Equipment proposed in the design complies with the configurations and the Equipment specifications set forth in Exhibit A, and evaluate compliance with the provisions of the City Code and the City’s Aesthetic Standards, as may be amended from time to time, and completion of the State and City Environmental Quality Review Act/Ordinance (“SEQRA/CEQRO”).

vi. If the City determines compliance has been achieved, the City will approve the application, provided that all required fees are paid and the application is complete and in compliance with all Laws. If the application is denied, the City will provide its basis for such denial in writing.

vii. Except as set forth in Section 7(a), all License approvals shall be only for the specific Equipment and Poles approved by the City and any additional or new Equipment shall be subject to the same approval process as the original application. Approval of the use of available City-owned fiber strands and/or conduit or other City-owned property or facilities, including but not limited to lighting fixtures, electroliers, handholes, manholes, fiber optic strands, and other City-owned property, structures or equipment, shall be subject to written agreement between the parties concerning the terms for the use thereof, including but not limited to compensation in an amendment to this Agreement or in a separate agreement.

(b). City may reject a Pole Application only for one or more of the following reasons, which must be specified with reasonable detail in the rejection: (i) concerns about structural capacity, safety, reliability, or generally applicable engineering practices, which may include, but shall not be limited to the City’s responsibility for providing fire and other emergency access, protecting safe movement and control of vehicular, bicycle and pedestrian traffic (ii) the Pole Application is incomplete; (iii) the proposed Equipment exceeds the height, dimension or other parameters for small wireless facilities under applicable Law (“Small Wireless Facilities”); (iv) the design documents attached to the Pole Application do not comply with this Agreement or with the City’s pole attachment laws for traffic light poles, show interference with or pose a safety risk in servicing the City’s public safety radio system, traffic signal light system, or other communications components, or do not comply with the Design Criteria; (v) if the Pole Application also concerns installation of a new pole, and the property or ROW on which it will be sited is needed by the City
for a public purpose that has already been identified at the time the application is submitted; or (vi) the Pole Application does not include a load bearing study.

(c). Any aesthetic or other design criteria for Small Wireless Facilities and poles upon which Small Wireless Facilities are attached (collectively, the “Design Criteria”) which are adopted by the City shall only apply if the criteria are (i) reasonable, (ii) applied equally and in a non-discriminatory manner to other types of infrastructure deployments within the ROW, (iii) objective and published in advance of a Small Wireless Facility request/application submitted herein, and (iv) comply with applicable federal and state Laws. If pole reinforcement or replacement is necessary, Licensee shall provide engineering design and specification drawings demonstrating the proposed alteration to the pole. Changes made to the City’s Design Criteria shall not be imposed or otherwise applied retroactively unless required by Laws. Equipment types and installation configurations substantially consistent with the drawings and plans attached hereto as Exhibit C are deemed to comply with the Design Criteria.

(d). The construction, installation, operation, maintenance, relocation and removal of Equipment and Poles shall be accomplished by the Licensee without cost or expense to the City and shall be subject to the requirements of this Agreement and in accordance with Laws and shall be accomplished in such manner as not to endanger persons or property or unreasonably obstruct access to, travel upon or other use of the specified ROW.

i. Licensee shall pay for any electricity service for Small Wireless Facilities. As permitted by the electric provider, Licensee may install an electric meter on the City pole or the ground adjacent to the City pole; in the event installation of an electric meter is not permitted, Licensee shall be responsible for its estimated pro-rata share of electrical service used. Licensee shall be solely responsible for compliance with and all costs or fees associated with studies, designs, plans, relocation of City equipment and any additional requirements of any owner of Privately Owned Poles on which Licensee intends to install equipment.

ii. Licensee shall be responsible for any make-ready work required by the City or any private owner of a pole or other facility to accommodate the attachment of Licensee’s Equipment to any Poles, including but not limited to field inspections, surveys, structural analysis, construction, materials, cost of relocation or removal (less salvage value), cost of clearing or expanding existing conduit, cost of substitution of light poles, tree trimming and construction and conduit system cleaning. Licensee or its agent is authorized to commence and continue work so long as it is done in compliance with the insurance, construction, maintenance and other requirements described in the License.

iii. To the extent caused by Licensee and as to the parties in this Agreement only, Licensee shall be responsible for any damage to City streets, existing utilities, poles, curbs and sidewalks due to its installation, maintenance, repair or removal of its Equipment or Poles in ROW, in accordance with the relevant law, and shall repair, replace and restore, according to current
standards and specifications, any such damage at its expense. If Licensee does not repair the site to its original condition, then the City shall have the option, upon five (5) days’ prior written notice served by return receipt mail to Licensee or without notice if an emergency exists, as determined by the City Engineer, in the exercise of her/his reasonable discretion, to perform or cause to be performed such reasonable and necessary work and to charge Licensee for the actual costs incurred by the City at City’s standard rates plus 15% for administrative costs. Upon the receipt of a demand for payment by the City, Licensee shall promptly reimburse the City for such costs.

iv. Licensee shall deposit with the City a security instrument, in such amount and type as required of other occupiers of the ROW providing telecommunication services. Such amount shall act as security for the faithful performance by the Licensee of the requirements of this Agreement and the Laws.

(e). Licensee shall maintain accurate maps and other appropriate records of its Equipment and Poles as they are actually constructed in the ROW. Such maps and records shall be promptly updated in the event of relocation or removal of any Equipment or Poles. All maps, drawings and other records shall show in detail the exact nature and location of all Equipment and Poles installed within the ROW, including to the extent available to the Licensee, the total linear footage of all of Licensee’s Equipment, including wire, fiber optic strands, innerduct or other Equipment, which shall be provided to the City Engineer within thirty (30) days from execution of this Agreement.

(f). The term of each Pole License shall be no less than 3 years beginning on the first day of the month following the date that is 90 days from the date of the fully approved or fully executed (as applicable) Pole License (“Commencement Date”), but otherwise run with the Term of Agreement unless terminated as provided below.

(g). A Pole License may be terminated prior to the expiration of its term: (i) by City upon written notice to Licensee, if Licensee fails to pay any amount when due and such failure continues for 30 days after Licensee’s receipt of notice (which may include any amounts assessed to the City by virtue of Licensee’s installation on a Privately Owned Pole); (ii) by either Party upon written notice to the other Party, if such other Party fails to comply with this Agreement and the party has failed to initiate a cure within 60 days after receipt of written notice; (iii) by Licensee at any time for any reason or no reason; (iv) by Licensee in the event that Licensee fails to timely obtain or maintain, or is not satisfied with any governmental approval applicable to Licensee; (v) by City, upon such notice as practicable, and to the extent the Pole License presents a hazard to the public that requires exigent or immediate termination and is not otherwise remedied by the authorized work specified in subparagraph 7(c) below; or (vi) by City upon at least three (3) months written notice to Licensee that the Superintendent has reasonably determined that the premises which the Pole License occupies is needed for a public purpose and no viable alternative location can be identified as provided in paragraph 8 below.
(g). Following expiration or earlier termination of any Pole License, Licensee shall remove all Equipment from the City owned or controlled poles and, other than reasonable wear and tear, repair and restore the City owned or controlled poles and the ROW to its prior condition, unless the City authorized otherwise. In the event that Licensee removes any City poles pursuant to this Agreement, the City shall retain ownership of any poles Licensee or its contractor removes and shall provide directions to Licensee for their reuse or disposal.

5. **Permits/Municipal Code.** While the requirements of the City’s Code (“Code”) are in addition to the requirements of this Agreement, Licensee shall be required to apply for and obtain permits that are required of other occupants of the ROW and/or performing similar work, including but not limited to applying for (including pay any applicable permit fee) and obtaining a street permit, tree permits, electrical permit, and ensuring that any work zone and installation is compliant with the provisions of the Manual on Uniform Traffic Control Devices (“MUTCD”).

6. **Interference.**

   (a). Licensee will not materially cause interference to City traffic, public safety, public improvement projects, public works operations or other communications signal equipment in the ROW. Except as set forth in Section 6(c) with respect to third parties, Licensee in the performance and exercise of its rights and obligations under this Agreement, shall not materially interfere in any manner with the existence and operation of any and all public and private rights of way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, and other telecommunications, utility or municipal property, without the written approval of the City or the owner or owners of the affected property, except as expressly permitted by applicable laws or this Agreement. The City agrees to require the inclusion of this or a similar prohibition against interference in all agreements the City may enter into, after the date of this Agreement, with other information or communications providers or carriers. The City agrees that City will not cause interference to Licensee’s Equipment or Licensee’s Use.

   (b). If interference occurs, the non-interfering Party shall notify the interfering Party via telephone to Licensee’s Network Operations Center at (800) 621-2622 or to City at (_____________), and the parties shall work together to cure the interference as soon as commercially possible.

   (c). Licensee understands that the rights granted under this Agreement are nonexclusive and that the City shall have the right to permit other providers of telecommunications, information or other services to install equipment or facilities in the ROW, including on City-owned property and facilities also used by Licensee. Senior priority rights are bestowed on Licensee as of the date of execution of this Agreement with respect to third parties that subsequently enter into Master License Agreements or install Equipment or Poles in the ROW under a valid license or permit. A party without senior priority rights shall have the burden to correct any interference caused by their installation of equipment or facilities with respect to those with senior priority rights, provided the equipment and facilities of the holder of senior priority rights are in compliance with the requirements of any license or permits for such equipment or facilities.
(d). This Agreement and any Licenses are subordinate to any prior and continuing vested right of the City and other persons legally authorized to use the specified ROW for each License location, for the purpose of constructing, installing, maintaining, locating, upgrading, repairing, operating, protecting, reconstructing, relocating, replacing and removing all other Equipment in, under, over, across and along the ROW, including ingress and egress. Each License and this Agreement are also subordinate to all recorded easements, restrictions, conditions, covenants, encumbrances and claims of title which may affect the specified ROW. Licensee shall, at its own expense, obtain such permissions as may be required because of existing or future rights granted to or held by other parties.

7. Maintenance, Repairs and Modifications.

(a). Equipment Maintenance, Repairs and Modifications. Licensee shall keep and maintain all Equipment in commercially reasonable condition and in accordance with any applicable and non-discriminatory maintenance requirements of City. Licensee may conduct testing and maintenance activities, and repair and replace damaged or malfunctioning Equipment at any time. Subject to the requirements of any owner of Privately Owned Poles for which Licensee shall be solely responsible for compliance and associated costs, Licensee may maintain, repair, replace and make like-kind modifications to any Small Wireless Facility that do not materially change the size, height and weight of the Small Wireless Facility or exceed the structural capacity of the supporting structure without requiring additional applications, permits or other City approval. Licensee shall obtain all required permits and prior approvals from the City for all other work subject to the terms of this Agreement.

(b). Pole Repairs and Replacements. If a City pole for which Licensee has a Pole License is in need of repair or replacement, as determined by the City in its reasoned discretion, the City shall repair or replace such pole at soon as reasonably practicable and required under the circumstances, unless otherwise agreed by the Parties in a Pole License. If City becomes aware of damage to a City pole that supports the Equipment, City shall notify Licensee’s Emergency Contact as soon as practicable. The Parties will use reasonable efforts to coordinate any necessary responses. In the event of any damage to a pole that impacts Licensee’s Use, Licensee may repair or replace the pole with a like-kind pole at its own expense. Licensee may reinstall its Equipment after a damaged pole has been repaired or replaced. Licensee may temporarily use an alternative pole or structure reasonably acceptable to the Parties during repair or restoration of a pole.

If Licensee intends to replace or relocate any existing Pole with any third party telecommunications facilities or other equipment or facilities attached to it, Licensee shall be responsible for notifying the owner(s) of the attached third party equipment or facilities that the Pole is going to be replaced or relocated and proof of such notification shall be provided to the City Engineer. It shall be Licensee’s sole responsibility to coordinate the protection and relocation of any such third party equipment or facilities with the third party and Licensee shall be solely responsible for all costs associated with such protection and relocation of the third party equipment and facilities. In addition to the indemnification requirements of this agreement,
Licensee shall indemnify and hold harmless the City from any claims made by such third party owners or lessees of the equipment or facilities which are relocated from existing Poles to replaced Poles by Licensee, including any claims directly related to the relocation concerning loss of income or business. This indemnification shall not apply to the negligence or willful misconduct of the City.

(c). **Emergency Events.** City reserves the right to take all reasonable actions in the case of an emergency to protect the public health and safety of its citizens, and to ensure the safe operation of its rights of way and public facilities, and assess the costs of such work to Licensee if such work was necessitated by Licensee’s negligence or willful misconduct. The Parties will use reasonable efforts to coordinate any emergency responses. In case of an emergency affecting the Equipment or Licensee’s Use, Licensee may access the ROW and perform necessary repairs to its Equipment and to the pole, including the right to install a replacement pole, without first obtaining any otherwise necessary permit(s) or authorization(s). All emergency work in the ROW shall be conducted in a safe and good workmanlike manner and in accordance with Laws, including but not limited to the MUTCD.

(d). **Emergency Contacts.** Licensee’s network operations center may be reached 24/7 at (800) 621-2622. City’s 24/7 emergency contact information is _________________. Each Party will maintain the emergency contact information current at all times with the other Party.

(e). If Licensee intends to abandon any portion of its Equipment and/or Pole, it shall notify the City Engineer, in writing at least thirty (30) days in advance thereof and Licensee shall remove the Equipment and/or Pole at its own expense or, at the City’s sole option, may abandon some or all of the Equipment and/or Pole in place. Except for Equipment or Poles authorized by the City Engineer to remain in place, Licensee shall remove all such Equipment and/or Poles from the ROW within thirty (30) days from the discontinuance of service over such Equipment or Pole, unless the City Engineer authorizes a different removal timetable. In the event Licensee fails to remove its Equipment or Pole within such period, the City may cause the same to be done, without further notice to Licensee and to charge Licensee for all costs incurred in such removal and storage, including all costs to restore the ROW and administrative costs of 15% plus any penalties as authorized by the City Charter and Code. Upon the receipt of a demand for payment by the City, Licensee shall promptly reimburse the City for such costs.

If the City has not received a notice of intent to abandon from Licensee but otherwise determines that Licensee has abandoned its Equipment or Poles, the City shall notify Licensee of its determination that the Equipment or Pole has been abandoned and demand a plan for removal of the abandoned Equipment or Pole. If Licensee fails to respond or to provide an acceptable plan, within thirty (30) days from the date of the notice, the City may remove or cause to be removed some or all of the abandoned without further notice and may charge Licensee for all costs incurred for such removal and storage, including all costs to restore the ROW. Upon the receipt of a demand for payment by the City, Licensee shall promptly reimburse the City for such costs including administrative costs of 15%.
8. **Removal and Relocation.** No later than 90 days after receipt of written notice from City, Licensee shall remove, repair and return the ROW to a safe and satisfactory condition, and may relocate the Equipment or Pole to an alternative location made available by City due to: (i) construction, expansion, repair, relocation, operation, or maintenance of a street or other public works or improvement project; or (ii) maintenance, upgrade, expansion, replacement, operation, or relocation of City or third party owned light poles, City traffic light poles and/or traffic signal light system; (iii) permanent closure of a street or sale of City property; or (iv) to the City’s public safety responsibilities, which may include but are not be limited to proper fire and other emergency access, protecting safe movement and control of vehicular, bicycle and pedestrian traffic. The City shall require removal or relocation only if necessary, which shall be in the City’s reasonable discretion. If Licensee fails to remove or relocate any Equipment or Pole within 90 days, City shall be entitled to remove the Equipment or Pole at Licensee’s expense. The Parties shall cooperate to the extent possible to assure continuity of service during any relocation and identify a reasonably equivalent location that affords Licensee substantially similar engineering objectives.

If removal or relocation is at the request of or the convenience of a third party, Licensee shall not be responsible for any costs or expenses for such removal or relocation, however all costs and expenses shall be prepaid by such third party at any time before construction commences. The City for its own and on behalf of any third party, will cooperate and issue, on an expedited basis, all Licenses or permits necessary to enable Licensee to relocate its Equipment or Pole without disruption to its services.

9. **Indemnity/Damages/Waiver and Limitation of Liability.** Licensee shall indemnify, defend and hold the City, its employees, officers, elected officials, agents and contractors (the “Indemnified Parties”) harmless from and against all injury, loss, damage, liability, costs or expenses arising from any third party claims resulting from Licensee’s Use or Licensee’s breach of this Agreement. Licensee’s indemnity shall not apply to any liability resulting from the negligence or willful misconduct of the City or other Indemnified Party. The City shall give prompt written notice to Licensee of any claim for which the City seeks indemnification. Licensee shall have the right to investigate these claims. Licensee shall not settle any claim without reasonable consent of the City, unless the settlement (i) will be fully funded by Licensee, and (ii) does not contain an admission of liability or wrongdoing by any Indemnified Party. Neither party will be liable under this Agreement for consequential, special, punitive or indirect damages, whether under theory of contract, tort (including negligence), strict liability, or otherwise.

Licensee waives the following: 1) any claim that it has obtained any grandfathered or other special status by making any investment or implementing any service pursuant to existing and prior permits, licenses, and any prior agreements, except as specifically set forth herein; 2) any and all claims, demands, causes of action, and rights it may assert against the City on account of any loss, damage, or injury to any Equipment or Pole or any loss or degradation of the services as a result of any event or occurrence which is beyond the reasonable control of the City; and 3) any and all claims of liability for the cost of repair to damaged Equipment or Pole from any cause.
whatsoever, unless caused directly by the willful, intentional or malicious acts of the City, its employees, agents or contractors, and in no event shall the City be liable for indirect or consequential damages.

10. Insurance.

(a) Licensee and its subcontractors shall carry the following insurance: (i) commercial general liability insurance in an amount of $3,000,000 per occurrence and $4,000,000 general aggregate and which provides coverage for bodily injury, death, damage to or destruction of property of others, including loss of use thereof, and including products and completed operations; (ii) Workers’ Compensation and Employer’s Liability Insurance as required by law; and (iii) employers’ liability insurance in an amount of $500,000 bodily injury each accident, $500,000 disease each employee, and $500,000 disease policy limit.

(b) The insurance coverages identified in this Section: (i) except the workers’ compensation and employer’s insurance, shall include the City as an additional insured as its interests may appear under this Agreement; (ii) will be primary and non-contributory with respect to any self-insurance or other insurance maintained by the City; (iii) contain a waiver of subrogation for the City’s benefit; and (iv) will be obtained from insurance carriers having an A.M Best rating of at least A-VII.

(c) If requested, Licensee shall provide the City with a Certificate of Insurance to provide evidence of insurance. Licensee will endeavor to provide the City with thirty (30) days prior written notice of cancellation upon receipt of notice thereof from its insurer(s).

11. Assignment. Licensee may assign this Agreement, any City Pole License, and/or related permits to any entity which (i) is an affiliate, subsidiary or successor of Licensee; or (ii) that acquires all or substantially all of the Licensee’s assets in the market. Licensee shall provide the City notice of any such assignment. Otherwise, Licensee shall not assign or transfer this Agreement or the rights granted hereunder without the City’s consent.

12. Notices. Notices required by this Agreement may be given by registered or certified mail by depositing the same in the United States mail or with a commercial courier. Unless either party notifies the other of a change of address, notices shall be delivered as follows:

If to City: With a copy to:

City of [CITY] City of [CITY]
[ADDRESS] [ADDRESS]
[ADDRESS] [ADDRESS]
Attn: City Representative Attn: City Clerk’s Office

If to Licensee: With a copy to:

[VERIZON ENTITY] [VERIZON ENTITY]
13. Change of Law. If any state or federal Law sets forth a term or provision that is inconsistent with or different than this Agreement, then the Parties agree to promptly amend the Agreement to effect the term or provision set forth under such Law.

14. Taxes. If City is required by Law to collect any federal, state, or local tax, fee, or other governmental imposition, including but not limited to Tompkins County or New York State reclassification of the use or premises underlying the Pole License as taxable (each, a “Tax”) from Licensee with respect to the transactions contemplated by this Agreement, then City shall bill such Tax to Licensee in the manner and for the amount required by Law. Licensee shall pay such billed amount of Tax to City, and City shall remit such Tax to the appropriate tax authorities as required by Law. Licensee shall have no obligation to pay any Tax for which Licensee is exempt. Otherwise, Licensee shall be responsible for paying all Taxes that are the legal responsibility of Licensee under Laws.

15. Laws; Non-discrimination; Definition of Small Cell Facility.

(a) The Parties shall comply with applicable laws including, without limitation, ordinances, local laws or any other orders, notices, directives or code provisions from the City or New York State or other authority having jurisdiction, the MUTCD, regulations and judicial decisions, Federal Communications Commission regulations and order (“Law” or “Laws”). Specifically, Laws shall include, but not be limited to the City Municipal Code Section 152, the City’s uniform directives and specifications for work in the ROW, and the City’s Small Wireless Facilities Design Guidelines.

(b) Notwithstanding anything else in this Agreement, City shall treat Licensee in a manner that is competitively neutral, nondiscriminatory, consistent with all applicable Laws, and is no more burdensome than other users of the ROW or City poles.

(c) “Small Wireless Facilities” are defined at those meeting the following conditions:

i. The facilities are mounted on structures 50 feet or less in height including their antennas, or are mounted on structures no more than 10 percent taller than adjacent structures, or do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

ii. each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume, and
iii. all other wireless equipment associated with the structure including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume.

16. **Miscellaneous.** This Agreement shall be governed by the laws of the State of New York and all other applicable Laws. The provisions of this Agreement may be waived or modified only by written agreement signed by both parties. This Agreement may be executed in counterparts. A scanned or electronic copy shall have the same legal effect as an original signed version. If one or more provisions in this Agreement is found to be invalid, illegal or otherwise unenforceable, all other provisions will remain unaffected and shall be deemed to be in full force and effect and the Parties shall amend this Agreement, if needed to effect the original intent of the Parties. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors. Nothing in this Agreement shall be construed to grant Licensee an interest in the City’s ROW or City assets located in the ROW. Neither Party shall be responsible for delays in the performance of its obligations caused by events beyond the Party’s reasonable control. As to the subject matter hereof, this Agreement is the complete agreement of the Parties. The Parties represent and warrant that the individuals executing this Agreement are duly authorized.

17. **Pre-existing Agreements and Facilities.** This approval is granted subject to the condition that, all prior agreements, franchises, licenses, leases, addendum agreements and agreements of any kind between the City and Licensee with respect to Licensee’s Equipment, Poles, other personal property or facilities in the ROW (“Prior Agreement”), shall terminate and become null and void upon execution of this Agreement, however, any Licensee Equipment approved under a prior agreement (“Pre-existing Equipment”), shall have the right to remain and operate in place, so long as such Pre-existing Equipment remains in compliance with all prior requirements and that no substantial changes or modifications have been made or are made to the Pre-existing Equipment. Although Licensee may maintain all Pre-existing Equipment, such Pre-existing Equipment shall be subject to the requirements of this Agreement and Laws, unless the requirements for the Pre-existing Equipment are inconsistent with or conflict with the above documents, in which case the original requirements with respect to the Pre-existing Equipment shall prevail, unless it is determined by the City Engineer that there are significant health or safety issues with respect to the Pre-existing Equipment. Notwithstanding any pre-existing rights confirmed above, the compensation requirements set forth in this Agreement shall apply to all Pre-existing Equipment.
[Remainder of page intentionally left blank; signature page to follow.]
IN WITNESS WHEREOF, the Parties have executed, or caused their respective duly authorized representatives to execute, this Agreement as of the day and year listed below.

CITY OF [CITY]

__________________________________________
(Signature)

Printed Name:
Title:
Date:

[VERIZON ENTITY]

__________________________________________
(Signature)

Printed Name:
Title:
Date:

APPROVED AS TO FORM:

__________________________________________
City Attorney
EXHIBIT A

FEE SCHEDULE

One-Time Pole License Application Fees: $500.00 for an application for attaching to up to 5 facilities, and $100.00 for each additional attachment beyond 5, and $1,000.00 for an application for a new pole.

City-owned Poles Recurring Fee: $270.00 - per pole per year

Privately Owned Poles or Verizon Owned Poles Previously Permitted for Installation Recurring Fee: $135.00 – per pole per year

Except as provided in this Fee Schedule, the City shall not require any other or additional recurring fees, costs, or charges of any kind.
4. City Administration, Human Resources and Policy

.1 Authorization to Enter into a Maintenance Agreement with City Harbor LLC

WHEREAS, City Harbor, LLC has acquired the property known as 101 Pier Road, City of Ithaca (the "City Harbor Property") and intends to redevelop the City Harbor Property into a mixed-use residential project ("Project"); and

WHEREAS, City Harbor has proposed certain improvements and long-term maintenance to Pier Road and portions of adjacent City-owned land as a part of City Harbor’s Project, as described in the draft agreement attached as Exhibit A and depicted in the plan attached as Exhibit B; and

WHEREAS, City staff is generally supportive of such improvements provided that: the improvements are installed under a street permit with installation subject to the City’s specifications and final approval, and thence becoming City property; all City-owned land and facilities improved by the Project remain open to the public and not exclusive to the Project or City Harbor; and City Harbor commits to maintaining the improvements in accordance with an approved plan (see draft proposals, Exhibits A and B); now therefore be it

RESOLVED, That the Common Council hereby authorizes the Mayor to execute a maintenance agreement with City Harbor containing substantially similar terms as the enclosed Development and Maintenance Agreement Between the City of Ithaca and City Harbor, LLC (Exhibit B) upon approval by the Superintendent of Public Works and City Attorney.
DEVELOPMENT AND MAINTENANCE AGREEMENT 
BETWEEN 
THE CITY OF ITHACA AND 
CITY HARBOR, LLC

THIS AGREEMENT, entered into the ___ day of ___________ 2020 (the “Effective Date”), between the CITY OF ITHACA (“City”) and CITY HARBOR, LLC (“City Harbor”).

WHEREAS,

a. City Harbor has acquired the property known as 101 Pier Road, City of Ithaca (the “City Harbor Property”) and intends to redevelop the City Harbor Property into a mixed-use residential project (the “Redevelopment Project”);

b. City Harbor has proposed certain improvements to City-owned land (the “City land”) as a part of the Redevelopment Project, and the City is supportive of such improvements;

c. As a condition of site plan approval for the Redevelopment Project, City Harbor will commit to construct and maintain street, pedestrian walks, tree plantings, storm sewer structures, site lighting and relocation of the Newman Golf Course 9th Green (collectively “Pier Road Improvements”) on a portion of City land as shown on the attached Site Plan identified as Exhibit A, and to uphold all other obligations under this Agreement;

d. The City owns the lands of Pier Road and Newman Golf Course and has agreed to allow physical improvements to be completed along and adjacent to Pier Road and Newman Golf Course to facilitate the Redevelopment Project as described herein and subject to the terms and conditions of this Agreement; and

e. In consideration of the mutual covenants and agreements in connection with the Redevelopment Project, the Parties agree to the terms and conditions set forth herein.

NOW THEREFORE IT IS HEREBY AGREED THAT:

Term

1. This Agreement shall be for a term of fifty (50) years commencing on the date upon which all of the following conditions have been fulfilled (the “Conditions Precedent”):
   a. Site Plan Approval,
   b. Receipt of Notice of Award of satisfactory Tax Abatements from Tompkins County Industrial Development Agency for the Redevelopment Project, and closing on all construction financing and financial assistance necessary to construct the same,
   c. Filing in the Tompkins County Clerk’s Office of a permanent easement to the City for certain street improvements constructed upon lands of City Harbor (the “Street Improvements Easement”).
d. Filing in the Tompkins County Clerk’s Office of a permanent public access easement to the City for a publicly accessible pedestrian promenade (“Promenade”) along the waterfront of Cascadilla Creek and Cayuga Inlet on lands of City Harbor (the “Promenade Easement”).

e. The City issuance of a street permit to City Harbor for the purposes of constructing the Redevelopment Project and Pier Road Improvements.
f. Completion of the Pier Road Improvements.

2. In the event that any of the conditions stated in paragraph 1 have not been fulfilled within three years from the Effective Date, this Agreement shall terminate.

3. Upon termination, City Harbor shall be relieved of further responsibility for construction, maintenance or repair of the Pier Road Improvements, and shall have no rights to the same as distinct from members of the public.

CITY HARBOR OBLIGATIONS

4. City Harbor shall timely apply for site plan review approval pursuant to City requirements for the Redevelopment Project. The proposed site plan shall include the Pier Road Improvements for public use and the Promenade. The design and layout of the Pier Road Improvements and Promenade shall be presented and approved as part of the site plan for the Redevelopment Project. City Harbor acknowledges that the adherence to the terms and conditions of this Agreement shall be a condition of site plan approval by the Planning and Development Board of the City.

5. The construction and maintenance of the Promenade shall be the sole responsibility of City Harbor.

6. The Promenade may be used by the public at any time as detailed in the Promenade Easement permitting year-round access by the public consistent with City regulations concerning recreation areas.

7. The construction of the Pier Road Improvements shall be the sole responsibility of City Harbor.

8. Maintenance of the Pier Road Improvements by City Harbor shall include the following:
   a. City Harbor will maintain at its own expense the improvements approved in the Site Plan in a safe, sound, clean and serviceable condition, in accordance with all applicable ordinances of the City, such that no hazard is posed to the public from the public's use of or proximity to the same, and will repair damage and defects in such improvements, as provided in this Agreement.
   b. City Harbor will provide custodial and landscaping services to maintain the appearance of the improvements, including trash removal and routine care of vegetation within the improved areas delineated on the Site Plan and in accordance with City exterior property maintenance ordinance.
   c. City Harbor will plow the street and sidewalks clear of snow within the improved areas delineated on the Site Plan to the City’s reasonable standard and in compliance with the City’s exterior property maintenance ordinance, or will contract for the same.
   d. City Harbor will maintain and clean all storm sewer facilities installed and provide an easement to the City for access to stormwater lines installed on City Harbor property.
   e. City Harbor shall not be responsible for maintaining City land beyond the limits delineated on the Site Plan.
f. Following its construction, City Harbor shall not be responsible for maintaining the Newman Golf Course 9th Green, but shall remain responsible for maintaining the temporary netting noted on Exhibit A for so long as it remains installed.


g. City Harbor will not have a duty to repair damages and defects caused by the City’s use of the City lands. For purposes of this clause, the public’s use shall not constitute the City’s use.


9. The design of the Pier Road Improvements shall be subject to the approval of the Superintendent of Public Works to assure that City emergency and maintenance vehicles have access to City lands and utilities. Final details shall be as set forth in the site plan approval, but shall include the following:

a. The Pier Road pavement width shall be minimally 22 feet wide, so as to allow use and access by City vehicles as part of the City’s maintenance duties. Pavement width will be increased where necessary to comply with emergency apparatus access requirements. The pavements shall be constructed to the depths and with suitable materials typical for a City residential street.

b. The site plan shall accommodate the turning radius for an Ithaca Fire Department aerial ladder truck at the intersection of Pier Road and Willow Avenue, the intersection of Pier Road and Harbor Lane, and at the Pier Road Turnaround.

c. The species, size and spacing of tree plantings on City land as recommended by the City Forester.


10. City Harbor shall obtain at its expense a survey of the completed Pier Road Improvements to show the as-constructed location of the street, sidewalks and tree plantings and the lines delineating the property which is under City Harbor obligations and that which is under City obligations.


City Obligations

11. The City will remain the owner of record for Pier Road. In the unlikely event that Pier Road is classified by Tompkins County as taxable, any amounts due for taxes or assessments shall be paid by the City.

12. The City will be responsible for the maintenance of the Newman Parking Lot and all trees or other vegetation outside the limits of the Pier Road Improvements shown on the Site Plan.

a. Once constructed by City Harbor in a location approved by the City, the City will provide all services, labor and equipment necessary to maintain the Newman Golf Course 9th Green.

13. City Harbor shall install Pier Road lighting in accordance with specifications provided by the Superintendent of Public Works. Upon acceptance and approval of the lighting, the City shall maintain and pay the cost of electric service for any existing or future lighting adjoining the Club House and Pier Road.

14. The City will provide timely notice to City Harbor of any damage or defects to the Pier Road Improvements. City Harbor further agrees to repair or remove any such damage or defect, as directed by the City except for damage or defect caused by the City. In the event of City Harbor’s failure to effect such repair or removal, after notice from City to do so, the City may carry out the same and charge City Harbor for such cost.

15. The City shall be the sole owner of the improvements, and may in its sole discretion alter, remove, or destroy the improvements, at its own expense. If the City alters the improvements, City Harbor obligations under this Agreement shall continue to such extent as those obligations are substantially similar in substance and scope to the obligations herein agreed,
provided that the public use of the street and walks continues to be solely for vehicular and pedestrian access, respectively. The City shall provide City Harbor with notice at least ninety (90) days prior to substantially and intentionally altering, removing or destroying the improvements, permitting City Harbor to provide comment on such plans.

16. Notwithstanding the foregoing paragraph, the City may not during the term of this Agreement alter, remove or destroy the Pier Road Turnaround. Except for damage incidental to fire or rescue efforts to the City Harbor structure or property, any damage to the Pier Road Turnaround caused by the City shall be promptly repaired at the City's expense.

17. Except in the case of emergencies, the City will give notice to City Harbor and, as feasible, the residents of the Redevelopment Project of any substantial closures, repairs, and maintenance that it plans to perform.

18. Contingent upon the execution of this Agreement and the site plan approval for the Redevelopment Project, the City shall diligently and in good faith pursue the Street Work Permit process for the Pier Road Improvements, with ultimate discretion to issue or not issue the Street Work Permit vested solely in the City.

19. Notwithstanding any other provisions herein, the Agreement contained herein may be revoked or modified by the City (a) upon such notice as is practical, in the event of an emergency that threatens property or the public safety or welfare, or (b) upon at least one month's notice that the Superintendent of Public Works has determined that City Harbor has failed to materially comply with any substantive term herein, and that City Harbor has not cured such breach within the notice period.

Indemnification, Liability, and Insurance

20. City Harbor shall defend, indemnify, and hold harmless the City from any claims, damages, costs, and expenses arising from or in connection with physical injury (including death) sustained on the City land as a result of the negligence or willful misconduct of City Harbor in the construction of the Pier Road Improvements and in the performance of the City Harbor maintenance obligations hereunder which affect the City land unless caused by or arising from defects in the City land or Pier Road Improvements that are (a) caused by any negligence or willful misconduct on the part of the City, or (b) as to which the City received prior written notice, as defined in Section C-107 of the City of Ithaca Charter, but then failed to so inform City Harbor within one week of receipt thereof.

21. The City shall defend, indemnify, and hold harmless City Harbor from any claims, damages, costs and expenses arising out of defects in the City land to the extent caused by negligence or willful misconduct of the City or which arise on City land not subject to the Pier Road Improvements.

22. When City Harbor and the City have both contributed to liabilities incurred by the Parties, each will indemnify the other in proportion to its respective responsibility for the act or omission that gave rise to such liability.

23. Notwithstanding any other provision of this Agreement, in no event shall the City be required to defend, hold harmless, or indemnify City Harbor or any other party from suits, actions, damages, liability, or expense which, had it been asserted against the City directly, would not have necessitated the City either to defend on the merits or to incur the resulting liability under applicable law.

24. At all times that the Agreement is in effect, including during construction of the Pier Road Improvements, Each party shall provide proof of commercial general liability coverage in the
amount of $1,000,000 per occurrence, $2,000,000 in the aggregate, and umbrella coverage of $5,000,000, which amounts may be increased every five (5) years for cost of living adjustments in accordance with commercially reasonable insurance practices at least every ten (10) years. Each party shall cause its insurance policy to name the other party as an additional insured with respect to the coverages required herein and contractual liability. City Harbor shall also provide proof of compliance with statutory Worker’s Compensation and Disability coverage requirements.

**Miscellaneous**

25. The City may add any reasonable fees, reimbursements, penalties or other amounts City Harbor owes the City by virtue of City Harbor’s obligations and responsibilities under this Agreement, which have been billed by the City to City Harbor and remain unpaid, to the tax bill of the City Harbor Property.

26. Except as otherwise set forth in this Agreement, the Parties shall bear their own costs and expenses, including engineering fees, legal accounting, insurance, and fees incurred in connection with the negotiation and preparation of this Agreement and any subsequent exercising of rights or performance of obligations set forth in this Agreement. In the event that a party is determined by a court of competent jurisdiction to be in material breach of any of the substantive terms of this Agreement, the party found to be in breach shall be liable for the costs and reasonable attorneys’ fees of the party that asserted and prevailed upon such claim.

27. The maintenance and any other use by City Harbor of the City land does not constitute and shall never ripen into or become a right to use any portion of such property without the consent of the City.

28. This Agreement supersedes all prior Agreements, understandings, and communications between the Parties, whether oral or in writing, concerning the subject matter of this Agreement. This Agreement may not be modified or amended except by a writing signed by all Parties. The waiver by a party of its rights under this Agreement or of a breach by any other party shall not constitute a waiver of any other rights under this Agreement or of any future breaches by any party.

29. If any part, paragraph, or portion of this Agreement is held to be void, invalid, inoperative, or unenforceable for any reason, such provision shall be deemed severed and the remainder of this Agreement shall not be impacted and shall continue in full force and effect, unless to do so would fundamentally contravene the present valid and legal intent and purpose of the Parties. The Parties agree that each and every provision that is deemed by a court of competent jurisdiction to have been required by law to be included in this Agreement shall be deemed to be inserted herein and shall have the same force and effect as if it were actually inserted.

30. This Agreement may not be assigned by either party without the express written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, City Harbor may assign this Agreement to any entity which becomes the owner of the City Harbor Property or a portion thereof for the purpose of developing and owning any portion of the City Harbor Property or to any lender providing financing which is secured by a mortgage on any portion of the City Harbor Property. This Agreement is not intended to benefit any third-party, and no person or entity who is not a party shall be entitled to enforce any of the rights, interests, or obligations of a party to this Agreement.

31. This Agreement shall be governed by the laws of the State of New York. Any action or
proceeding relating to this Agreement shall be venued in a court of competent jurisdiction that is located in the County of Tompkins.

32. All notices required by this Agreement shall be in writing and shall be sent by certified mail, return receipt requested, personal delivery, or facsimile at the following addresses:

To City:
Mayor
City of Ithaca
108 East Green Street
Ithaca, New York 14850

City Attorney
City of Ithaca
108 East Green Street
Ithaca, New York 14850

To City Harbor, LLC:
Jessica Edger-Hillman
303 East 14th Street
Elmira Heights, New York 14903

33. The terms and provisions of this Agreement shall be binding upon the heirs, successors, distributees and assigns of the parties hereto.

34. The parties agree to execute an amendment to this Agreement specifying the date that all of the Conditions Precedent are satisfied.

In Witness Whereof, the parties have executed this Agreement as of the Effective Date.

CITY OF ITHACA                                   CITY HARBOR, LLC
By:                                      By:
Name:                                      Name:
Title:                                     Title:
Date:                                      Date:

LIST OF EXHIBITS: Exhibit A - Site Plan
WARNING: It is a violation of New York State Law for any person, unless acting under the direction of a licensed Architect, to alter this document in any way. If a document bearing the seal of an Architect is altered, the altering Architect shall affix to such document his seal and the notation "altered by" followed by his signature, the date of such alteration, and a specific description of the alteration.
4. City Administration, Human Resources and Policy
   .2 An Ordinance to Release and Terminate City’s Abandoned Sewer Easement and Amend the City’s Outfall Line Easement

ORDINANCE __ -2020

An Ordinance to Release and Terminate City’s Abandoned Sewer Easement and Amend the City’s Outfall Line Easement

WHEREAS, presently before Common Council is a proposal requesting that the City 1) release its rights to a 10 foot wide sewer easement (“Sewer Easement”) beginning at the northerly shore of Cascadilla Creek running westerly through the parcels located on Pier Road, known as tax map no. 17.-1-1.2 and 17.-1-1.3, recorded with the Tompkins County Clerk as Bk. 243, Pg. 89; and 2) to amend an existing easement for the waste water treatment facility’s effluent outfall pipe (“Outfall Easement”) to authorize construction above the easement area, which begins at the north shore of Cascadilla creek and runs north through the parcel owned by City Harbor, LLC, known as Tax map 17.-1-1.3, recorded with the Tompkins County Clerk as Bk. 595, Pg. 509; and

WHEREAS, City Harbor, LLC and The Guthrie Clinic, property owners of the respective tax map parcels 17.-1-1.3 and 17-1-1.2, have requested that the City release its rights to the Sewer Easement and amend its rights under the Outfall Easement; and

WHEREAS, the City is no longer in need of the Sewer Easement and can continue to service the existing effluent outfall with restrictions on overhead construction, and City staff are supportive of releasing the Sewer Easement and amending the Outfall Easement to allow construction above under certain conditions to which City Harbor, LLC has agreed; and

WHEREAS, in consideration for the City’s release of its rights to the Sewer Easement, which is limited value to the City, the property owners have agreed to pay $2,500; and

WHEREAS, on March 26, 2020, the Board of Public Works declared the Sewer Easement surplus property for municipal purposes and recommended Council’s authorization of its release; and

WHEREAS, amendment of the Outfall Easement requires approval by the Special Joint Committee of the Ithaca Area Waste Water Treatment Facility, of which the City is a member; and

WHEREAS, the City Charter requires approval by three-fourths of the Common Council to authorize divestment of real property, and
WHEREAS, the City Charter further requires notice of a proposed sale to be published no less than once each week for three weeks, the first such notice being published no less than 30 days prior to the approval vote, and such notices have been published; now, therefore be it,

BE IT ORDAINED AND ENACTED by the Common Council of the City of Ithaca as follows:

Section 1. Legislative Intent and Purpose. The Common Council makes the following findings of fact:

A. The above-described Sewer Easement is surplus for municipal purposes.
B. The sewer line described in the Sewer Easement is no longer in use or needed by the City.
C. The consideration offered by City Harbor LLC is adequate to release the City’s interests in the Sewer Easement.
D. The Outfall Easement may be amended with approval by the Special Joint Committee of the Ithaca Area Waste Water Treatment Facility.
E. The amendment to the Outfall Easement will not prejudice the Waste Water Treatment Facility’s needs for servicing and maintaining the existing effluent outfall and will clarify the Facility’s needs and rights for future property owners.

Section 2. Approval and Execution of Deed. The Common Council authorizes release of the Sewer Easement, recommends that the Special Joint Committee approve amendment of the Outfall Easement as approved by City staff, and directs the Mayor, on the advice of the City Attorney, to execute documents as needed to affect these transactions.

Section 3. Effective Date. This ordinance shall take effect immediately.