# AGENDA ITEMS

<table>
<thead>
<tr>
<th>Item</th>
<th>Voting Item?</th>
<th>Presenter(s)</th>
<th>Time Allotted</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Call to Order</td>
<td>No</td>
<td>Chair, Deb Mohlenhoff</td>
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</tr>
<tr>
<td>1.1 Agenda Review</td>
<td></td>
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<tr>
<td>1.2 Review and Approval of Minutes</td>
<td>Yes</td>
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<tr>
<td>Approval of August 26, 2020 Minutes</td>
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<tr>
<td>1.3 Statements from the Public</td>
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<tr>
<td>Up to 40 members of the public will be able to provide short statements during the first hour of the meeting. *Written comments will be compiled and entered into the record.</td>
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<tr>
<td>1.4 Council’s Response</td>
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<tr>
<td>2. Consent</td>
<td>Yes</td>
<td></td>
<td>5 Min</td>
</tr>
<tr>
<td>2.1 DPW – Funding for Cecil A Malone Bridge</td>
<td>Yes</td>
<td>Steve Thayer, City Controller</td>
<td>5 Min</td>
</tr>
<tr>
<td>3. Finance, Budget and Appropriations</td>
<td>Yes</td>
<td></td>
<td>5 Min</td>
</tr>
<tr>
<td>3.1 A Local Law to Override the Tax Levy Limit Established in General Municipal Law</td>
<td>Yes</td>
<td></td>
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<tr>
<td>4. City Administration, Human Resources and Policy</td>
<td>Yes</td>
<td></td>
<td>5 Min</td>
</tr>
<tr>
<td>4.1 IURA – Temporary City Use of Cayuga St Garage</td>
<td>Yes</td>
<td>Nels Bohn, Director of IURA</td>
<td>10 Min</td>
</tr>
<tr>
<td>4.2 Proposed Inter-City Bus Permit Extension and Modification</td>
<td>Yes</td>
<td>Eric Hathaway, Director of Transportation and Parking</td>
<td>10 Min</td>
</tr>
<tr>
<td>4.3 DPW – 2021 Sidewalk Improvement District</td>
<td>Yes</td>
<td>John Licitra, Sidewalk Program Manager</td>
<td>15 Min</td>
</tr>
<tr>
<td>4.4 Acceptance of Various Easements at the Former Emerson Power Transmission Site in South Hill</td>
<td>Yes</td>
<td>Ari Lavine, Attorney</td>
<td>15 Min</td>
</tr>
<tr>
<td>4.5 Removal of the First White Settlers marker</td>
<td>Yes</td>
<td>Dan Cogan, Chief of Staff</td>
<td>30 Min</td>
</tr>
<tr>
<td>5. Discussion</td>
<td>Yes</td>
<td></td>
<td>5 Min</td>
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<tr>
<td>5.1 Update on Commissions</td>
<td>No</td>
<td></td>
<td></td>
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<tr>
<td>5.2 Budget Process and Reminders</td>
<td>No</td>
<td></td>
<td>10 Min</td>
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<tr>
<td>6. Meeting Wrap-Up</td>
<td>Yes</td>
<td></td>
<td>5 Min</td>
</tr>
<tr>
<td>6.1 Announcements</td>
<td></td>
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<tr>
<td>6.2 Next Meeting Date: October 28, 2020</td>
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<tr>
<td>6.3 Review Agenda Items for Next Meeting</td>
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<tr>
<td>6.4 Adjourn</td>
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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://j.mp/2AWrkvq](https://j.mp/2AWrkvq)
HOW TO PARTICIPATE IN* Public Comment* virtually

EMAIL COMMON COUNCIL THROUGH AGENDA LINK
Every agenda posted online includes a link to an online form that sends an email to all of Council. These are not read into the record, but will be included as an attachment to meeting minutes.

REGISTER TO SPEAK AT A MEETING VIA ZOOM
At 9am on the day of a Council meeting (including standing committees) a link will be open to register for speaking at the beginning of the meeting via Zoom. The first hour of the meeting will be used for Public Comment. Up to 40 people can register to speak. Registration will close at 3pm so that we can calculate how much time each person will be allotted. If you register, you will be emailed the Zoom link later that day. Use that link to sign in and enter the Zoom waiting room. You will be moved into the meeting for your allotted time in the order that you registered to speak. You must be present in the waiting room when your turn is called or you will forfeit your time. You can use video or telephone to participate.

GET CREATIVE - SEND US A SOCIAL MEDIA LINK
Send us a social media video with your thoughts and ideas. You can send it in using the link found on each agenda for emailing in public comment - and then the URL to your video will also be included in the public record.

WE WANT TO HEAR FROM YOU!
CITYOFITHACA.ORG
2. Consent

.1 Cecil Malone Drive Bridge Replacement Project Resolution
Authorizing the implementation, and funding in the first instance 100% of the Federal-aid and State-aid eligible costs, of a federal-aid and /or state-aid transportation project, and appropriating funds

WHEREAS, Sponsor will design, let and construct the “project”; and

WHEREAS, a Project for the Cecil Malone Drive Bridge over Flood Relief Channel, P.I.N. 375589 (“the Project”) is eligible for funding under Title 23 U.S. Code, as amended, that calls for the apportionment of the costs of such program to be borne at the ratio of 95% Federal funds and 5% non-Federal funds; and

WHEREAS, the City of Ithaca desires to advance the Project by making a commitment of 100% of the non-Federal share of Design, Right-of-Way Incidental, Right-of-Way Acquisition, Construction and Inspection; and

WHEREAS, in November 2018, $2,172,000 (95% Federal and 5% Local Share) of BRIDGE NY funding was made available by New York State Department of Transportation for Project; now, therefore be it

RESOLVED, That the City of Ithaca Common Council hereby approves the above project, and be it further

RESOLVED, That the City of Ithaca Common Council hereby authorizes the City of Ithaca to pay in the first instance 100% of the federal and non-federal share of the cost of all work for the Project or portions thereof, and be it further

RESOLVED, That the City of Ithaca Common Council hereby agrees that the City of Ithaca shall be responsible for all costs of the Project which exceed the amount of the BRIDGE NY funding awarded to the City of Ithaca, and be it further

RESOLVED, That the City of Ithaca Common Council hereby establishes Capital Project #863 in an amount not to exceed $2,172,000, and be it further

RESOLVED, That this project be undertaken with the understanding that the final cost of the Project to the City of Ithaca will be 5% of project costs up to a total project cost of $2,172,000 and 100% of additional costs thereafter, and be it further

RESOLVED, That funds needed for said amendment shall be derived from serial bonds, with understanding that these funds are available to the Project and that the final cost to the City will be $108,600, and be it further

RESOLVED, That in the event of full federal and non-federal share cost of the project exceeds the amount appropriated above, the City of Ithaca shall convene as soon as
possible to appropriate said excess amount immediately upon the notification by the New York State Department of Transportation thereof, and be it further

RESOLVED, That City of Ithaca hereby agrees that construction of the Project shall begin no later than twenty four (24) months after award and that the project shall be completed within thirty (30) months of commencing construction, and be it further

RESOLVED, That the Mayor of the City of Ithaca be and is hereby authorized to execute all necessary Agreements and the Superintendent of Public Works is hereby authorized to execute all the necessary Certifications or reimbursement requests for Federal Aid and/or State-Aid on behalf of the City of Ithaca with the New York State Department of Transportation in connection with the advancement or approval of the Project and providing for the administration of the Project and the municipality’s first instance funding of project costs and permanent funding of the local share of federal-aid and state-aid eligible Project costs and all Project costs within appropriations therefore that are not so eligible, and be it further

RESOLVED, That a certified copy of this resolution be filed with the New York State Commissioner of Transportation by attaching it to any necessary Agreement in connection with the Project, and be it further

RESOLVED, This Resolution shall take effect immediately.
MEMORANDUM

TO: City Administration Committee
FROM: Addisu Gebre, Bridge Systems Engineer
DATE: September 10, 2020
RE: Cecil Malone Drive Bridge Replacement Project, CP#863

Please find attached a resolution seeking Common Council authorization to add Right-of-Way Incidental and Right-of-Way Acquisition phases to the subject project.

When Common Council authorized the project on March 6, 2019, the project only included design, construction, and construction inspection phases. However, during the preliminary design phase, it was determined that property acquisitions are needed for construction and for future access to maintain the bridge.

These two phases don’t require additional funding authorization from Common Council. In coordination with Ithaca Tompkins County Transportation Council (ITCTC), I have already managed to fund the two phases from allocated design fund.

The project will include replacing the existing bridge to eliminate the bridge structural deficiencies and provide a wider bridge deck to accommodate heavy industrial traffic, pedestrians, and bicyclists. The project will include restoring the crossing to a condition which provides a minimum 75-year design life.

If you have any questions, please call me @ 607-274-6530 or email me agebre@cityofithaca.org

cc: Tim Logue, Director of Engineering Services

“An Equal Opportunity Employer with a commitment to workforce diversification.”
3. Finance, Budget and Appropriations
   .1 A Local Law to Override the Tax Levy Limit Established in General Municipal Law

   Local Law No. 2020 -

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

   Section 1. Legislative Intent
   It is the intent of this local law to allow the City of Ithaca to adopt a budget for the fiscal year commencing January 1, 2021, that requires a real property tax levy in excess of the “tax levy limit” as defined by General Municipal law §3-c.

   Section 2. Authority
   This local law is adopted pursuant to subdivision 5 of General Municipal Law §3-c, which expressly authorizes a local government's governing body to override the property tax cap for the coming fiscal year by the adoption of a local law approved by a vote of sixty percent (60%) of said governing body.

   Section 3. Tax Levy Limit Override
   The Common Council of the City of Ithaca, County of Tompkins, New York, is hereby authorized to adopt a budget for the fiscal year commencing January 1, 2021, that requires a real property tax levy in excess of the amount otherwise prescribed in General Municipal Law §3-c.

   Section 4. Severability
   If a court of competent jurisdiction determines that any clause, sentence, paragraph, subdivision, or part of this local law or application thereof to any person, firm or corporation, or circumstance is invalid or unconstitutional, the court’s order or judgment shall not affect, impair or invalidate the remainder of this local law, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this local law or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

   Section 5. Effective Date
   This local law shall take effect immediately upon filing with the Secretary of State.
WHEREAS, renovation and expansion of the Green Street parking garage (Green Garage) is scheduled for 2021 that will require temporary closure of the garage; and

WHEREAS, the City of Ithaca executed a parking agreement to provide parking at the Green Garage for hotel guests of the downtown Ithaca Marriott hotel; and

WHEREAS, the City Director of Transportation and Parking seeks to relocate a variety of parkers from the Green Garage to alternative public parking facilities during construction activity at the Green Garage site; and

WHEREAS, the 685-space Cayuga Street parking garage (Cayuga Garage) has over 250 parking spaces available at normal peak demand times; and

WHEREAS, the Cayuga Garage is owned by Community Development Properties, Ithaca, Inc. (CDP), whose governing board includes the Mayor and City Controller; and

WHEREAS, CDP has developed a draft agreement to provide the City with use of 55 parking spaces at no charge to help the City fulfill its obligations under the Marriott hotel parking agreement during construction of the Green Garage; now therefore be it

RESOLVED, That the Mayor, subject to review by the City Attorney, is authorized to execute an agreement substantially similar to the attached “Agreement for Temporary City Use of Cayuga Street Parking Garage” for temporary use of parking at no charge to the City.
Agreement for Temporary City Use of Cayuga Street Parking Garage

Community Development Properties, Ithaca, Inc. (“CDP”) and the City of Ithaca, New York (the “City”) agree to the following use by the City of CDP’s Cayuga Street Parking Garage (the “Garage”) for a period of not more than six months, beginning as of the commencement date of renovation and expansion of the Green Street parking garage, projected to begin March 1, 2021.

RECITALS

1. CDP is a not-for-profit Delaware Corporation, described in Sec. 501(c)(3) of the Internal Revenue Code. CDP is the owner of the Garage at 235 South Cayuga Street in the City of Ithaca which it built in 2004 in air rights above the ground level, leased to CDP by the Ithaca Urban Renewal Agency.

2. The City requested that CDP build the Garage to lessen the City’s governmental burden of providing public parking in downtown Ithaca as part of its development and renewal efforts to improve the attractiveness of downtown Ithaca as a destination for visitors, shoppers and residents.

3. The Garage has seven levels providing approximately 700 parking spaces, which was more than was initially expected to be needed, in anticipation of the growth of future requirements as a result of the success of the City’s development and renewal efforts. While public usage has increased, the Garage still at this time has a large amount of unused parking capacity.

4. The City has informed CDP that, as another part of the City’s development and renewal efforts, the City had induced Hotel Ithaca, LLC (“Marriott”) to build a 155-key Marriott hotel in the City by providing parking spaces for hotel guests. It has satisfied its obligation to Marriott with spaces at the City’s Green Street parking garage.

5. The City has also informed CDP that it must undertake renovation and expansion, which are expected to take six months, to the Green Street parking garage. It has requested CDP to provide the City with 55 spaces in the Garage for that six months period to enable the City to satisfy its obligation to Marriott. CDP is not privy in any way to the arrangements between the City and Marriott.

AGREEMENT

A. Beginning as of March 1, 2021 or such later date that the Green Street garage renovation and expansion work commences (“Commencement Date”), CDP will provide to the City 55 unassigned parking spaces in the Garage to enable the City to fulfill its obligations to
Marriott. It will make no charge to the City for the use of these unassigned parking spaces, nor will it receive any compensation from the parkers or from Marriott for such use.

B. CDP’s Garage is managed by Allpro Parking LLC (“Allpro”). CDP will direct Allpro to deliver to the City prior to the Commencement Date a validation machine to be installed at the direction of the City at the Marriott hotel.

C. The City will inform Marriott that each guest wishing to park at the Garage can take a parking ticket upon entering the Garage, and have it validated by the validation machine at the Marriott hotel. Upon exiting the Garage, the guest can use that validated ticket at the walk up pay station to exit. Parker Technology, offering 24/7 two-way audio and video service, is available at the exit to cope with lost tickets and Allpro will monitor the use of the Garage under this arrangement.

D. If, as is not now expected, the repairs to the Green Street garage take longer than six months, CDP and the City agree that this arrangement may be extended to cover any extra time the City requires.

COMMUNITY DEVELOPMENT PROPERTIES, ITHACA, INC.

BY: ____________________________
Daniel Marsh III, President

DATE: ____________________________

CITY OF ITHACA, NEW YORK

BY: ____________________________
Svante Myrick, Mayor

DATE: ____________________________
4. City Administration, Human Resources and Policy

.2 Proposed Inter-City Bus Permit Extension and Modification

WHEREAS, Section 346-31 of the City Code states that no bus shall operate, stop on or stand on any City street, nor shall such bus pick up or discharge passengers on any such City street or curb, or any other public property, or within 200 feet of any City bus stop in the corporate limits of the City of Ithaca, unless a permit is obtained from the Common Council or its designee; and

WHEREAS, in September 2018, Common Council passed a resolution to allow the use of East Green Street as an intercity bus stop; and

WHEREAS, staff prepared and executed agreements with the intercity operators for a 6-month trial period ending on March 31, 2019; and

WHEREAS, on April 3, 2019, staff recommended that the Common Council conditionally renew the agreement until August 31, 2019, to allow for a full year of consideration of this site; and

WHEREAS, in September 2019, Common Council passed a resolution to continue the use of East Green as an intercity bus stop increasing the rate from $5 to $15 per bus arrival or departure (but if the arrival or departure occurs within 30 minutes of the other, only one $15 per bus fee will be imposed), but asked staff to provide a report in 6 months detailing efforts to collaborate with other regional municipal officials; and

WHEREAS, the coronavirus pandemic effectively discontinued bus service through the summer and shifted priorities away from the inter-city bus permits; and

WHEREAS, current intercity bus companies permit agreements are in effect until termination, which must be upon no less than 30 days’ notice, but it is unclear as New York State continues to reopen which buses will be returning to regular operating service in Ithaca; and

WHEREAS, it does not seem prudent to end the use of Green Street as the intercity bus stop at this time, but future conditions on Green Street are projected to limit the capacity to one bus during reconstruction of the Green Street Parking Garage; and

WHEREAS, staff is exploring a potential drop-off only location on West Green Street and wishes to install a concrete pad at the location, if selected; and

WHEREAS, staff continues to look for other suitable interim locations for intercity bus operations while planning for a long term permanent location for an intercity transportation depot; now, therefore be it

RESOLVED, That Common Council approves the continued use of the Green Street
stop on a first paid - first served basis to operators for which Common Council has authorized operation from the Green Street location (namely, Trailways, Shortline/CoachUSA, Greyhound, and FlixBus approved in February 2020) to accommodate the availability of one-space for bus operations and potentially one drop off space, until an alternate location or permanent solution can be found; and, be it further

RESOLVED, That Common Council continues to authorize the Board of Public Works to modify the above-established Intercity Bus Permit fee from time to time, but retains the sole legislative discretion as to issuance of bus permits; and, be it further

RESOLVED, That Common Council authorizes establishing a drop-off only location at or near 115 West Green Street, and authorizes Public Works to expend up to $5,000 in permit fees for installation of a concrete pad; and be it further

RESOLVED, That Common Council instructs city staff to continue to work on the conditions specified in earlier resolutions of Council to minimize disruption to riders and the community while continuing to provide this valuable service to the community; and be it further

RESOLVED, That the Mayor and Senior Staff shall report to Common Council within six months regarding efforts to collaborate with other regional municipal officials to develop a long-term plan for inter-city services.
4. City Administration, Human Resources and Policy  
.3 DPW – Local Law Entitled “Confirmation of the Sidewalk Improvement District Assessments, Budget, and Schedule of Work for Fiscal Year 2021”

Local Law No. ____-2021

A local law entitled “Confirmation of the Sidewalk Improvement District Assessments, Budget, and Schedule of Work for Fiscal Year 2021”

WHEREAS Section C-73 of the City Charter creates five Sidewalk Improvement Districts (each a “SID”) for the construction and repair of sidewalk, and provides for an assessment against each property located in each SID for the benefits received by the property from said construction and repair, and

WHEREAS the Board of Public Works has recommended a budget, schedule of work, and schedule of assessments for Fiscal Year 2021, subject to review, amendment, and confirmation by the Common Council, and

WHEREAS Section C-73 provides that Council shall amend as appropriate and confirm the SID assessments, budget, and schedule of work after a public hearing, and

WHEREAS the appropriate public hearing has been held, and Council has given due consideration to the comments made, if any,

NOW, THEREFORE BE IT ENACTED by the Common Council of the City of Ithaca as follows:

Section 1. Legislative Findings, Intent, and Purpose.

Pursuant to Municipal Home Rule Law Section 10(1)(ii)(c)(3) the City of Ithaca is authorized to adopt a local law relating to the authorization, making, confirmation, and correction of benefit assessments for local improvements.

The Common Council has reviewed the assessments, budget, and schedule of work recommended by the Board of Public Works for Fiscal Year 2021, and makes the following findings of fact:

A. The public hearing prior to confirmation required by Section C-73 has been held, and all owners of property subject to a SID assessment appearing to speak before Council have had an opportunity to do so.

B. The attached schedule of work, as recommended by BPW and previously subject to review by Council, constitutes a set of local improvements, the cost of which should be assessed against the properties located in the SID in which the work is to be performed.
C. The attached budget and the related assessments reflected on the assessment roll kept on file with the City Clerk are necessary to defray the cost of construction and maintenance of sidewalk in the City, and Council has made a legislative judgment that each property in each SID is being assessed in proportion to the benefit received by that property from the sidewalk construction and repair contained in the schedule of work.

Section 2. Confirmation of the Assessments, Schedule of Work, and Budget.

The Common Council approves and confirms the assessment roll, a copy of which is maintained in the City Clerk’s office, and the budget and schedule of work attached hereto, and imposes a lien upon each property so assessed as set forth in the assessment roll.

In the event there are additional funds available following completion of the schedule of work, or changes to the work plan are required for financial, engineering, or other reasons, the Superintendent of Public Works or his or her designee may alter the schedule of work in his or her discretion, as instructed by the Board of Public Works from time to time; provided, however, that if such actions affect ten percent or more of any Sidewalk Improvement District’s annual levy, such actions must be approved by resolution of the Board of Public Works.

Section 3. Severability Clause.

Severability is intended throughout and within the provisions of this Local Law. If any section, subsection, sentence, clause, phrase, or portion of this Local Law is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Local Law.

Section 4. Effective and Operative Date.

This Local Law shall be effective immediately after filing in the office of the Secretary of State.
TO: City Administration

FROM: Johnathan Licitra, Sidewalk Program Manager

DATE: 8/31/2020

RE: 2021 Sidewalk Improvement District Work Plan and Budget

Attached for your review are the 2021 Sidewalk Improvement District (SID) work plans, assessment roles, and budget. A link to the 2021 assessment role is also provided here, as the document is too large to attach (https://www.cityofithaca.org/219/Sidewalk-Policy).

At your September 16th meeting, I will request your approval to file a schedule of work, assessment roles, and budget with Common Council. These materials have been approved by the Board of Public works at their Aug 18th, 2020 meeting. A public hearing on the budget, assessment roles, schedule of work, and local law can occur on the October 7, 2020 Common Council meeting.

The 2021 Work Plan budget was created based on the aforementioned assessment role and reflects all credits for past work that were received before the May 1, 2020 application deadline. The costs for each sidewalk project are estimates based on anticipated quantities of work, as well as unit prices from past sidewalk contracts. Final quantities of work performed will be dictated by bid prices received and field conditions, which could increase or decrease the amount of work completed in the 2020 work plan.

It is possible that issues unknown at this time might arise that will prevent some of these construction projects from moving forward during the 2021 construction season. Conflicts with other construction projects might necessitate cancelation or postponement of planned sidewalk work. Ongoing design efforts might identify construction barriers that will impact costs or make some projects technically infeasible.

To proactively address any of the above potential construction issues and cost uncertainty—a contingency list of construction and design projects are included at the bottom of each sidewalk district. These projects could replace locations in the work plan, if needed, or add to the project list if additional budget is available based on bid prices.

For many of the district work plans, a Future Collaboration list exists. This secondary contingency list is intended to combine sidewalk design plans with City Street and/or Water/Sewer repair work. Additionally, this list can be used to pursue future grant applications for new sidewalk construction.
Some specific project details:

District 1: At least 3 curb ramps will be constructed around the 2 block radius of Fall Creek Elementary School (King & N. Tioga St./ and E. Jay St./N. Tioga St.).

District 2: College Ave is pursuing a major infrastructure upgrade of water, sewer, and electric. Partial funding of sidewalk repairs will be used to collaborate with a full streetscape plan (in development). The SID program applied for the DEC Climate Smart Grant and was awarded a 50/50 grant. Residents have requested sidewalk along this section of Giles St that currently does not have any sidewalk along a steep and curvy road.

District 3: The high traffic areas near W. and E. Seneca St and the residential sections of 500-600 W. Green St are scheduled for replacement. This approach intends to capitalize on limited, efficient mobilization costs by focusing all the construction along these few corridors within District 3.

District 4: The work plan has been updated to include Cecil A Malone Dr. sidewalk to correspond with the planned pedestrian bridge over the inlet.

District 5: The 200 block of Cliff St becomes a priority based upon the SID prioritization algorithm. However, considering the disruption along Hector St. all summer, the City and residents may prefer a different work location.
## Proposed 2021 Sidewalk Improvement District (SID)—BASE BUDGET

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<th>District</th>
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<th>3</th>
<th>4</th>
<th>5</th>
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<td>$158,858</td>
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<td>$270,080</td>
<td>$167,483</td>
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<td>31.1%</td>
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<td>$125,905</td>
<td>$226,126</td>
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<td>Capital Projects-Repayment</td>
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<td>Balance for 2020 work plan</td>
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<td>$6,650</td>
<td>$6,295</td>
<td>$11,306</td>
<td>$7,011</td>
<td>$5,053</td>
<td>$36,316</td>
</tr>
<tr>
<td>Concrete Lifting/Concrete Cutting</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

updated 29 July 2020
# 2021 PROPOSED Sidewalk Work Plan and Budget

## District One

<table>
<thead>
<tr>
<th>City Block</th>
<th>Side of Street</th>
<th>Appr. Length of sidewalk (linear feet)</th>
<th>Estimated SF cost</th>
<th>Cost (5' wide)</th>
<th>Available Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Construction</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Curb Ramps at the intersection of King St./ N. Tioga St.</td>
<td>East</td>
<td>80</td>
<td>$ 23</td>
<td>$ 9,200</td>
<td></td>
</tr>
<tr>
<td>Curb Ramps at the intersection of E. Jay St./ N. Tioga St.</td>
<td>East</td>
<td>100</td>
<td>$ 23</td>
<td>$ 11,500</td>
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</tr>
<tr>
<td>300 Utica St</td>
<td>East</td>
<td>260</td>
<td>$ 23</td>
<td>$ 29,900</td>
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<tr>
<td>100 E. York St.</td>
<td>North</td>
<td>350</td>
<td>$ 23</td>
<td>$ 40,250</td>
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<tr>
<td>100 E. York St.</td>
<td>South</td>
<td>120</td>
<td>$ 23</td>
<td>$ 13,800</td>
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</tr>
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<td><strong>TOTAL</strong></td>
<td></td>
<td>730</td>
<td></td>
<td></td>
<td>$ 104,650</td>
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<tr>
<td><strong>Contingency</strong></td>
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<td></td>
<td></td>
<td>$ 111,746</td>
</tr>
<tr>
<td><strong>Construction</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>500 N. Aurora St.</td>
<td>West</td>
<td>340</td>
<td>$ 23</td>
<td>$ 39,100</td>
<td></td>
</tr>
<tr>
<td>100 E. Lewis St.</td>
<td>North</td>
<td>230</td>
<td>$ 23</td>
<td>$ 26,450</td>
<td></td>
</tr>
<tr>
<td>100 E. Lewis St.</td>
<td>South</td>
<td>200</td>
<td>$ 23</td>
<td>$ 23,000</td>
<td></td>
</tr>
<tr>
<td>100 E. Yates St.</td>
<td>North</td>
<td>230</td>
<td>$ 23</td>
<td>$ 26,450</td>
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<tr>
<td>100 E. Yates St.</td>
<td>South</td>
<td>170</td>
<td>$ 23</td>
<td>$ 19,550</td>
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<td><strong>Total Contingency</strong></td>
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<td></td>
<td>$ 134,550</td>
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## Future Collaboration with City Streets' Crews/Grant Money/Capital Projects

<table>
<thead>
<tr>
<th>City Block</th>
<th>Side of Street</th>
<th>Appr. Length of sidewalk (linear feet)</th>
<th>Estimated SF cost</th>
<th>Cost (5' wide)</th>
</tr>
</thead>
<tbody>
<tr>
<td>100 Thurston Ave.</td>
<td>North</td>
<td></td>
<td></td>
<td>$ 60,000</td>
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<tr>
<td>900 Stewart Ave.</td>
<td>West</td>
<td></td>
<td></td>
<td>$ 65,000</td>
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<tr>
<td>300 Fall Creek Dr.</td>
<td>North</td>
<td></td>
<td></td>
<td>$ 200,000</td>
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</table>
## 2021 PROPOSED Sidewalk Work Plan and Budget

### District Two

<table>
<thead>
<tr>
<th>City Block</th>
<th>Side of Street</th>
<th>Appr. Length of Sidewalk (linear feet)</th>
<th>Estimated SF cost</th>
<th>Cost (5' wide)</th>
<th>Available Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>100 Ithaca Rd.</td>
<td>North</td>
<td>100</td>
<td>$23</td>
<td>$11,500</td>
<td></td>
</tr>
<tr>
<td>200 Cornell St.</td>
<td>East/West</td>
<td>180</td>
<td>$23</td>
<td>$20,700</td>
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<tr>
<td>100-300 College Ave.</td>
<td>East/West</td>
<td>500</td>
<td>$23</td>
<td>$57,500</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>780</td>
<td>$89,700</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>92,781</td>
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<tr>
<td>SID Capital Projects</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>500-900 Giles St</td>
<td>North</td>
<td>575</td>
<td></td>
<td>250,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>15 Yr Debt Service = $20,000</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>50/50 NYS Climate Smart Grant Recipient</td>
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</tr>
</tbody>
</table>

### Contingency

| Construction   |                |                                        |                   |                |                  |
| 500 Mitchell St. | North         | 100                                    | $23               | $11,500        |                  |
| 100 Linden Ave. | West          | 550                                    | $23               | $63,250        |                  |
| 400 Dryden Rd.  | North          | 290                                    | $23               | $33,350        |                  |
| 200 Delaware Ave. | West     | 400                                    | $23               | $46,000        |                  |
| 100 Delaware Ave. | West | 450                                    | $23               | $51,750        |                  |
| Total Contingency |                |                                        |                   | $205,850        |                  |

### Future Collaboration with City Streets' Crews/Grant Money/Capital Projects

|                      |                |                                        |                   |                |                  |
| 1100 E. State St    | South          | 450                                    |                  | $120,000       |                  |
| 400 Oak Ave         | North          | 900                                    |                  | $244,000       |                  |
| 100-400 College Ave. Streetscape | East/West | 2400                                    |                  | $264,000       |                  |
## 2021 PROPOSED Sidewalk Work Plan and Budget

### District Three

<table>
<thead>
<tr>
<th>City Block</th>
<th>Side of Street</th>
<th>Appr. Length of sidewalk (linear feet)</th>
<th>Estimated SF cost</th>
<th>Cost (5' wide)</th>
<th>Available Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>100 E. Seneca St</td>
<td>North</td>
<td>220</td>
<td>$23</td>
<td>$25,300</td>
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</tr>
<tr>
<td>100-300 W. Seneca St.</td>
<td>North/South</td>
<td>640</td>
<td>$23</td>
<td>$34,500</td>
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</tr>
<tr>
<td>600 W. Green St.</td>
<td>North/South</td>
<td>650</td>
<td>$23</td>
<td>$74,750</td>
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</tr>
<tr>
<td>500 W. Green St.</td>
<td>North/South</td>
<td>480</td>
<td>$23</td>
<td>$55,200</td>
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<tr>
<td></td>
<td></td>
<td>1,990</td>
<td></td>
<td>189,750</td>
<td>189,983</td>
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### Contingency

<table>
<thead>
<tr>
<th>City Block</th>
<th>Side of Street</th>
<th>Appr. Length of sidewalk (linear feet)</th>
<th>Estimated SF cost</th>
<th>Cost (5' wide)</th>
<th>Available Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>200 Monroe St.</td>
<td>North</td>
<td>150</td>
<td>$23</td>
<td>$17,250</td>
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</tr>
<tr>
<td>200 E. Buffalo St.</td>
<td>South</td>
<td>300</td>
<td>$23</td>
<td>$34,500</td>
<td></td>
</tr>
<tr>
<td>500 W. Seneca St.</td>
<td>North</td>
<td>300</td>
<td>$23</td>
<td>$34,500</td>
<td></td>
</tr>
<tr>
<td>300 W. Buffalo St.</td>
<td>South</td>
<td>400</td>
<td>$23</td>
<td>$46,000</td>
<td></td>
</tr>
<tr>
<td>100 W. Buffalo St.</td>
<td>North</td>
<td>150</td>
<td>$23</td>
<td>$17,250</td>
<td></td>
</tr>
<tr>
<td>100 S. Plain St.</td>
<td>East</td>
<td>200</td>
<td>$23</td>
<td>$23,000</td>
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</tr>
<tr>
<td>100 E. Green St. (vault membrane repair)</td>
<td>North</td>
<td>300</td>
<td>$23</td>
<td>$34,500</td>
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<tr>
<td>200 S. Cayuga St.</td>
<td>East</td>
<td>180</td>
<td>$23</td>
<td>$20,700</td>
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</tr>
<tr>
<td>400 Madison St.</td>
<td>North/South</td>
<td>460</td>
<td>$23</td>
<td>$52,900</td>
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</tr>
<tr>
<td></td>
<td></td>
<td>1,990</td>
<td></td>
<td>228,850</td>
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</tr>
</tbody>
</table>

**Future Collaboration with City Streets' Crews/Grant Money/Capital Projects**
# 2021 PROPOSED Sidewalk Work Plan and Budget

## District Four

<table>
<thead>
<tr>
<th>City Block</th>
<th>Side of Street</th>
<th>Appr. Length of Sidewalk (linear feet)</th>
<th>Estimated SF cost</th>
<th>Cost (5' wide)</th>
<th>Available Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>200 Cecil A Malone Dr. South</td>
<td>840 $ 23</td>
<td>$ 96,600</td>
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<tr>
<td>300 Elmira Rd East</td>
<td>100 $ 23</td>
<td>$ 11,500</td>
<td></td>
<td></td>
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<tr>
<td><strong>TOTAL</strong></td>
<td><strong>940</strong></td>
<td><strong>$ 108,100</strong></td>
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<tr>
<td><strong>Contingency</strong></td>
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</tbody>
</table>

### Construction

<table>
<thead>
<tr>
<th>City Block</th>
<th>Side of Street</th>
<th>Appr. Length of Sidewalk (linear feet)</th>
<th>Estimated SF cost</th>
<th>Cost (5' wide)</th>
</tr>
</thead>
<tbody>
<tr>
<td>500 S. Cayuga St. East</td>
<td>200 $ 23</td>
<td>$ 23,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>300 Pleasant St. South</td>
<td>370 $ 23</td>
<td>$ 42,550</td>
<td></td>
<td></td>
</tr>
<tr>
<td>100 Hawthorne Pl. North</td>
<td>250 $ 23</td>
<td>$ 28,750</td>
<td></td>
<td></td>
</tr>
<tr>
<td>300 Wood St. North</td>
<td>130 $ 23</td>
<td>$ 14,950</td>
<td></td>
<td></td>
</tr>
<tr>
<td>100 Hillview Pl South</td>
<td>400 $ 23</td>
<td>$ 46,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>200 Columbia St South</td>
<td>385 $ 23</td>
<td>$ 44,275</td>
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<td></td>
</tr>
<tr>
<td>100 Hyers South</td>
<td>400 $ 23</td>
<td>$ 46,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>400 Turner Pl. East</td>
<td>250 $ 23</td>
<td>$ 28,750</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total Contingency</strong></td>
<td><strong>$ 119,025</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Future Collaboration with City Streets' Crews/Grant Money/Capital Projects

<table>
<thead>
<tr>
<th>City Block</th>
<th>Side of Street</th>
<th>Appr. Length of Sidewalk (linear feet)</th>
<th>Estimated SF cost</th>
<th>Cost (5' wide)</th>
</tr>
</thead>
<tbody>
<tr>
<td>400 Hillview Pl South</td>
<td>650</td>
<td>$ 223,000</td>
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<tr>
<td>600-900 S. Aurora St East</td>
<td>1650</td>
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<tr>
<td>300 Spencer Rd East/West</td>
<td>2100</td>
<td>$ 400,000</td>
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<tr>
<td>100 Giles St South</td>
<td>450</td>
<td>$ 360,000</td>
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<tr>
<td>200-300 Giles St East</td>
<td>1600</td>
<td>$ 300,000</td>
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</tr>
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</table>
## 2021 PROPOSED Sidewalk Work Plan and Budget

### District Five

<table>
<thead>
<tr>
<th>City Block</th>
<th>Side of Street</th>
<th>Appr. Length of sidewalk (linear feet)</th>
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<th>Cost (5' wide)</th>
<th>Available Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Construction</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>200 Cliff St.</td>
<td>East</td>
<td>450</td>
<td>$23</td>
<td>$51,750</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>450 TOTAL</td>
<td></td>
<td>$51,750</td>
<td>60,901</td>
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</table>

<table>
<thead>
<tr>
<th>City Block</th>
<th>Side of Street</th>
<th>Appr. Length of sidewalk (linear feet)</th>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>Contingency</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>400 Chestnut St.</td>
<td>West</td>
<td>260</td>
<td>$23</td>
<td>$29,900</td>
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</tr>
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<td>200 Taughannock Blvd.</td>
<td>West</td>
<td>80</td>
<td>$23</td>
<td>$9,200</td>
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<tr>
<td>500 Esty St.</td>
<td>North</td>
<td>80</td>
<td>$23</td>
<td>$9,200</td>
<td></td>
</tr>
<tr>
<td>600 W. Buffalo St.</td>
<td>North</td>
<td>80</td>
<td>$23</td>
<td>$9,200</td>
<td></td>
</tr>
</tbody>
</table>

**Total Contingency** $57,500

### Future Collaboration with City Streets' Crews/Grant Money/Captial Projects

- **100-1100 Hector St**
  - North/East
  - Appr. Length: 7150
  - Cost: $2,500,000
  - Approved in 2019
  - Construction completed 2020

- **Elm/Chestnut Intersection**
  - Cost: $530,000
WHEREAS, Emersub 15, LLC ("Emerson") is the owner of the South Hill parcel of land previously occupied by Emerson Power Transmission, identified as 620-640 S. Aurora Street, City tax map parcel 106.-1-8 and 810 Danby Road, Town tax map parcel 40.-3-3 (collectively the "Parcel"); and

WHEREAS, Unchained Properties, LLC intends to develop the Parcel into a mixed-used district referred to as the Chainworks District Redevelopment Project ("Project"); and Whereas, the Project has undergone joint environmental review by the City and Town, and on March 26, 2019, the City Planning Board approved Phase 1 of the Project consisting of rehabilitation of existing buildings and hardscape and landscape improvements; and

WHEREAS, Emerson and Unchained Properties, LLC have agreed to convey various public easements to mitigate potential environmental impacts to vegetation and fauna, public health and environment, transportation and circulation, open space and recreation and increases in impervious areas; and

WHEREAS, the easements to be granted include three permanent easements (collectively “Easements”) that, together, will enable the City (potentially in conjunction with the Town of Ithaca) to construct and maintain, for public use, a multi-use trail called the Gateway Trail, intended to run from South Aurora Street to Stone Quarry Rd and beyond, connecting the South Hill Recreation Way and Black Diamond Trails; and

WHEREAS, the Trail Easements are more specifically described as follows:

1. A permanent easement to the City for the portion of the trail, within City limits, upon the “OU-1” subdivided parcel, which parcel will be retained by Emersub 15, LLC for ongoing environmental remediation.
2. A permanent easement to the City for the portion of the trail, within City limits, upon the “OU-2” subdivided parcel, which parcel is intended to be extensively developed by Unchained Properties, LLC, including both primary and secondary trail easements, with said secondary easements included for purposes of providing alternative trail routing in the event that environmental remediation or construction activities require the temporary closure of the primary trail.
3. A permanent easement jointly to the Town and City for the portion of the trail, straddling the Town/City line, upon the “OU-2” subdivided parcel, but in the forested portion of that parcel closer to Stone Quarry Rd., which portion is not currently intended for development (other than the trail).

and;
WHEREAS, General City Law Section 20 empowers the City to accept, hold and administer real property within and without the limits of the city, and the Easements serve the public interest; now therefore be it

RESOLVED, Common Council is supportive of accepting the Easements; and further be it

RESOLVED, That the Mayor, upon the advice of the City Attorney, is authorized to execute documents required to memorialize and accept the Easements, which may include the terms of future maintenance and/or use, with said documents to be substantially similar to the attached Easements, provided, however, that the joint Town-City easement may be executed with such later, more substantial edits as agreed between the Town and Emersub 15, LLC, so long as such edits are acceptable to the Mayor, upon the advice of the City Attorney.
TRAIL EASEMENT AGREEMENT

THIS TRAIL EASEMENT AGREEMENT (the “Agreement”) is made and entered into this _____ day of __________, 2020 (the “Effective Date”), by and between EMERSUB 15 LLC, a Delaware limited liability company (“Grantor”), and the CITY OF ITHACA, NEW YORK (the “City”). Grantor and the City, and their respective successors and assigns, are also referred to herein individually as a “Party” and collectively as the “Parties”.

WITNESSETH:

WHEREAS, Grantor owns real property described in Exhibit A attached hereto and incorporated herein by reference (the “Property”);

WHEREAS, the City desires to construct and maintain, for the public use, a multi-use trail (the “Trail”) on and over a portion of the Property; and

WHEREAS, in furtherance of the development of the Trail, Grantor desires to grant, and the City desires to accept, a non-exclusive, perpetual easement (the “Easement”) over that certain portion of the Property legally described and depicted as the highlighted portion of the “Proposed Primary Trail Easement Area” on Exhibit B attached hereto and incorporated herein by reference (the “Easement Area”) for the construction, public use, and maintenance of the Trail (the “Easement Purpose”); and

WHEREAS, the City will construct or cause to have constructed a portion of the Trail on the property adjacent to the Property described on Exhibit C attached hereto and incorporated herein by reference (the “Adjacent Property”).

NOW THEREFORE, for and in consideration of Ten and No/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and the City hereby covenant and agree as follows:

1. **Grant of Easement.** Subject to the terms of this Agreement and subject to all matters of fact or record, Grantor does hereby grant and declare to the City the Easement over the Easement Area to be used exclusively for the Easement Purpose and for no other purpose except that the grant of the Easement shall include the right of the City to temporarily use areas of the Property adjacent to the Easement Area for use in the construction and maintenance of the Trail so long as such use does not adversely impact Grantor’s use of the Property.

2. **Reservation of Rights.** The City acknowledges and agrees that Grantor retains for itself all rights with respect to the Easement Area other than the rights expressly granted to the City in Section 1 herein. Without limiting the generality of the preceding sentence, subject to the terms of this Agreement, the Easement shall be expressly subject and subordinate to the following rights hereby reserved by Grantor with respect to the Easement Area:
(a) The right to use the surface areas of the Easement Area for access, ingress and egress over, upon and across the Trail to access and use the Property, provided, however, that Grantor shall not obstruct the Trail except pursuant to Section 3 herein.

(b) The right to enter and cross the Trail (whether above, below or upon the surface of the Easement Area) to install, maintain, repair and replace utility lines and pipes (including, without limitation, water, gas, electric, steam, telecommunications, and other similar services), storm and sanitary sewers, and similar services and improvements (including repairing and maintaining Turner Place), provided, however, that no such improvements or installations may materially restrict or interfere with any access to or use of the Trail by the public or the City between grade level and sixteen (16) feet above grade level.

(c) The right to conduct environmental investigation, remediation and monitoring as required by applicable environmental law and/or Grantor's contractual obligations.

(d) The right to grant additional access, utility or other easements over, upon and under, and the right to grant others the right to use, the Easement Area, so long as the exercise by Grantor of such rights: (i) does not materially and adversely interfere with the City's use of the Easement Area for the purposes herein granted; and (ii) is not otherwise prohibited by the terms of this Agreement.

3. **Easement Area Closures.**

(a) In no event shall any portion of the Easement Area be opened by the City for public use until the City has completed construction of the Trail on the Property pursuant to Section 4 herein and completed construction of at least one phase and/or section the Trail on the property adjacent to the Property.

(b) Due to remediation, investigation and/or monitoring activities that Grantor is required by applicable law and/or contractual obligation to conduct on the Property, Grantor, with three (3) days' notice to the City (except in the event of an emergency, in which no notice shall be required), shall be entitled in its sole discretion, exercised in good faith, to close and restrict access to those portions of the Easement Area located within a twenty (20) foot radius of a remediation work site and/or such additional areas of the Easement Area as may be necessary or appropriate to perform or complete such activities, at any time and for such periods of time as Grantor shall deem appropriate, in order to comply with Grantor's remediation, investigation and/or monitoring obligations and/or to maintain the monitoring wells and other environmental remediation equipment located on the Property and/or as necessary in order to address a clear and direct threat to public safety. Grantor shall exercise reasonable efforts to limit both the scope and duration of any such closures or restrictions, and to only do so when reasonably necessary for the performance of such activities and/or public safety threats as set forth in this Section 3(b). Grantor's right to close or restrict access to the Easement Area shall expire once Grantor is no longer required to conduct such activities under any applicable law or contractual obligation. Grantor's obligation to provide notice to the City of such closures or restricted access shall take effect only at such time after the City has opened the Trail within the Easement Area for public use and notified Grantor in writing of the same.
(c) No later than such time as when the Trail on the Property first opens to the public, Grantor shall be required to coordinate with the City and Adjacent Property owner in order to establish and authorize a sign plan to be approved by the City in its reasoned discretion and thereafter implemented by Grantor or their agent or contractor on each such occasion as the Trail has been or will be closed. In the event portions of the Trail are closed pursuant to this Section 3, Grantor shall comply with any obligations it may have under said sign plan.


(a) Except as otherwise expressly provided herein, the City shall be responsible for the initial design, construction and ongoing maintenance of the Trail at its own cost and expense, and in accordance with all applicable laws, including, without limitation, any required compliance with the Americans with Disabilities Act, provided, however, that this agreement does not provide Grantor with any authority or standing to enforce any such applicable laws against the City in the design, construction, and ongoing maintenance of the Trail. The City hereby agrees that it shall (i) provide the proposed plans, specifications, and schedule for the construction and design of the Trail to Grantor for review prior to performing any construction activities on the Easement Area (which construction activities shall be performed in accordance with the plans, specifications, and—on a reasonable-efforts basis—schedule as finalized pursuant to this Section 4(a)) and (ii) reasonably consider incorporating any input from Grantor relating to such plans, specifications, and schedule.

(b) In the event that any activities conducted by Grantor within the Easement Area pursuant to Section 2(a), 2(b) or 2(c) damage the Trail within the Easement Area (including, but not limited to, damage caused by the release of any hazardous substances for which Grantor is responsible under applicable law), Grantor shall, at Grantor’s cost, either (i) restore that portion of the Trail to substantially the condition in which it existed immediately prior to such damage or (ii) if Grantor has not performed such restoration within a commercially reasonable period of time, pay the reasonable, out-of-pocket costs incurred by the City in completing or contracting for the completion of such restoration.

(c) Grantor may construct, at its option, in a manner satisfactory to Grantor and approved by the City, such approval not to be unreasonably withheld, conditioned or delayed, a fence or other device to segregate and restrict access from the Trail to the remainder of the Property, either temporarily or permanently. The initial construction and ongoing maintenance of such fence or other device shall be at Grantor’s sole cost and expense, provided, that, Grantor shall have no obligation to construct such fence or other device, or to leave in place the same, provided, however, the Grantor shall have an obligation to maintain such fence or other device so long as the Grantor chooses to leave the same in place.

5. Defaults; Remedies. In the event of any default with respect to any of the covenants, conditions or restrictions to be observed or performed by Grantor or the City hereunder, the aggrieved Party shall be permitted to cure such default at the defaulting Party’s expense, provided that the defaulting Party shall be afforded a reasonable cure period prior to the aggrieved Party’s exercise of such cure right, such cure period not to exceed: (i) three (3) business days when
the default causes the Trail to be closed; and (ii) thirty (30) days for all other defaults, running from the date of the defaulting Party’s receipt of written notice of such default (unless the defaulting Party has commenced cure within such cure period and is diligently pursuing the same to completion, in which event such cure period shall be extended for so long as the defaulting Party shall continue diligently to pursue such cure), and further provided that, in the event of emergency, the aggrieved Party shall have the right to immediately cure such default at the defaulting Party’s expense. The defaulting Party shall reimburse the aggrieved Party for all reasonable, out-of-pocket costs incurred in curing any such default promptly upon written notice of such costs by the aggrieved Party. In addition, immediately from and after any default in respect of any of the covenants, conditions or restrictions to be observed or performed by Grantor or the City hereunder, the aggrieved Party shall be entitled to exercise any and all other rights and remedies permitted by law or equity, including the remedies of injunction and/or specific performance.

6. Insurance. The City shall maintain Commercial General Liability with minimum limits for Bodily Injury and Property Damage Each Occurrence $5,000,000; Personal Injury & Advertising Injury Limit $5,000,000; Products/Completed Operations Aggregate $7,000,000; General Aggregate $7,000,000. Such policies shall cover occurrences arising out of the use, occupancy, misuse or condition of the Easement Area and improvements thereon and shall name Grantor as an additional insured. Upon request by Grantor, the City shall deliver to Grantor a certificate of insurance evidencing the foregoing coverage.

7. Liability. The City hereby assumes all liability with respect to personal injury or property damage that may occur on the Property, the Easement Area and/or the Trail from any cause proximately and primarily relating to or arising from the construction, use, and/or maintenance of the Trail and shall, to the maximum extent enforceable under applicable law, fully and unconditionally indemnify, defend and hold Grantor and the Property free and harmless from and against any cost, expense, charge, lien or judgment arising as a result of any such personal injury or property damage, unless such personal injury or property damage was in whole or in part the result of the negligence or willful misconduct of Grantor or Grantor’s agents, employees, contractors, or predecessors-in-interest, in which case liability shall be allocated between the involved parties in proportion to their respective degrees of fault, negligence or willful misconduct contributing to such liability. Notwithstanding the preceding sentence, the City shall in no event be liable for any environmental liability or cleanup costs under this Agreement, including but not limited to any liability arising under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and Article 12 of the New York State Navigation Law, unless such liability arises from a release, discharge, spill, or disposal of a Hazardous Substance (as that term is defined under CERCLA) or Petroleum (as that term is defined under Article 12 of the Navigation Law) by City employees, agents, or contractors, that occurs subsequent to the commencement of construction activities for the Trail.

8. Tax Benefits. The City hereby agrees to reasonably cooperate with any reasonable requests of Grantor which are designed to permit Grantor to obtain the benefits of any tax credits and/or tax deductions available under state and/or federal law as a result of Grantor’s granting of the Easement.

9. No Third-Party Beneficiary; No Dedication. Nothing contained in this Agreement shall be deemed a gift or dedication of any portion of the Easement Area or Property to the general
public or for the general public or for any public purpose whatsoever nor shall anything contained in this Agreement confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third party beneficiary or otherwise. Without limiting the generality of the preceding sentence, in no event shall any third parties, including any invitees of the City or the general public be entitled to enforce any provision of this Agreement.

10. **Severability.** The unenforceability of any provision of this Agreement shall not render the remaining provisions hereof unenforceable or void.

11. **Notices.** All notices, demands, requests, consents, approvals and other communications required or permitted to be given hereunder, or which are to be given with respect to this Agreement, shall be in writing and shall be sent by (i) registered or certified mail, return receipt requested, or (ii) delivered personally, including by air courier or expedited mail service, provided such notices shall be addressed or delivered to the Parties at their respective addresses set forth below:

If to Grantor: EMERSUB 15 LLC
c/o Emerson Electric Co.
8000 West Florissant Avenue
St. Louis, MO 63136
Attn: Steve Clarke
Environmental Affairs and Real Estate

With a copy to:

James G. Buell, Esq.
Bryan Cave Leighton Paisner LLP
One Metropolitan Square
Suite 3600
St. Louis, MO 63102

If to the City: Superintendent of Public Works
City of Ithaca
108 E. Green St.
Ithaca, NY 14850

With a copy to:

City Attorney
City of Ithaca
108 E. Green St.
Ithaca, NY 14850

or to such other address as may be specified from time to time in writing. Notice may be given by a Party’s attorney or other representative. All such notices hereunder shall be deemed to have been given on the date of delivery or the date marked on the return receipt unless delivery is refused or cannot be made because of any incorrect address provided by the addressee, in which case the date
of postmark shall be deemed the date notice has been given. All costs and expenses of the delivery of notices hereunder shall be borne and paid for by the delivering Party, and no notice shall be deemed to have been validly delivered hereunder unless delivery charges shall have been prepaid.

12. **Covenants Running With the Land.** All provisions of this Agreement, including the benefits and burdens, shall run with the land and are binding upon and inure to the benefit of all parties having or acquiring any right, title or interest in or to any portion of, or interest or estate in the Property for so long as, and to the extent, any such party shall have an interest in the land. Any reference herein to either of the Parties shall include the plural if there should be more than one or as the context may require. If at any time there should be more than one individual and/or entity comprising either of the Parties, each such individual and/or entity shall be jointly and severally liable for the performance of all obligations of such Party hereunder. If Grantor shall sell, transfer or assign the Property or its interest therein, it shall be released from any and all obligations hereunder from and after the date of such sale, transfer or assignment. Notwithstanding the foregoing, the City shall not be permitted to transfer or otherwise assign its rights, title, and interest in this Agreement or any portion of the Trail except to another municipal corporation or not-for-profit corporation.

13. **Non-Recourse.** Notwithstanding any provision hereof to the contrary, the obligations created by this Agreement shall be without recourse whatsoever to any of the Parties respective partners, members, shareholders, officers, directors or employees.

14. **Amendment.** This Agreement may not be modified, amended or terminated without the written consent of Grantor and the City.

15. **No Joint Venture.** This Agreement shall not be deemed or construed to make the parties hereto partners or joint venturers in any undertaking.

16. **Entire Agreement.** This Agreement, including all exhibits attached hereto, contains the entire agreement between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Agreement and exhibits hereto.

17. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of New York, without regard to conflicts laws or choice of law rules thereof and any litigation arising from this Agreement shall be venued in Tompkins County.

18. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

19. **Superior Rights.** Notwithstanding anything contained herein to the contrary, the City acknowledges that (i) the Property and the Easement Area is burdened by various easements and other third-party rights which may be superior to the Easement and other rights granted to the City hereunder, including, without limitation, rights held by the New York State Electric and Gas Corporation, preferential rights held by the New York State Department of Transportation, and
others (any such holders of superior rights or interests, collectively, the "Superior Rights Holders") and (ii) the Easement and the other rights granted to the City hereunder may require the consent and approval of any such Superior Rights Holders.

20. **Authority.** The undersigned persons executing this instrument represent and certify on behalf of the Party for which he/she is signing, that he/she has full power and authority to execute and deliver this instrument; that (as to Grantor) Grantor has full capacity to convey the real estate interest described; that (as to the City) the City has full authority to enter into this Agreement; and that all necessary action for the making of this Agreement and conveyance has been duly taken.

[SIGNATURES BEGIN ON THE NEXT PAGE]
IN WITNESS WHEREOF, Grantor and the City have caused this Agreement to be executed as of the day and year first above written.

GRANTOR:

EMERSUB 15 LLC

By: ____________________________
Name: Stephen L. Clarke
Title: President

STATE OF MISSOURI  )
COUNTY OF Missouri  ) ss.:  

On the 8th day of September, 2020, before me, the undersigned, personally appeared personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

______________________________
Notary Public (SEAL)

[SIGNATURES CONTINUE ON THE NEXT PAGE.]
CITY:

THE CITY OF ITHACA, NEW YORK

By: _________________________________
Name: _______________________________
Title: ________________________________

STATE OF NEW YORK

) ss.
COUNTY OF ____________

On the ___ day of __________, 2020, before me, the undersigned, personally appeared ___________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public (SEAL)
Exhibit A to Trail Easement Agreement

Legal Description of Property

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Ithaca, County of Tompkins and State of New York and being a portion of said City and being more particularly described as follows:

BEGINNING at the intersection of the southeasterly terminus of South Cayuga Street with the northerly line of former Lehigh Valley Railroad, said point of beginning being S.29°08’11”W., a distance of 7.49 feet from a railroad monument;

thence N.01°12’09”W., along the easterly street line of South Cayuga Street, a distance of 239.23 feet to a point;

thence through lands of Emerson Power Transmission Corp. as recorded in the Tompkins County Clerk’s Office in Instrument No. 555134-003 the following courses and distances:

N.59°22’08”E., a distance of 27.54 feet to a point;

S.43°11’21”E., a distance of 198.89 feet to a point;

S.36°58’29”W., a distance of 102.64 feet to a point;

S.48°02’39”E., a distance of 81.00 feet to a point;

S.42°00’53”W., a distance of 127.56 feet to a point;

N.47°59’07”W., a distance of 113.00 feet to a point:

N.01°12’09”W., a distance of 28.39 feet to its intersection with said southeasterly terminus of South Cayuga Street;

thence northeasterly, along a curve to the right, having a radius of 2,187.09 feet an arc distance of 25.03 feet to the point of beginning.

Containing 0.8966 Acres or 39,057 Square Feet of Land more or less and intending to describe “OU-1” as shown on the subdivision map of [TITLE] made by [SURVEYOR] dated [DATE] and filed in [LIBER/PAGE] in the Tompkins County Clerk’s Office.
Exhibit B to Trail Easement Agreement

Legal Description and Dépiction of Easement Area

(see attached)
Exhibit C to Trail Easement Agreement

Legal Description of Adjacent Property

ALL THAT TRACT OR PARCEL OF LAND situate in the City and Town of Ithaca, County of Tompkins and State of New York and being more particularly described as follows:

BEGINNING at an existing railroad monument in the northerly line of the former Lehigh Valley Railroad with the westerly road boundary of South Aurora Street (A.K.A New York State Route 96B);

thence S.02°51′33″E., along said westerly road boundary of South Aurora Street, a distance of 72.42 feet to an angle point;

thence S.02°02′26″E., continuing along said westerly road boundary of South Aurora Street, a distance of 204.12 feet to a point of curvature;

thence southwesterly, along a curve to the right, having a radius of 370.00 feet an arc distance of 177.34 feet and a chord bearing and distance of S.11°41′26″W., 175.65 feet;

thence S.25°25′18″W., continuing along said westerly road boundary of South Aurora Street, a distance of 295.74 feet to an existing iron pipe;

thence N.63°50′28″W., a distance of 100.00 feet to a point;

thence S.26°09′32″W., a distance of 413.00 feet to a point;

thence S.74°58′28″E., a distance of 101.00 feet to its intersection said westerly road boundary of South Aurora Street;

thence S.26°09′32″W., along said westerly road boundary of South Aurora Street, a distance of 28.00 feet to a point;

thence N.63°54′22″W., a distance of 32.40 feet to an existing iron pipe,

thence N.85°05′42″W., a distance of 72.17 feet to an existing iron pipe;

thence S.26°54′14″W., a distance of 161.60 feet to an existing iron pipe;

thence S.03°30′29″E., a distance of 35.30 feet to an existing iron pipe;

thence S.84°53′19″E., a distance of 89.00 feet to its intersection with said westerly road boundary of South Aurora Street;
thence S.26°42′55″W., along said westerly road boundary of South Aurora Street, a distance of 48.00 feet to an angle point;

thence S.31°44′06″W., continuing along said westerly road boundary of South Aurora Street, a distance of 122.19 feet to the northeasterly corner of New York State Appropriation of State Highway 5043, Map No. 6, Parcel No. 6;

thence westerly and southwesterly along said New York State Appropriation of State Highway 5043, Map No. 6, Parcel No. 6 the following courses and distances;

N.63°58′34″W., a distance of 17.00 feet to a point;
S.31°44′04″W., a distance of 100.50 to an angle point;
S.26°01′26″W., a distance of 600.13 feet to an angle point;
S.25°46′26″W., a distance of 483.13 feet to an existing granite monument;

thence N.64°11′56″W., a distance of 173.40 feet to a point;

thence S.25°44′04″W., a distance of 200.00 feet to a point;

thence S.63°58′56″E., a distance of 9.86 feet to a point;

thence S.26°03′05″W., a distance of 100.00 feet to a point;

thence S.63°52′14″E., a distance of 173.92 feet to its intersection the northwesterly corner of New York State Appropriation of State Highway 5043, Map No. 6, Parcel No. 7;

thence S.25°46′46″W., along the northwesterly line of said New York State Appropriation of State Highway 5043, Map No. 6, Parcel No. 7, a distance of 299.66 feet to a point;

thence N.68°13′50″W., a distance of 183.31 feet to an existing iron pipe;

thence S.21°46′10″W., a distance of 115.00 feet to a point;

thence S.72°34′50″E., a distance of 191.73 feet to an existing granite monument at the northwesterly corner of New York State Appropriation of State Highway 5043, Map No. 6, Parcel No. 8;

thence S.20°27′45″W., along the northwesterly line of said New York State Appropriation of State Highway 5043, Map No. 6, Parcel No. 8, a distance of 202.82 feet to a point, said point being 1.10 feet north of an existing granite monument;

thence N.73°42′24″W., a distance of 388.05 feet to an existing iron pipe;

thence S.16°17′36″W., a distance of 100.00 feet to and existing iron pipe;
thence S.73°42'24"E., a distance of 358.54 feet to the northwesterly corner of New York State Appropriation of State Highway 5043, Map No. 6, Parcel No. 9;

thence S.13°00'26"W., along the northwesterly line of said New York State Appropriation of State Highway 5043, Map No. 6, Parcel No. 8 and through an existing granite monument, a distance of 50.20 feet to a point;

thence N.73°41'49"W., a distance of 361.59 feet to an existing iron pipe;

thence S.16°16'07"W., a distance of 478.70 feet to an existing iron pipe;

thence S.87°30'52"W., a distance of 968.14 feet to an existing iron pipe;

thence N.01°40'24"W., a distance of 759.61 feet to an existing iron pipe at the intersection of the southeasterly line of the former Lehigh Valley Railroad;

thence S.51°30'23"W., along said southeasterly line of the former Lehigh Valley Railroad, a distance of 306.88 feet to an existing railroad monument at a point of curvature;

thence southwesterly, along a curve to the right, having a radius of 2064.25 feet an arc distance of 300.22 feet and a chord bearing and distance of S.55°40'44"W., 299.96 feet to an existing railroad monument;

thence S.59°15'37"W., along said southeasterly line of the former Lehigh Valley Railroad, a distance of 173.94 feet to its intersection of the centerline of Stone Quarry Road (49.5 feet wide) (formerly Teers Road);

thence northeasterly along said centerline of Stone Quarry Road the following courses and distances:

N.47°12'29"E., a distance of 60.51 feet to a point;
N.29°26'06"E., a distance of 52.69 feet to a point;
N.24°48'25"E., a distance of 43.66 feet to its intersection with the northwesterly line of the former Lehigh Valley Railroad;

thence N.59°15'37"E., along said northwesterly line of said former Lehigh Valley Railroad, a distance of 56.57 feet to an existing iron pipe at a point of curvature;

thence northeasterly, along a curve to the left, having a radius of 1766.95 feet an arc distance of 267.50 feet and a chord bearing and distance of N.54°55'24"E., 267.24 feet to an existing railroad monument;
thence N.51°30'47"E., along said northwesterly line of said former Lehigh Valley Railroad, a distance of 743.49 feet to an existing railroad monument at a point of curvature;

thence northeasterly, along a curve to the left having a radius of 3261.76 feet an arc distance of 462.53 feet and a chord bearing and distance of N.47°26'38"E., 462.14 feet to an existing iron pipe and point of compound curvature;

thence northeasterly, along a curve to the left having a radius of 5637.73 feet an arc distance of 615.64 feet and a chord bearing and distance of N.40°17'19"E., 615.33 feet to an existing railroad monument;

thence N.37°06'36"E., along said northwesterly line of said former Lehigh Valley Railroad, a distance of 641.31 feet to an existing railroad monument;

thence N.19°17'24"W., a distance of 427.60 feet to its intersection with the southeasterly road boundary of West Spencer Street;

thence N.28°25'19"W., along said southeasterly road boundary of West Spencer Street, a distance of 542.73 feet to a point;

thence S.60°31'42"E., a distance of 123.00 feet to an existing iron pipe;

thence N.29°28'18"E., a distance of 50.00 feet to an existing iron pipe;

thence N.60°31'42"W., a distance of 1.30 feet to a point;

thence N.29°28'18"W., a distance of 60.00 feet to an existing iron pipe;

thence N.20°16'18"E., a distance of 22.00 feet to a point;

thence S.58°01'42"E., a distance of 136.72 feet to its intersection with the westerly road boundary of South Cayuga Street;

thence S.01°44'18"E., along said westerly road boundary of South Cayuga Street, a distance of 118.54 feet to an existing iron pipe;

thence S.37°19'45"W., a distance of 318.10 feet to an existing iron pipe;

thence S.52°40'15"E., a distance of 131.48 feet to its intersection of said northeasterly line of said former Lehigh Valley Railroad;

thence N.37°10'20"E., along said northeasterly line of said former Lehigh Valley Railroad, a distance of 42.66 feet to an existing iron pipe at a point of curvature;
thence northeasterly, along a curve to the right, having a radius of 2187.09 feet an arc distance of 157.02 feet to a point;

thence S.01°12'09"E., a distance of 28.39 feet to a point;

thence S.47°59'07"E., a distance of 113.00 feet to a point;

thence N.42°00'53"E., a distance of 127.56 feet to a point;

thence N.48°02'39"W., a distance of 81.00 feet to a point;

thence N.36°58'29"E., a distance of 102.64 feet to a point;

thence N.43°11'21"W., a distance of 198.89 feet to a point;

thence S. 59°22'08"W., a distance of 27.54 feet to its intersection with the easterly road boundary of South Cayuga Street;

thence N. 01°12'09" W., along said easterly road boundary of South Cayuga Street, a distance of 40.18 feet to a point;

thence N.59°22'08"E., a distance of 142.00 feet to an existing iron pipe;

thence N.40°16'41"W., a distance of 47.38 feet to a point of curvature along the southeasterly road boundary of South Hill Terrace;

thence northeasterly, along a curve to the left, having a radius of 257.27 feet an arc distance of 84.00 feet and a chord bearing and distance of N35°37'08"E., 83.63 feet to a point;

thence S.68°10'44"E., a distance of 89.62 feet to a point;

thence N.36°10'17"E., a distance of 50.00 feet to a point;

thence N.67°17'10"W., a distance of 100.00 feet to its intersection with said southeasterly line of South Hill Terrace;

thence N.22°53'08"E., along said southeasterly road boundary of South Hill Terrace, a distance of 50.00 feet to an iron pipe;

thence S.67°06'52"E., a distance of 128.38 feet to a point;

thence N.01°05'38"E., a distance of 106.32 feet to a point;

thence N.88°14'20"E., a distance of 23.66 feet to a point;
thence N.22°35'04"E., a distance of 64.09 feet to a point;

thence N.87°40'07"E., a distance of 160.94 feet to its intersection with the westerly road boundary of Turner Place;

thence S.02°19'41"E., along said easterly road boundary of Turner Place, a distance of 214.20 feet to its intersection with said northeasterly line of said former Lehigh Valley Railroad;

thence N.50°10'21"E., along said northeasterly line of said former Lehigh Valley Railroad, a distance of 305.02 feet to an existing iron pipe;

thence N.82°08'58"E., a distance of 7.60 feet to an existing iron pipe;

thence N.00°00'04"W., a distance of 7.00 feet to an existing iron pipe;

thence N.53°53'26"E., continuing along said northeasterly line of said former Lehigh Valley Railroad, a distance of 13.44 feet to a point of curvature;

thence northeasterly, along a curve to the right, having a radius of 1825.61 feet an arc distance of 167.10 and a chord bearing and distance of N52°48'05"E., 167.04 feet to an existing railroad monument;

thence northeasterly, along a curve to the right, having a radius of 14500.77 feet an arc distance of 139.18 feet and a chord bearing and distance of N.58°10'53"E., 139.18 feet to a point of compound curvature;

thence northeasterly, along a curve to the right, having a radius of 411.32 feet an arc distance of 46.08' and a chord bearing and distance of N.61°39'27"E., 46.06 feet to the point of beginning.

Containing 95.0403 Acres of Land more or less and intending to describe “OU-2” as shown on the subdivision map of [TITLE] made by [SURVEYOR] dated [DATE] and filed in [LIBER/PAGE] in the Tompkins County Clerk’s Office.
TRAIL EASEMENT AGREEMENT

THIS TRAIL EASEMENT AGREEMENT (the “Agreement”) is made and entered into this _____ day of __________, 2020 (the “Effective Date”), by and between EMERSUB 15 LLC, a Delaware limited liability company (“Grantor”), and the CITY OF ITHACA, NEW YORK (the “City”). Grantor and the City, and their respective successors and assigns, are also referred to herein individually as a “Party” and collectively as the “Parties”.

WITNESSETH:

WHEREAS, Grantor owns real property described in Exhibit A attached hereto and incorporated herein by reference (the “Property”);

WHEREAS, the City desires to construct and maintain, for the public use, a multi-use trail (the “Trail”) on and over a portion of the Property; and

WHEREAS, in furtherance of the development of the Trail, Grantor desires to grant, and the City desires to accept, a non-exclusive, perpetual easement (the “Easement”) over those certain portions of the Property legally described and depicted as (1) the highlighted portion of the “Proposed Primary Trail Easement Area” (the “Primary Easement Area”), (2) the “Proposed Alternate Trail Easement Area #1” (the “First Alternate Easement Area”), and (3) the “Proposed Alternate Trail Easement Area #2” (the “Second Alternate Easement Area”) on Exhibit B attached hereto and incorporated herein by reference (the Primary Easement Area, the First Alternate Easement Area, and the Second Alternate Easement Area, collectively referred to herein as the “Easement Area”) for the construction, public use, and maintenance of the Trail (the “Easement Purpose”).

WHEREAS, the City will construct or cause to have constructed a portion of the Trail on the property adjacent to the Property described on Exhibit C attached hereto and incorporated herein by reference (the “Adjacent Property”).

NOW THEREFORE, for and in consideration of Ten and No/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and the City hereby covenant and agree as follows:

1. **Grant of Easement.** Subject to the terms of this Agreement and subject to all matters of fact or record, Grantor does hereby grant and declare to the City the Easement over the Easement Area to be used exclusively for the Easement Purpose and for no other purpose.

   (a) **Pre-Construction Easement Area.** The Parties hereby agree that the Easement Area before and during the City’s construction of the Trail will be as follows:

   (i) From South Aurora Street to the eastside of Turner Place: The Easement Area shall be 25 feet wide measured from the top of the bank, as shown on Exhibit B attached hereto and incorporated herein by reference.
(ii) From the eastside of Turner Place to northwesternmost point of where the City and Town of Ithaca intersect on the Property (the "City/Town Intersection"): The Easement Area shall be 30 feet wide centered on the existing fence line, as shown on Exhibit B attached hereto and incorporated herein by reference. Notwithstanding the foregoing, should Grantor determine in its sole discretion, acting in good faith, that it needs the City to narrow the Easement Area, Grantor may send a notice of such request to the City. The City shall then have six (6) months to survey and set a course for the Trail at its sole cost and expense, at which point the easement shall narrow to 25 feet, centered on the centerline of the proposed Trail.

(iii) City/Town Intersection to Stone Quarry Road: The Easement Area will be 60 feet wide, as shown on Exhibit B attached hereto and incorporated herein by reference. Notwithstanding the foregoing, should Grantor determine in its sole discretion, acting in good faith, that it needs the City to narrow the Easement Area, Grantor may send a notice of such request to the City. The City shall then have six (6) months to survey and set a course for the Trail at its sole cost and expense, at which point the easement shall narrow to 25 feet, centered on the centerline of the proposed Trail.

(b) Post-Construction Easement Area. The Parties hereby agree that the Easement Area shall be as follows:

(i) From South Aurora Street to the eastside of Turner Place: Upon the City’s completion of the Trail from South Aurora Street to the eastside of Turner Place, the Easement Area shall be 20 feet wide, measured from the top of the bank and as shown on Exhibit B.

(ii) From the eastside of Turner Place to the City/Town Intersection: Upon the City’s completion of the Trail from the eastside of Turner Place to the City/Town Intersection, the Easement Area will be 20 feet wide, centered on the centerline of the Trail as-built.

(iii) City/Town Intersection to Stone Quarry Road: Upon the City’s completion of the Trail from City/Town Intersection to Stone Quarry Road, the Easement Area will be 20 feet wide, centered on the centerline of the Trail as-built.

2. Reservation of Rights. The City acknowledges and agrees that Grantor retains for itself all rights with respect to the Easement Area other than the rights expressly granted to the City in Section 1 herein. Without limiting the generality of the preceding sentence, subject to the terms of this Agreement, the Easement shall be expressly subject and subordinate to the following rights hereby reserved by Grantor with respect to the Easement Area:

(a) The right to use the surface areas of the Easement Area for access, ingress and egress over, upon and across the Trail to access and use the Property, provided, however, that Grantor shall not obstruct the Trail except pursuant to Section 3 herein.

(b) The right to enter and cross the Trail (whether above, below or upon the surface of the Easement Area) to install, maintain, repair and replace utility lines and pipes
(including, without limitation, water, gas, electric, steam, telecommunications, and other similar services), storm and sanitary sewers, and similar services and improvements (including repairing and maintaining Turner Place), provided, however, that no such improvements or installations may materially restrict or interfere with any access to or use of the Trail by the public or the City between grade level and sixteen (16) feet above grade level.

(e) The right to grant additional access, utility or other easements over, upon and under, and the right to grant others the right to use, the Easement Area, so long as the exercise by Grantor of such rights: (i) does not materially and adversely interfere with the City's use of the Easement Area for the purposes herein granted; and (ii) is not otherwise prohibited by the terms of this Agreement.

3. Easement Area Closures:

(a) The First Alternate Easement Area and the Second Alternate Easement Area shall not be open and available to the public nor used by the City for purposes of public Trail access: (i) until the City completes the Trail on the Adjacent Parcel; and (ii) except as described in this Section 3. For purposes of clarification, only one of the two alternate easement areas (either the First Alternate Easement Area or the Second Alternate Easement Area) shall be required to be open and available to the public in the event that the Primary Easement Area or a portion of the Trail on the Adjacent Property is closed and unavailable.

(b) In connection with the development of the Property by Grantor, the City hereby agrees that Grantor shall, due to a demonstrable need for which there is no reasonable alternative, be entitled to close via street permit obtained from the City, such permit not to be unreasonably withheld, conditioned or delayed, and restrict access to portions of the Trail within the Primary Easement Area, but not along the orange dotted line depicted on Exhibit D (except where the orange dotted line crosses Turner Place, in accordance with the provision below), provided that the Grantor shall provide reasonable alternative access to the Trail through the First Alternate Easement Area for the duration of any such closure. In the event Grantor determines in its sole discretion, exercised in good faith, during such closure, that the First Alternate Easement Area is not suitable for public access due to a demonstrable need for which there is no reasonable alternative (e.g., during the construction or rehabilitation of Buildings 1-6, 17 and 18 and/or demolition of Building 4A and area road construction on the Property), then, upon three (3) days' written notification thereof to the City, the First Alternate Easement Area shall be closed and Grantor shall provide reasonable alternative access to the Trail through the Second Alternate Easement Area. Except in cases of emergency, Grantor shall not close and/or restrict access to both the First Alternate Easement Area and the Second Alternate Easement Area when the Primary Easement Area is closed.

(c) Upon three (3) days' written notice from the Adjacent Property Owner or City to Grantor that the portion of the Trail on the Adjacent Property has been or will be closed by the owner of the Adjacent Property, which notice shall include the planned duration of such closure, Grantor shall provide reasonable alternative access to the Trail through the First Alternate Easement Area for the duration of any such closure. In the event Grantor determines in its sole discretion, exercised in good faith, during such closure, that the First Alternate Easement Area is
not suitable for public access due to a demonstrable need for which there is no reasonable alternative (e.g., during the construction or rehabilitation of adjacent buildings or roads on the Property), then, upon three (3) days’ written notification thereof to the City, the First Alternate Easement Area shall be closed and Grantor shall provide reasonable alternative access to the Trail through the Second Alternate Easement Area. Except in cases of emergency, Grantor shall not close and/or restrict access to both the First Alternate Easement Area and the Second Alternate Easement Area during the period of the portion of the Trail upon the Adjacent Property is closed, provided that the proper written notification thereof has been delivered by the Adjacent Property Owner or the City. The Parties hereby agree that Grantor is only obligated to provide access through the First Alternate Easement Area and/or the Second Alternate Easement Area when the owner of the Adjacent Property determines in its sole discretion that the Adjacent Property must close; nothing herein shall grant the City the right to close the Adjacent Property independent of and/or without first receiving notice thereof from the owner of the Adjacent Property.

(d) Notwithstanding the foregoing, in the event the roadway known as Turner Place requires temporary closure by Grantor within the Easement Area for maintenance or repair, prior to such temporary closure Grantor will propose a detour plan for the Trail to be approved by the City, such approval to not be unreasonably withheld, conditioned, or delayed (except in the event of an emergency, in which case no approval shall be required).

(e) Grantor must maintain the First Alternate Easement Area in a condition suitable for public access for at least three (3) months out of any three (3) year period once the planned construction or rehabilitation of Buildings 1-6, 17 and 18, demolition of Building 4A, and the surrounding road construction, as shown on Exhibit D as the “Phase I & II Construction Zone” is complete. If construction within the Phase I & II Construction Zone is not completed before the portion of the Trail on the Adjacent Property is opened to the public, (i) Grantor will use reasonable efforts to make the First Alternate Easement Area available for use during construction within the Phase I & II Construction Zone when the portion of the Trail on the Adjacent Property is closed; and (ii) Grantor shall allow the City to make minor improvements to the First Alternate Easement Area at the City’s cost to allow for its safe use (including, without limitation, resurfacing of the area), the City hereby agreeing that it shall provide the proposed plans and specifications for any such minor improvements to Grantor for review prior to performing any construction activities on the Easement Area and will reasonably consider incorporating any input from Grantor relating to such plans and specifications. The requirements contained in this Section 3(e) shall take effect only after the portion of the Trail on the Adjacent Property first opens to the public.

(f) No later than such time as the portion of the Trail on the Adjacent Property first opens to the public, Grantor shall be required to coordinate with the City and Adjacent Property Owner in order to establish and authorize a sign plan to be approved by the City in its reasoned discretion and thereafter implemented by the Adjacent Property Owner or their agent or contractor on each such occasion as that the portion of the Trail on the Adjacent Property has been or will be closed by the owner of the Adjacent Property. In the event portions of the Trail are closed pursuant to this Section 3, Grantor shall comply with any obligations it may have under said sign plan.
(g) Grantor’s obligations to open, maintain, and provide access to the First Alternate Easement Area and/or the Second Alternate Easement Area shall expire once the owner of the Adjacent Property is no longer required to conduct remediation, investigation and/or monitoring activities under any applicable law or contractual obligation on the Adjacent Property, and all provisions of this Agreement regarding the First Alternate Easement Area and/or the Second Alternate Easement Area shall thereafter be of no further force and effect.


(a) Except as otherwise expressly provided herein, the City shall be responsible for the initial design, construction and ongoing maintenance of the Trail at its own cost and expense, and in accordance with all applicable laws, including, without limitation, any required compliance with the Americans with Disabilities Act, provided, however, that this Agreement does not provide Grantor with any authority or standing to enforce any such applicable laws against the City in the design, construction, and ongoing maintenance of the Trail. The City hereby agrees that it shall (i) provide the proposed plans, specifications, and schedule for the construction and design of the Trail to Grantor for review prior to performing any construction activities on the Easement Area (which construction activities shall be performed in accordance with the plans, specifications, and---on a reasonable-efforts basis---schedule as finalized pursuant to this Section 4(a)) and (ii) reasonably consider incorporating any input from Grantor relating to such plans, specifications, and schedule. The City may open the Trail within the Primary Easement Area in phases and/or sections upon completion of said phase and/or section.

(b) In the event that any activities conducted by Grantor within the Easement Area pursuant to Section 2(a), 2(b) or 2(c) damage the Trail within the Easement Area, Grantor shall, at Grantor’s cost, either (i) restore that portion of the Trail to substantially the condition in which it existed immediately prior to such damage or (ii) if Grantor has not performed such restoration within a commercially reasonable period of time, pay the reasonable, out-of-pocket costs incurred by the City in completing or contracting for the completion of such restoration.

(c) Grantor may construct, at its option, in a manner satisfactory to Grantor and approved by the City, such approval not to be unreasonably withheld, conditioned or delayed, a fence or other device to segregate and restrict access from the Trail to the remainder of the Property, either temporarily or permanently. The initial construction and ongoing maintenance of such fence or other device shall be at Grantor’s sole cost and expense, provided, that, Grantor shall have no obligation to construct such fence or other device, or to leave in place the same, provided, however, the Grantor shall have an obligation to maintain such fence or other device so long as the Grantor chooses to leave the same in place.

(d) Grantor shall, prior to the City’s opening of the Trail on the Adjacent Parcel, prepare the surface of that portion of the Second Alternate Easement Area that follows the driveway to Building 21, as shown on Exhibit D as the “Striping Zone” to allow for its safe use, including striping or similar to indicate exclusive trail area. Grantor shall submit a striping plan to the City for its approval, which shall not be unreasonably withheld, conditioned, or delayed, prior to striping. Grantor may, at its option, widen the driveway to Building 21, in which event the Second Alternate Easement Area will relocate so that the centerline of the Second Alternate
Easement Area is the southeastern edge of the widened driveway, subject to the same surface preparation and striping requirements established in this paragraph.

(e) The City may make minor improvements to the First Alternate Easement Area at the City's cost as set forth in Section 3(e).

(f) In the event the supports for the pedestrian bridge connecting Buildings 1 and 21 (generally, the "Pedestrian Bridge") are still located in the Easement Area when the City is ready to construct the Trail, the City will send notice of same to Grantor and Grantor will remove said Pedestrian Bridge and such supports in the Easement Area to grade level at its sole cost within a commercially reasonable timeframe.

(g) During the construction of the Trail, the City shall replace the railroad bridge that crosses Cayuga Street (generally, the "Railroad Bridge") with a bridge suitable for the Easement Purpose. Notwithstanding the foregoing, Grantor may determine, in its sole discretion, exercised in good faith, to remove the Railroad Bridge and/or move and reconstruct the southern abutment of the Railroad Bridge to widen the Cayuga Street entrance as part of its development. If Grantor has not moved and reconstructed the Railroad Bridge abutment before the City is ready to construct the Trail, the City will send notice of same to Grantor and Grantor: (1) will move and reconstruct the Railroad Bridge abutment at its sole cost and expense within a commercially reasonable timeframe; or (2) will elect to not move the Railroad Bridge abutment. Should Grantor elect to not move the Railroad Bridge abutment and the City constructs a pedestrian bridge, Grantor will be responsible for all costs associated with replacing the City's pedestrian bridge should Grantor decide to move the Railroad Bridge abutment in the future.

5. Defaults; Remedies. In the event of any default with respect to any of the covenants, conditions or restrictions to be observed or performed by Grantor or the City hereunder, the aggrieved Party shall be permitted to cure such default at the defaulting Party's expense, provided that the defaulting Party shall be afforded a reasonable cure period prior to the aggrieved Party’s exercise of such cure right, such cure period not to exceed: (i) three (3) business days when the default causes the Trail to be closed; and (ii) thirty (30) days for all other defaults, running from the date of the defaulting Party’s receipt of written notice of such default (unless the defaulting Party has commenced cure within such cure period and is diligently pursuing the same to completion, in which event such cure period shall be extended for so long as the defaulting Party shall continue diligently to pursue such cure), and further provided that, in the event of emergency, the aggrieved Party shall have the right to immediately cure such default at the defaulting Party’s expense. The defaulting Party shall reimburse the aggrieved Party for all reasonable, out-of-pocket costs incurred in curing any such default promptly upon written notice of such costs by the aggrieved Party. In addition, immediately from and after any default in respect of any of the covenants, conditions or restrictions to be observed or performed by Grantor or the City hereunder, the aggrieved Party shall be entitled to exercise any and all other rights and remedies permitted by law or equity, including the remedies of injunction and/or specific performance.

6. Insurance. The City shall maintain Commercial General Liability with minimum limits for Bodily Injury and Property Damage Each Occurrence $5,000,000; Personal Injury & Advertising Injury Limit $5,000,000; Products/Completed Operations Aggregate $7,000,000;
General Aggregate $7,000,000. Such polices shall cover occurrences arising out of the use, occupancy, misuse or condition of the Easement Area and improvements thereon and shall name Grantor as an additional insured. Upon request by Grantor, the City shall deliver to Grantor a certificate of insurance evidencing the foregoing coverage.

7. Liability. The City hereby assumes all liability with respect to personal injury or property damage that may occur on the Property, the Easement Area and/or the Trail from any cause proximately and primarily relating to or arising from the construction, use, and/or maintenance of the Trail and shall, to the maximum extent enforceable under applicable law, fully and unconditionally indemnify, defend and hold Grantor and the Property free and harmless from and against any cost, expense, charge, lien or judgment arising as a result of any such personal injury or property damage, unless such personal injury or property damage was in whole or in part the result of the negligence or willful misconduct of Grantor or Grantor's agents, employees, contractors, or predecessors-in-interest; in which case liability shall be allocated between the involved parties in proportion to their respective degrees of fault, negligence or willful misconduct contributing to such liability. Notwithstanding the preceding sentence, the City shall in no event be liable for any environmental liability or cleanup costs under this Agreement, including but not limited to any liability arising under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and Article 12 of the New York State Navigation Law, unless such liability arises from a release, discharge, spill, or disposal of a Hazardous Substance (as that term is defined under CERCLA) or Petroleum (as that term is defined under Article 12 of the Navigation Law) by City employees, agents, or contractors, that occurs subsequent to the commencement of construction activities for the Trail.

8. Tax Benefits. The City hereby agrees to reasonably cooperate with any reasonable requests of Grantor which are designed to permit Grantor to obtain the benefits of any tax credits and/or tax deductions available under state and/or federal law as a result of Grantor’s granting of the Easement.

9. Option to Convey Fee Interest. Grantor shall be permitted, with the City’s approval, not to be unreasonably withheld, conditioned or delayed, to convey the fee interest in all or a portion of the Easement Area to the City, in which event, (i) Grantor will bear the cost of subdividing the Property to permit such conveyance; (ii) the City will cooperate with Grantor’s request to convey such fee interest; and (iii) such conveyance will be subject to the express reservation by the Grantor of such easement and other rights to permit the Grantor to retain the benefits of all rights held by it pursuant to this Agreement.

10. Additional Easement. Within sixty (60) days after recitation of this Agreement, Grantor agrees that Grantor shall, by a separate agreement containing terms identical in all material respects to the terms of the Easement granted herein, grant to the joint ownership of the City and the Town of Ithaca, New York an easement area over the full width of that portion of the length of the “Proposed Primary Trail Easement Area” extending from the City/Town Intersection to Stone Quarry Road depicted on Exhibit B attached hereto and incorporated by reference herein.

11. No Third-Party Beneficiary; No Dedication. Nothing contained in this Agreement shall be deemed a gift or dedication of any portion of the Easement Area or Property to the general public or for the general public or for any public purpose whatsoever nor shall anything contained
in this Agreement confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third party beneficiary or otherwise. Without limiting the generality of the preceding sentence, in no event shall any third parties, including any invitees of the City or the general public be entitled to enforce any provision of this Agreement.

12. **Severability.** The unenforceability of any provision of this Agreement shall not render the remaining provisions hereof unenforceable or void.

13. **Notices.** All notices, demands, requests, consents, approvals and other communications required or permitted to be given hereunder, or which are to be given with respect to this Agreement, shall be in writing and shall be sent by (i) registered or certified mail, return receipt requested, or (ii) delivered personally, including by air courier or expedited mail service; provided such notices shall be addressed or delivered to the Parties at their respective addresses set forth below:

**If to Grantor:**

EMERSUB 15 LLC  
c/o Emerson Electric Co.  
8000 West Florissant Avenue  
St. Louis, MO 63136  
Attn: Steve Clarke  
Environmental Affairs and Real Estate

With a copy to:

James G. Buell, Esq.  
Bryan Cave Leighton Paisner LLP  
One Metropolitan Square  
Suite 3600  
St. Louis, MO 63102

**If to the City:**

Superintendent of Public Works  
City of Ithaca  
108 E. Green St.  
Ithaca, NY 14850

With a copy to:

City Attorney  
City of Ithaca  
108 E. Green St.  
Ithaca, NY 14850

or to such other address as may be specified from time to time in writing. Notice may be given by a Party’s attorney or other representative. All such notices hereunder shall be deemed to have been given on the date of delivery or the date marked on the return receipt unless delivery is refused or cannot be made because of any incorrect address provided by the addressee, in which case the date of postmark shall be deemed the date notice has been given. All costs and expenses of the delivery
of notices hereunder shall be borne and paid for by the delivering Party, and no notice shall be
deemed to have been validly delivered hereunder unless delivery charges shall have been prepaid.

14. **Covenants Running With the Land.** All provisions of this Agreement, including
the benefits and burdens, shall run with the land and are binding upon and inure to the benefit of
all parties having or acquiring any right, title or interest in or to any portion of, or interest or estate
in the Property for so long as, and to the extent, any such party shall have an interest in the land.
Any reference herein to either of the Parties shall include the plural if there should be more than
one or as the context may require. If at any time there should be more than one individual and/or
entity comprising either of the Parties, each such individual and/or entity shall be jointly and
severally liable for the performance of all obligations of such Party hereunder. If Grantor shall
sell, transfer or assign the Property or its interest therein, it shall be released from any and all
obligations hereunder from and after the date of such sale, transfer or assignment. Notwithstanding
the foregoing, the City shall not be permitted to transfer or otherwise assign its rights, title, and
interest in this Agreement or any portion of the Trail except to another municipal corporation or
not-for-profit corporation.

15. **Non-Recourse.** Notwithstanding any provision hereof to the contrary, the
obligations created by this Agreement shall be without recourse whatsoever to any of the Parties
respective partners, members, shareholders, officers, directors or employees.

16. **Amendment.** This Agreement may not be modified, amended or terminated
without the written consent of Grantor and the City.

17. **No Joint Venture.** This Agreement shall not be deemed or construed to make the
parties hereto partners or joint venturers in any undertaking.

18. **Entire Agreement.** This Agreement, including all exhibits attached hereto, contains
the entire agreement between the parties hereto with respect to the subject matter hereof. Any
prior correspondence, memoranda or agreements are superseded in total by this Agreement and
exhibits hereto.

19. **Governing Law.** This Agreement shall be construed in accordance with the laws of
the State of New York, without regard to conflicts laws or choice of law rules thereof and any
litigation arising from this Agreement shall be venued in Tompkins County.

20. **Counterparts.** This Agreement may be executed in any number of counterparts,
each of which shall be deemed an original, and all of which, when taken together, shall constitute
one and the same document.

21. **Superior Rights.** Notwithstanding anything contained herein to the contrary, the
City acknowledges that (i) the Property and the Easement Area is burdened by various easements
and other third-party rights which may be superior to the Easement and other rights granted to the
City hereunder, including, without limitation, rights held by the New York State Electric and Gas
Corporation, preferential rights held by the New York State Department of Transportation, and
others (any such holders of superior rights or interests, collectively, the “Superior Rights Holders”)

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and (ii) the Basement and the other rights granted to the City hereunder may require the consent and approval of any such Superior Rights Holders.

22. **Authority.** The undersigned persons executing this instrument represent and certify on behalf of the Party for which he/she is signing, that he/she has full power and authority to execute and deliver this instrument; that (as to Grantor) Grantor has full capacity to convey the real estate interest described; that (as to the City) the City has full authority to enter into this Agreement; and that all necessary action for the making of this Agreement and conveyance has been duly taken.

[SIGNATURES BEGIN ON THE NEXT PAGE]
IN WITNESS WHEREOF, Grantor and the City have caused this Agreement to be executed as of the day and year first above written.

GRANTOR:

EMERSUB 15 LLC

By: ________________________________
Name: ________________________________
Title: ________________________________

STATE OF Missouri

COUNTY OF St. Louis

On the 8th day of September, 2020, before me, the undersigned, personally appeared personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public (SEAL)

[Signatures continue on the next page.]
CITY:

THE CITY OF ITHACA, NEW YORK

By: _________________________________
Name: _______________________________
Title: _______________________________

STATE OF NEW YORK )
 ) ss.
COUNTY OF ___________

On the ___ day of __________, 2020, before me, the undersigned, personally appeared _____________________ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

__________________________
Notary Public (SEAL)
Exhibit A to Trail Easement Agreement

Legal Description of Property

ALL THAT TRACT OR PARCEL OF LAND situate in the City and Town of Ithaca, County of Tompkins and State of New York and being more particularly described as follows:

BEGINNING at an existing railroad monument in the northerly line of the former Lehigh Valley Railroad with the westerly road boundary of South Aurora Street (A.K.A New York State Route 96B);

thence S.02°51'33"E., along said westerly road boundary of South Aurora Street, a distance of 72.42 feet to an angle point;

thence S.02°02'26"E., continuing along said westerly road boundary of South Aurora Street, a distance of 204.12 feet to a point of curvature;

thence southwesterly, along a curve to the right, having a radius of 370.00 feet an arc distance of 177.34 feet and a chord bearing and distance of S.11°41'26"W., 175.65 feet;

thence S.25°25'18"W., continuing along said westerly road boundary of South Aurora Street, a distance of 295.74 feet to an existing iron pipe;

thence N.63°50'28"W., a distance of 100.00 feet to a point;

thence S.26°09'32"W., a distance of 413.00 feet to a point;

thence S.74°58'28"E., a distance of 101.00 feet to its intersection said westerly road boundary of South Aurora Street;

thence S.26°09'32"W., along said westerly road boundary of South Aurora Street, a distance of 28.00 feet to a point;

thence N.63°54'22"W., a distance of 32.40 feet to an existing iron pipe;

thence N.85°05'42"W., a distance of 72.17 feet to an existing iron pipe;

thence S.26°54'14"W., a distance of 161.60 feet to an existing iron pipe;

thence S.03°30'29"E., a distance of 35.30 feet to an existing iron pipe;

thence S.84°53'19"E., a distance of 89.00 feet to its intersection with said westerly road boundary of South Aurora Street;
thence S.26°42′55″W., along said westerly road boundary of South Aurora Street, a distance of 48.00 feet to an angle point;

thence S.31°44′06″W., continuing along said westerly road boundary of South Aurora Street, a distance of 122.19 feet to the northeasterly corner of New York State Appropriation of State Highway 5043, Map No. 6, Parcel No. 6;

thence westerly and southwesterly along said New York State Appropriation of State Highway 5043, Map No. 6, Parcel No. 6 the following courses and distances;

N.63°58′34″W., a distance of 17.00 feet to a point;
S.31°44′04″W., a distance of 100.50 to an angle point;
S.26°01′26″W., a distance of 600.13 feet to an angle point;
S.25°46′26″W., a distance of 483.13 feet to an existing granite monument;

thence N.64°11′56″W., a distance of 173.40 feet to a point;

thence S.25°44′04″W., a distance of 200.00 feet to a point;

thence S.63°58′56″E., a distance of 9.86 feet to a point;

thence S.26°03′05″W., a distance of 100.00 feet to a point. ;

thence S.63°52′14″E., a distance of 173.92 feet to its intersection the northwesterly corner of New York State Appropriation of State Highway 5043, Map No. 6, Parcel No. 7;

thence S.25°46′46″W., along the northwesterly line of said New York State Appropriation of State Highway 5043, Map No. 6, Parcel No. 7, a distance of 299.66 feet to a point;

thence N.68°13′50″W., a distance of 183.31 feet to an existing iron pipe;

thence S.21°46′10″W., a distance of 115.00 feet to a point;

thence S.72°34′50″E., a distance of 191.73 feet to an existing granite monument at the northwesterly corner of New York State Appropriation of State Highway 5043, Map No. 6, Parcel No. 8;

thence S.20°27′45″W., along the northwesterly line of said New York State Appropriation of State Highway 5043, Map No. 6, Parcel No. 8, a distance of 202.82 feet to a point, said point being 1.10 feet north of an existing granite monument;

thence N.73°42′24″W., a distance of 388.05 feet to an existing iron pipe;

thence S.16°17′36″W., a distance of 100.00 feet to and existing iron pipe;
thence S.73°42′24″E., a distance of 358.54 feet to the northwesterly corner of New York State Appropriation of State Highway 5043, Map No. 6, Parcel No. 9;

thence S.13°00′26″W., along the northwesterly line of said New York State Appropriation of State Highway 5043, Map No. 6, Parcel No. 8 and through an existing granite monument, a distance of 50.20 feet to a point;

thence N.73°41′49″W., a distance of 361.59 feet to an existing iron pipe;

thence S.16°16′07″W., a distance of 478.70 feet to an existing iron pipe;

thence S.87°30′52″W., a distance of 968.14 feet to an existing iron pipe;

thence N.01°40′24″W., a distance of 759.61 feet to an existing iron pipe at the intersection of the southeasterly line of the former Lehigh Valley Railroad;

thence S.51°30′23″W., along said southeasterly line of the former Lehigh Valley Railroad, a distance of 306.88 feet to an existing railroad monument at a point of curvature;

thence southwesterly, along a curve to the right, having a radius of 2064.25 feet an arc distance of 300.22 feet and a chord bearing and distance of S.55°40′44″W., 299.96 feet to an existing railroad monument;

thence S.59°15′37″W., along said southeasterly line of the former Lehigh Valley Railroad, a distance of 173.94 feet to its intersection of the centerline of Stone Quarry Road (49.5 feet wide) (formerly Teers Road);

thence northeasterly along said centerline of Stone Quarry Road the following courses and distances:

N.47°12′29″E., a distance of 60.51 feet to a point;
N.29°26′06″E., a distance of 52.69 feet to a point;
N.24°48′25″E., a distance of 43.66 feet to its intersection with the northwesterly line of the former Lehigh Valley Railroad;

thence N.59°15′37″E., along said northwesterly line of said former Lehigh Valley Railroad, a distance of 56.57 feet to an existing iron pipe at a point of curvature;

thence northeasterly, along a curve to the left, having a radius of 1766.95 feet an arc distance of 267.50 feet and a chord bearing and distance of N.54°55′24″E., 267.24 feet to an existing railroad monument;
thence N.51°30'47"E., along said northwesterly line of said former Lehigh Valley Railroad, a distance of 743.49 feet to an existing railroad monument at a point of curvature;

thence northeasterly, along a curve to the left having a radius of 3261.76 feet an arc distance of 462.53 feet and a chord bearing and distance of N.47°26'38"E., 462.14 feet to an existing iron pipe and point of compound curvature;

thence northeasterly, along a curve to the left having a radius of 5637.73 feet an arc distance of 615.64 feet and a chord bearing and distance of N.40°17'19"E., 615.33 feet to an existing railroad monument;

thence N.37°06'36"E., along said northwesterly line of said former Lehigh Valley Railroad, a distance of 641.31 feet to an existing railroad monument;

thence N.19°17'24"W., a distance of 427.60 feet to its intersection with the southeasterly road boundary of West Spencer Street;

thence N.28°25'19"E., along said southeasterly road boundary of West Spencer Street, a distance of 542.73 feet to a point;

thence S.60°31'42"E., a distance of 123.00 feet to an existing iron pipe;

thence N.29°28'18"E., a distance of 50.00 feet to an existing iron pipe;

thence N.60°31'42"W., a distance of 1.30 feet to a point;

thence N.29°28'18"E., a distance of 60.00 feet to an existing iron pipe;

thence N.20°16'18"E., a distance of 22.00 feet to a point;

thence S.58°01'42"E., a distance of 136.72 feet to its intersection with the westerly road boundary of South Cayuga Street;

thence S.01°44'18"E., along said westerly road boundary of South Cayuga Street, a distance of 118.54 feet to an existing iron pipe;

thence S.37°19'45"W., a distance of 318.10 feet to an existing iron pipe;

thence S.52°40'15"E., a distance of 131.48 feet to its intersection of said northeasterly line of said former Lehigh Valley Railroad;

thence N.37°10'20"E., along said northeasterly line of said former Lehigh Valley Railroad, a distance of 42.66 feet to an existing iron pipe at a point of curvature;
thence northeasterly, along a curve to the right, having a radius of 2187.09 feet an arc distance of 157.02 feet to a point;

thence S.01°12'09"E., a distance of 28.39 feet to a point;

thence S.47°59'07"E., a distance of 113.00 feet to a point;

thence N.42°00'53"E., a distance of 127.56 feet to a point;

thence N.48°02'39"W., a distance of 81.00 feet to a point;

thence N.36°58'29"E., a distance of 102.64 feet to a point;

thence N.43°11'21"W., a distance of 198.89 feet to a point;

thence S. 59°22'08" W., a distance of 27.54 feet to its intersection with the easterly road boundary of South Cayuga Street;

thence N. 01°12'09" W., along said easterly road boundary of South Cayuga Street, a distance of 40.18 feet to a point;

thence N.59°22'08"E., a distance of 142.00 feet to an existing iron pipe;

thence N.40°16'41"W., a distance of 47.38 feet to a point of curvature along the southeasterly road boundary of South Hill Terrace;

thence northeasterly, along a curve to the left, having a radius of 257.27 feet an arc distance of 84.00 feet and a chord bearing and distance of N35°37'08"E., 83.63 feet to a point;

thence S.68°10'44"E., a distance of 89.62 feet to a point;

thence N.36°10'17"E., a distance of 50.00 feet to a point;

thence N.67°17'10"W., a distance of 100.00 feet to its intersection with said southeasterly line of South Hill Terrace;

thence N.22°53'08"E., along said southeasterly road boundary of South Hill Terrace, a distance of 50.00 feet to an iron pipe;

thence S.67°06'52"E., a distance of 128.38 feet to a point;

thence N.01°05'38"E., a distance of 106.32 feet to a point;

thence N.88°14'20"E., a distance of 23.66 feet to a point;
thence N.22°35′04″E., a distance of 64.09 feet to a point;

thence N.87°40′07″E., a distance of 160.94 feet to its intersection with the westerly road boundary of Turner Place;

thence S.02°19′41″E., along said easterly road boundary of Turner Place, a distance of 214.20 feet to its intersection with said northeasterly line of said former Lehigh Valley Railroad;

thence N.50°10′21″E., along said northeasterly line of said former Lehigh Valley Railroad, a distance of 305.02 feet to an existing iron pipe;

thence N.82°08′58″E., a distance of 7.60 feet to an existing iron pipe;

thence N.00°00′04″W., a distance of 7.00 feet to an existing iron pipe;

thence N.53°53′26″E., continuing along said northeasterly line of said former Lehigh Valley Railroad, a distance of 13.44 feet to a point of curvature;

thence northeasterly, along a curve to the right, having a radius of 1825.61 feet an arc distance of 167.10 and a chord bearing and distance of N52°48′05″E., 167.04 feet to an existing railroad monument;

thence northeasterly, along a curve to the right, having a radius of 14500.77 feet an arc distance of 139.18 feet and a chord bearing and distance of N.58°10′53″E., 139.18 feet to a point of compound curvature;

thence northeasterly, along a curve to the right, having a radius of 411.32 feet an arc distance of 46.08′ and a chord bearing and distance of N.61°39′27″E., 46.06 feet to the point of beginning.

Containing 95.0403 Acres of Land more or less and intending to describe “OU-2” as shown on the subdivision map of [TITLE] made by [SURVEYOR] dated [DATE] and filed in [LIBER/PAGE] in the Tompkins County Clerk’s Office.
Exhibit B to Trail Easement Agreement

Legal Description and Depiction of Primary Easement Area, First Alternate Easement Area, and Second Alternate Easement Area

(see attached)
Exhibit C to Trail Easement Agreement

Adjacent Property

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Ithaca, County of Tompkins and State of New York and being a portion of said City and being more particularly described as follows:

BEGINNING at the intersection of the southeasterly terminus of South Cayuga Street with the northerly line of former Lehigh Valley Railroad, said point of beginning being S.29°08’11”W., a distance of 7.49 feet from a railroad monument;

thence N.01°12’09”W., along the easterly street line of South Cayuga Street, a distance of 239.23 feet to a point;

thence through lands of Emerson Power Transmission Corp. as recorded in the Tompkins County Clerk’s Office in Instrument No. 555134-003 the following courses and distances:

N.59°22’08”E., a distance of 27.54 feet to a point;
S.43°11’21”E., a distance of 198.89 feet to a point;
S.36°58’29”W., a distance of 102.64 feet to a point;
S.48°02’39”E., a distance of 81.00 feet to a point;
S.42°00’53”W., a distance of 127.56 feet to a point;
N.47°59’07”W., a distance of 113.00 feet to a point:

N.01°12’09”W., a distance of 28.39 feet to its intersection with said southeasterly terminus of South Cayuga Street;

thence northeasterly, along a curve to the right, having a radius of 2,187.09 feet an arc distance of 25.03 feet to the point of beginning.

Containing 0.8966 Acres or 39,057 Square Feet of Land more or less and intending to describe “OU-1” as shown on the subdivision map of [TITLE] made by [SURVEYOR] dated [DATE] and filed in [LIBER/PAGE] in the Tompkins County Clerk’s Office.
Exhibit D to Trail Easement Agreement

Phase I and II Construction Zone and Striping Zone

(see attached)
THIS TRAIL EASEMENT AGREEMENT (the “Agreement”) is made and entered into this _____ day of __________, 2020 (the “Effective Date”), by and among EMERSUB 15 LLC, a Delaware limited liability company (“Grantor”), the CITY OF ITHACA, NEW YORK (the “City”), and the TOWN OF ITHACA, NEW YORK (the “Town,” and together with the City, collectively the “Grantee”). Grantor and the Grantee, and their respective successors and assigns, are also referred to herein individually as a “Party” and collectively as the “Parties”.

WITNESSETH:

WHEREAS, Grantor owns real property described in Exhibit A attached hereto and incorporated herein by reference (the “Property”);

WHEREAS, the City and/or the Town (such party, or both, as applicable, performing construction, the “Developing Party”) desire to construct and maintain, for the public use, a multi-use trail (the “Trail”) on and over a portion of the Property; and

WHEREAS, in furtherance of the development of the Trail, Grantor desires to grant, and the Grantee desires to accept, a non-exclusive, perpetual easement (the “Easement”) over those certain portions of the Property legally described and depicted as the highlighted portion of the “Proposed Primary Trail Easement Area” (the “Easement Area”) on Exhibit B attached hereto and incorporated herein by reference for the construction, public use, and maintenance of the Trail (the “Easement Purpose”).

NOW THEREFORE, for and in consideration of Ten and No/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and the Grantee hereby covenant and agree as follows:

1. Grant of Easement. Subject to the terms of this Agreement and subject to all matters of fact or record, Grantor does hereby grant and declare to the Grantee the Easement over the Easement Area to be used exclusively for the Easement Purpose and for no other purpose.

   (a) Pre-Construction Easement Area. The Parties hereby agree that the Easement Area before and during the Developing Party’s construction of the Trail will be as follows: From the point where the City and Town intersect on the Property (the “City/Town Intersection”) to Stone Quarry Road: The Easement Area will be 60 feet wide, as shown on Exhibit B attached hereto and incorporated herein by reference. Notwithstanding the foregoing, should Grantor determine in its sole discretion, acting in good faith, that it needs the Grantee to narrow the Easement Area, Grantor may send a notice of such request to the Grantee. The Grantee shall then have six (6) months to survey and set a course for the Trail at its sole cost and expense, at which point the easement shall narrow to 25 feet, centered on the centerline of the proposed Trail.

   (b) Post-Construction Easement Area. The Parties hereby agree that the Easement Area shall be as follows: City/Town Intersection to Stone Quarry Road: Upon
the Developing Party’s completion of the Trail from City/Town Intersection to Stone Quarry Road, the Easement Area will be 20 feet wide, centered on the centerline of the Trail as-built.

2. **Reservation of Rights.** The Grantee acknowledges and agrees that Grantor retains for itself all rights with respect to the Easement Area other than the rights expressly granted to the Grantee in Section 1 herein. Without limiting the generality of the preceding sentence, subject to the terms of this Agreement, the Easement shall be expressly subject and subordinate to the following rights hereby reserved by Grantor with respect to the Easement Area:

   (a) The right to use the surface areas of the Easement Area for access, ingress and egress over, upon and across the Trail to access and use the Property, provided, however, that Grantor shall not obstruct the Trail except pursuant to Section 3 herein.

   (b) The right to enter and cross the Trail (whether above, below or upon the surface of the Easement Area) to install, maintain, repair and replace utility lines and pipes (including, without limitation, water, gas, electric, steam, telecommunications, and other similar services), storm and sanitary sewers, and similar services and improvements, provided, however, that no such improvements or installations may materially restrict or interfere with any access to or use of the Trail by the public or the Grantee between grade level and sixteen (16) feet above grade level.

   (c) The right to grant additional access, utility or other easements over, upon and under, and the right to grant others the right to use, the Easement Area, so long as the exercise by Grantor of such rights: (i) does not materially and adversely interfere with the Grantee’s use of the Easement Area for the purposes herein granted; and (ii) is not otherwise prohibited by the terms of this Agreement.

3. **Omitted.**

4. **Construction, Maintenance and Repair.**

   (a) Except as otherwise expressly provided herein, the Developing Party shall be responsible for the initial design, construction and ongoing maintenance of the Trail at its own cost and expense, and in accordance with all applicable laws, including, without limitation, any required compliance with the Americans with Disabilities Act, provided, however, that this agreement does not provide Grantor with any authority or standing to enforce any such applicable laws against the Developing Party in the design, construction, and ongoing maintenance of the Trail. The Developing Party hereby agrees that it shall (i) provide the proposed plans, specifications, and schedule for the construction and design of the Trail to Grantor for review prior to performing any construction activities on the Easement Area (which construction activities shall be performed in accordance with the plans, specifications, and—on a reasonable-efforts basis—schedule as finalized pursuant to this Section 4(a)) and (ii) reasonably consider incorporating any input from Grantor relating to such plans, specifications, and schedule. The Developing Party may open the Trail within the Easement Area in phases and/or sections upon completion of said phase and/or section.
(b) In the event that any activities conducted by Grantor within the Easement Area pursuant to Section 2(a), 2(b) or 2(c) damage the Trail within the Easement Area, Grantor shall, at Grantor’s cost, either (i) restore that portion of the Trail to substantially the condition in which it existed immediately prior to such damage or (ii) if Grantor has not performed such restoration within a commercially reasonable period of time, pay the reasonable, out-of-pocket costs incurred by the Developing Party in completing or contracting for the completion of such restoration.

(c) Grantor may construct, at its option, in a manner satisfactory to Grantor and approved by the Grantee, such approval not to be unreasonably withheld, conditioned or delayed, a fence or other device to segregate and restrict access from the Trail to the remainder of the Property, either temporarily or permanently. The initial construction and ongoing maintenance of such fence or other device shall be at Grantor’s sole cost and expense, provided, that, Grantor shall have no obligation to construct such fence or other device, or to leave in place the same, provided, however, the Grantor shall have an obligation to maintain such fence or other device so long as the Grantor chooses to leave the same in place.

(d) Omitted.

(e) Omitted.

(f) Omitted.

(g) Omitted.

5. Defaults; Remedies. In the event of any default with respect to any of the covenants, conditions or restrictions to be observed or performed by Grantor or the Grantee hereunder, the aggrieved Party shall be permitted to cure such default at the defaulting Party’s expense, provided that the defaulting Party shall be afforded a reasonable cure period prior to the aggrieved Party’s exercise of such cure right, such cure period not to exceed: (i) three (3) business days when the default causes the Trail to be closed; and (ii) thirty (30) days for all other defaults, running from the date of the defaulting Party’s receipt of written notice of such default (unless the defaulting Party has commenced cure within such cure period and is diligently pursuing the same to completion, in which event such cure period shall be extended for so long as the defaulting Party shall continue diligently to pursue such cure), and further provided that, in the event of emergency, the aggrieved Party shall have the right to immediately cure such default at the defaulting Party’s expense. The defaulting Party shall reimburse the aggrieved Party for all reasonable, out-of-pocket costs incurred in curing any such default promptly upon written notice of such costs by the aggrieved Party. In addition, immediately from and after any default in respect of any of the covenants, conditions or restrictions to be observed or performed by Grantor or the Grantee hereunder, the aggrieved Party shall be entitled to exercise any and all other rights and remedies permitted by law or equity, including the remedies of injunction and/or specific performance.

6. Insurance. Each Grantee shall maintain Commercial General Liability with minimum limits for Bodily Injury and Property Damage Each Occurrence $5,000,000; Personal Injury & Advertising Injury Limit $5,000,000; Products/Completed Operations Aggregate
$7,000,000; General Aggregate $7,000,000. Such policies shall cover occurrences arising out of the use, occupancy, misuse or condition of the Easement Area and improvements thereon and shall name Grantor as an additional insured. Upon request by Grantor, each Grantee shall deliver to Grantor a certificate of insurance evidencing the foregoing coverage.

7. Liability. Each Grantee, severally and not jointly, hereby assumes all liability with respect to personal injury or property damage that may occur on the Property, the Easement Area and/or the Trail from any cause proximately and primarily relating to or arising from the construction, use, and/or maintenance of the Trail and shall, to the maximum extent enforceable under applicable law, fully and unconditionally indemnify, defend and hold Grantor and the Property free and harmless from and against any cost, expense, charge, lien or judgment arising as a result of any such personal injury or property damage, unless such personal injury or property damage was in whole or in part the result of the negligence or willful misconduct of Grantor or Grantor’s agents, employees, contractors, or predecessors-in-interest, in which case liability shall be allocated between the involved parties in proportion to their respective degrees of fault, negligence or willful misconduct contributing to such liability. Notwithstanding the preceding sentence, the Grantee shall in no event be liable for any environmental liability or cleanup costs under this Agreement, including but not limited to any liability arising under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and Article 12 of the New York State Navigation Law, unless such liability arises from a release, discharge, spill, or disposal of a Hazardous Substance (as that term is defined under CERCLA) or Petroleum (as that term is defined under Article 12 of the Navigation Law) by Grantee employees, agents, or contractors, that occurs subsequent to the commencement of construction activities for the Trail.

8. Tax Benefits. The Grantee hereby agrees to reasonably cooperate with any reasonable requests of Grantor which are designed to permit Grantor to obtain the benefits of any tax credits and/or tax deductions available under state and/or federal law as a result of Grantor’s granting of the Easement.

9. Option to Convey Fee Interest. Grantor shall be permitted, with the Grantee’s approval, not to be unreasonably withheld, conditioned or delayed, to convey the fee interest in all or a portion of the Easement Area to the City or Town, as applicable, in which event, (i) Grantor will bear the cost of subdividing the Property to permit such conveyance; (ii) the Grantee will cooperate with Grantor’s request to convey such fee interest; and (iii) such conveyance will be subject to the express reservation by the Grantor of such easement and other rights to permit the Grantor to retain the benefits of all rights held by it pursuant to this Agreement.

10. Omitted.

11. No Third-Party Beneficiary; No Dedication. Nothing contained in this Agreement shall be deemed a gift or dedication of any portion of the Easement Area or Property to the general public or for the general public or for any public purpose whatsoever nor shall anything contained in this Agreement confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third party beneficiary or otherwise. Without limiting the generality of the preceding sentence, in no event shall any third parties, including any invitees of the Grantee or the general public be entitled to enforce any provision of this Agreement.
12. **Severability.** The unenforceability of any provision of this Agreement shall not render the remaining provisions hereof unenforceable or void.

13. **Notices.** All notices, demands, requests, consents, approvals and other communications required or permitted to be given hereunder, or which are to be given with respect to this Agreement, shall be in writing and shall be sent by (i) registered or certified mail, return receipt requested, or (ii) delivered personally, including by air courier or expedited mail service, provided such notices shall be addressed or delivered to the Parties at their respective addresses set forth below:

   If to Grantor: EMERSUB 15 LLC  
c/o Emerson Electric Co.  
8000 West Florissant Avenue  
St. Louis, MO 63136  
Attn: Steve Clarke  
Environmental Affairs and Real Estate

   With a copy to:  
   James G. Buell, Esq.  
   Bryan Cave Leighton Paisner LLP  
   One Metropolitan Square  
   Suite 3600  
   St. Louis, MO 63102

   If to the City: Superintendent of Public Works  
   City of Ithaca  
   108 E. Green St.  
   Ithaca, NY 14850

   With a copy to:  
   City Attorney  
   City of Ithaca  
   108 E. Green St.  
   Ithaca, NY 14850

   If to the Town: [_____]

or to such other address as may be specified from time to time in writing. Notice may be given by a Party’s attorney or other representative. All such notices hereunder shall be deemed to have been given on the date of delivery or the date marked on the return receipt unless delivery is refused or cannot be made because of any incorrect address provided by the addressee, in which case the date of postmark shall be deemed the date notice has been given. All costs and expenses of the delivery of notices hereunder shall be borne and paid for by the delivering Party, and no notice shall be deemed to have been validly delivered hereunder unless delivery charges shall have been prepaid.
14. **Covenants Running With the Land.** All provisions of this Agreement, including the benefits and burdens, shall run with the land and are binding upon and inure to the benefit of all parties having or acquiring any right, title or interest in or to any portion of, or interest or estate in the Property for so long as, and to the extent, any such party shall have an interest in the land. Any reference herein to either of the Parties shall include the plural if there should be more than one or as the context may require. If at any time there should be more than one individual and/or entity comprising either of the Parties, each such individual and/or entity shall be jointly and severally liable for the performance of all obligations of such Party hereunder. If Grantor shall sell, transfer or assign the Property or its interest therein, it shall be released from any and all obligations hereunder from and after the date of such sale, transfer or assignment. Notwithstanding the foregoing, the Grantee shall not be permitted to transfer or otherwise assign its rights, title, and interest in this Agreement or any portion of the Trail except to another municipal corporation or not-for-profit corporation.

15. **Non-Recourse.** Notwithstanding any provision hereof to the contrary, the obligations created by this Agreement shall be without recourse whatsoever to any of the Parties respective partners, members, shareholders, officers, directors or employees.

16. **Amendment.** This Agreement may not be modified, amended or terminated without the written consent of Grantor and the Grantee.

17. **No Joint Venture.** This Agreement shall not be deemed or construed to make the parties hereto partners or joint venturers in any undertaking.

18. **Entire Agreement.** This Agreement, including all exhibits attached hereto, contains the entire agreement between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Agreement and exhibits hereto.

19. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of New York, without regard to conflicts laws or choice of law rules thereof and any litigation arising from this Agreement shall be venued in Tompkins County.

20. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

21. **Superior Rights.** Notwithstanding anything contained herein to the contrary, the Grantee acknowledges that (i) the Property and the Easement Area is burdened by various easements and other third-party rights which may be superior to the Easement and other rights granted to the Grantee hereunder, including, without limitation, rights held by the New York State Electric and Gas Corporation, preferential rights held by the New York State Department of Transportation, and others (any such holders of superior rights or interests, collectively, the “Superior Rights Holders”) and (ii) the Easement and the other rights granted to the Grantee hereunder may require the consent and approval of any such Superior Rights Holders.
22. **Authority.** The undersigned persons executing this instrument represent and certify on behalf of the Party for which he/she is signing, that he/she has full power and authority to execute and deliver this instrument; that (as to Grantor) Grantor has full capacity to convey the real estate interest described; that (as to the City) the City has full authority to enter into this Agreement; and that all necessary action for the making of this Agreement and conveyance has been duly taken; that (as to the Town) the Town has full authority to enter into this Agreement; and that all necessary action for the making of this Agreement and conveyance has been duly taken.

[Signatures Begin on the Next Page]
IN WITNESS WHEREOF, Grantor and the Grantee have caused this Agreement to be executed as of the day and year first above written.

GRANTOR:

EMERSUB 15 LLC

By: __________________________________________
Name: __________________________________________
Title: __________________________________________

STATE OF __________ )
 ) ss.
COUNTY OF __________ )

On the ___ day of __________, 2020, before me, the undersigned, personally appeared __________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

________________________________________
Notary Public (SEAL)

[SIGNATURES CONTINUE ON THE NEXT PAGE.]
CITY:

THE CITY OF ITHACA, NEW YORK

By: ________________________________
Name: ______________________________
Title: ______________________________

STATE OF NEW YORK )
COUNTY OF ___________ ) ss.

On the ___ day of __________, 2020, before me, the undersigned, personally appeared ______________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

__________________________
Notary Public (SEAL)
TOWN:

THE TOWN OF ITHACA, NEW YORK

By: ______________________________________
Name: ____________________________________
Title: _____________________________________

STATE OF NEW YORK    )
COUNTY OF __________ ) ss.

On the ___ day of __________, 2020, before me, the undersigned, personally appeared __________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_________________________
Notary Public (SEAL)
Exhibit A to Trail Easement Agreement

Legal Description of Property

ALL THAT TRACT OR PARCEL OF LAND situate in the City and Town of Ithaca, County of Tompkins and State of New York and being more particularly described as follows:

BEGINNING at an existing railroad monument in the northerly line of the former Lehigh Valley Railroad with the westerly road boundary of South Aurora Street (A.K.A New York State Route 96B);

thence S.02°51’33”E., along said westerly road boundary of South Aurora Street, a distance of 72.42 feet to an angle point;

thence S.02°02’26”E., continuing along said westerly road boundary of South Aurora Street, a distance of 204.12 feet to a point of curvature;

thence southwesterly, along a curve to the right, having a radius of 370.00 feet an arc distance of 177.34 feet and a chord bearing and distance of S.11°41’26”W., 175.65 feet;

thence S.25°25’18”W., continuing along said westerly road boundary of South Aurora Street, a distance of 295.74 feet to an existing iron pipe;

thence N.63°50’28”W., a distance of 100.00 feet to a point;

thence S.26°09’32”W., a distance of 413.00 feet to a point;

thence S.74°58’28”E., a distance of 101.00 feet to its intersection said westerly road boundary of South Aurora Street;

thence S.26°09’32”W., along said westerly road boundary of South Aurora Street, a distance of 28.00 feet to a point;

thence N.63°54’22”W., a distance of 32.40 feet to an existing iron pipe,

thence N.85°05’42”W., a distance of 72.17 feet to an existing iron pipe;

thence S.26°54’14”W., a distance of 161.60 feet to an existing iron pipe;

thence S.03°30’29”E., a distance of 35.30 feet to an existing iron pipe;

thence S.84°53’19”E., a distance of 89.00 feet to its intersection with said westerly road boundary of South Aurora Street;
thence S.26°42’55”W., along said westerly road boundary of South Aurora Street, a distance of 48.00 feet to an angle point;

thence S.31°44’06”W., continuing along said westerly road boundary of South Aurora Street, a distance of 122.19 feet to the northeasterly corner of New York State Appropriation of State Highway 5043, Map No. 6, Parcel No. 6;

thence westerly and southwesterly along said New York State Appropriation of State Highway 5043, Map No. 6, Parcel No. 6 the following courses and distances;

   N.63°58’34”W., a distance of 17.00 feet to a point;
   S.31°44’04”W., a distance of 100.50 to an angle point;
   S.26’01’26”W., a distance of 600.13 feet to an angle point;
   S.25°46’26”W., a distance of 483.13 feet to an existing granite monument;

thence N.64°11’56”W., a distance of 173.40 feet to a point;

thence S.25°44’04”W., a distance of 200.00 feet to a point;

thence S.63°58’56”E., a distance of 9.86 feet to a point;

thence S.26°03’05”W., a distance of 100.00 feet to a point;

thence S.63°52’14”E., a distance of 173.92 feet to its intersection the northwesterly corner of New York State Appropriation of State Highway 5043, Map No. 6, Parcel No. 7;

thence S.25°46’46”W., along the northwesterly line of said New York State Appropriation of State Highway 5043, Map No. 6, Parcel No. 7, a distance of 299.66 feet to a point;

thence N.68°13’50”W., a distance of 183.31 feet to an existing iron pipe;

thence S.21°46’10”W., a distance of 115.00 feet to a point;

thence S.72°34’50”E., a distance of 191.73 feet to an existing granite monument at the northwesterly corner of New York State Appropriation of State Highway 5043, Map No. 6, Parcel No. 8;

thence S.20°27’45”W., along the northwesterly line of said New York State Appropriation of State Highway 5043, Map No. 6, Parcel No. 8, a distance of 202.82 feet to a point, said point being 1.10 feet north of an existing granite monument;

thence N.73°42’24”W., a distance of 388.05 feet to an existing iron pipe;

thence S.16°17’36”W., a distance of 100.00 feet to and existing iron pipe;
thence S.73°42’24”E., a distance of 358.54 feet to the northwesterly corner of New York State Appropriation of State Highway 5043, Map No. 6, Parcel No. 9;

thence S.13°00’26”W., along the northwesterly line of said New York State Appropriation of State Highway 5043, Map No. 6, Parcel No. 8 and through an existing granite monument, a distance of 50.20 feet to a point;

thence N.73°41’49”W., a distance of 361.59 feet to an existing iron pipe;

thence S.16°16’07”W., a distance of 478.70 feet to an existing iron pipe;

thence S.87°30’52”W., a distance of 968.14 feet to an existing iron pipe;

thence N.01°40’24”W., a distance of 759.61 feet to an existing iron pipe at the intersection of the southeasterly line of the former Lehigh Valley Railroad;

thence S.51°30’23”W., along southeasterly line of the former Lehigh Valley Railroad, a distance of 306.88 feet to an existing railroad monument at a point of curvature;

thence southwesterly, along a curve to the right, having a radius of 2064.25 feet an arc distance of 300.22 feet and a chord bearing and distance of S.55°40’44”W., 299.96 feet to an existing railroad monument;

thence S.59°15’37”W., along said southeasterly line of the former Lehigh Valley Railroad, a distance of 173.94 feet to its intersection of the centerline of Stone Quarry Road (49.5 feet wide) (formerly Teers Road);

thence northeasterly along said centerline of Stone Quarry Road the following courses and distances:

N.47°12’29”E., a distance of 60.51 feet to a point;
N.29°26’06”E., a distance of 52.69 feet to a point;
N.24°48’25”E., a distance of 43.66 feet to its intersection with the northwesterly line of the former Lehigh Valley Railroad;

thence N.59°15’37”E., along said northwesterly line of said former Lehigh Valley Railroad, a distance of 56.57 feet to an existing iron pipe at a point of curvature;

thence northeasterly, along a curve to the left, having a radius of 1766.95 feet an arc distance of 267.50 feet and a chord bearing and distance of N.54°55’24”E., 267.24 feet to an existing railroad monument;
thence N.51°30’47”E., along said northwesterly line of said former Lehigh Valley Railroad, a distance of 743.49 feet to an existing railroad monument at a point of curvature;

thence northeasterly, along a curve to the left having a radius of 3261.76 feet an arc distance of 462.53 feet and a chord bearing and distance of N.47°26’38”E., 462.14 feet to an existing iron pipe and point of compound curvature;

thence northeasterly, along a curve to the left having a radius of 5637.73 feet an arc distance of 615.64 feet and a chord bearing and distance of N.40°17’19”E., 615.33 feet to an existing railroad monument;

thence N.37°06’36”E., along said northwesterly line of said former Lehigh Valley Railroad, a distance of 641.31 feet to an existing railroad monument;

thence N.19°17’24”W., a distance of 427.60 feet to its intersection with the southeasterly road boundary of West Spencer Street;

thence N.28°25’19”E., along said southeasterly road boundary of West Spencer Street, a distance of 542.73 feet to a point;

thence S.60°31’42”E., a distance of 123.00 feet to an existing iron pipe;

thence N.29°28’18”E., a distance of 50.00 feet to an existing iron pipe;

thence N.60°31’42”W., a distance of 1.30 feet to a point;

thence N.29°28’18”E., a distance of 60.00 feet to an existing iron pipe;

thence N.20°16’18”E., a distance of 22.00 feet to a point;

thence S.58°01’42”E., a distance of 136.72 feet to its intersection with the westerly road boundary of South Cayuga Street;

thence S.01°44’18”E., along said westerly road boundary of South Cayuga Street, a distance of 118.54 feet to an existing iron pipe;

thence S.37°19’45”W., a distance of 318.10 feet to an existing iron pipe;

thence S.52°40’15”E., a distance of 131.48 feet to its intersection of said northeasterly line of said former Lehigh Valley Railroad;

thence N.37°10’20”E., along said northeasterly line of said former Lehigh Valley Railroad, a distance of 42.66 feet to an existing iron pipe at a point of curvature;
thence northeasterly, along a curve to the right, having a radius of 2187.09 feet an arc distance of 157.02 feet to a point;

thence S.01º12’09”E., a distance of 28.39 feet to a point;

thence S.47º59’07”E., a distance of 113.00 feet to a point;

thence N.42º00’53”E., a distance of 127.56 feet to a point;

thence N.48º02’39”W., a distance of 81.00 feet to a point;

thence N.36º58’29”E., a distance of 102.64 feet to a point;

thence N.43º11’21”W., a distance of 198.89 feet to a point;

thence S. 59º22’08” W., a distance of 27.54 feet to its intersection with the easterly road boundary of South Cayuga Street;

thence N. 01º12’09” W., along said easterly road boundary of South Cayuga Street, a distance of 40.18 feet to a point;

thence N.59º22’08”E., a distance of 142.00 feet to an existing iron pipe;

thence N.40º16’41”W., a distance of 47.38 feet to a point of curvature along the southeasterly road boundary of South Hill Terrace;

thence northeasterly, along a curve to the left, having a radius of 257.27 feet an arc distance of 84.00 feet and a chord bearing and distance of N35º37’08”E., 83.63 feet to a point;

thence S.68º10’44”E., a distance of 89.62 feet to a point;

thence N.36º10’17”E., a distance of 50.00 feet to a point;

thence N.67º17’10”W., a distance of 100.00 feet to its intersection with said southeasterly line of South Hill Terrace;

thence N.22º53’08”E., along said southeasterly road boundary of South Hill Terrace, a distance of 50.00 feet to an iron pipe;

thence S.67º06’52”E., a distance of 128.38 feet to a point;

thence N.01º05’38”E., a distance of 106.32 feet to a point;

thence N.88º14’20”E., a distance of 23.66 feet to a point;
thence N.22°35’04”E., a distance of 64.09 feet to a point;

thence N.87°40’07”E., a distance of 160.94 feet to its intersection with the westerly road boundary of Turner Place;

thence S.02°19’41”E., along said easterly road boundary of Turner Place, a distance of 214.20 feet to its intersection with said northeasterly line of said former Lehigh Valley Railroad;

thence N.50°10’21”E., along said northeasterly line of said former Lehigh Valley Railroad, a distance of 305.02 feet to an existing iron pipe;

thence N.82°08’58”E., a distance of 7.60 feet to an existing iron pipe;

thence N.00°00’04”W., a distance of 7.00 feet to an existing iron pipe;

thence N.53°53’26”E., continuing along said northeasterly line of said former Lehigh Valley Railroad, a distance of 13.44 feet to a point of curvature;

thence northeasterly, along a curve to the right, having a radius of 1825.61 feet an arc distance of 167.10 and a chord bearing and distance of N52°48’05”E., 167.04 feet to an existing railroad monument;

thence northeasterly, along a curve to the right, having a radius of 14500.77 feet an arc distance of 139.18 feet and a chord bearing and distance of N.58°10’53”E., 139.18 feet to a point of compound curvature;

thence northeasterly, along a curve to the right, having a radius of 411.32 feet an arc distance of 46.08’ and a chord bearing and distance of N.61°39’27”E., 46.06 feet to the point of beginning.

Containing 95.0403 Acres of Land more or less and intending to describe “OU-2” as shown on the subdivision map of [TITLE] made by [SURVEYOR] dated [DATE] and filed in [LIBER/PAGE] in the Tompkins County Clerk’s Office.
Exhibit B to Trail Easement Agreement

Legal Description and Depiction of Easement Area

(see attached)
4. City Administration, Human Resources and Policy
   .5 Removal of the First White Settlers Marker from DeWitt Park

WHEREAS, Dewitt Park is within the Dewitt Park Historic District; and

WHEREAS, an historical marker in Dewitt Park, dedicated in 1933 by the Daughters of the American Revolution (DAR), purports to recognize the first White settlers in this area, though there is dispute over the historical accuracy of this claim; and

WHEREAS, regardless of who were actually the first non-Indigenous settlers of this area, this area was already settled by the Haudenosaunee, who were ejected from this land through use of explicit violence, forced to sign unfair treaties, and who never received fair compensation for their loss; and

WHEREAS, the marker reflects the DAR’s focus on White Americans and the promotion of an intentionally limited version of American history, a history that often marginalized the contributions of women, Black and Indigenous people and other people of color; and

WHEREAS, as our community has become more socially and culturally aware in the decades after its installation, the marker has become a local symbol of exclusion, oppression, and injustice; and

WHEREAS, this historical marker has generated numerous complaints and has been a magnet for vandalism; and

WHEREAS, The History Center in Tompkins County will accept the plaque from the historic marker into their collection in the condition provided by the City; and

WHEREAS, the Ithaca Landmarks Preservation Commission, at its meeting on September 15, 2020, granted a Certificate of Appropriateness for the removal of the historic marker, noting that it was installed after the period of significance (1820 – 1930) of the Dewitt Park Historic District; and

WHEREAS, the choice of who is recognized in the stories we tell from history is a statement about who is valued and who is not; and

WHEREAS, the City of Ithaca wishes to tell a more inclusive story of our region’s history; now, therefore, be it

RESOLVED, that the City of Ithaca Common Council authorizes the removal of the First White Settlers historical marker from Dewitt Park; and be it further

RESOLVED, that the plaque from the historical marker shall be donated to The History Center to be accessioned into their collection and used for future educational opportunities as they deem appropriate.
Memorials sometimes lead us to think one thing, when the documents suggest something else, or perhaps, something a bit more complicated.

The stone memorial, placed in DeWitt Park, along the sidewalk on North Cayuga Street, commemorates the first explorers who came into this area. Often the stone is the object of graffiti, which is a shame, but mostly it is ignored, sitting forgotten in the bushes.

The memorial tablet recalls the “first white settlers,” and names two Revolutionary soldiers who had a cabin near what is now the corner of Seneca and Cayuga streets.

The Daughters of the American Revolution erected the memorial in 1933, an era when the DAR was also erecting roadside markers around the county as automobile travel became popular. The people named on the DeWitt Park memorial are Jonathan Woodworth and Robert McDowell and the date given for their arrival is 1788.

Well, yes and no. There were more people in the area than the two men mentioned on the memorial — for there were still some Indians living here and there were also other settlers — and the dates of their arrivals and departures and then re-arrivals are confusing.

The land had not been empty awaiting settlement by European-Americans, because this part of the state was claimed and used by the Cayuga Indians who had allowed displaced Indians from the south to establish villages near Cayuga Lake. New York state was the
heart of Iroquoia, the confederation of the Mohawks, Oneida, Onondaga, Cayuga and Seneca tribes that became the Six Nations when joined by the Tuscaroras in 1712.

The Iroquois used the land gently, had trails across it, villages scattered about, and had a spiritual relationship with the land. Many, however, left central New York following the invading army of 1779 led by Gen. John Sullivan.

The Revolutionary War ended in 1783 with the Peace of Paris. During that decade, a number of people came into the area to look over the land as a place to exploit and perhaps settle.

In April 1788 a party of 11 men left Kingston, New York to explore. Not finding a location that suited them, they returned home. At about the same time, the two men named on the memorial and their party of four men on horses and four afoot, also came to the headwaters of Cayuga Lake.

This second group “proceeded to the foot of the east hill, turning to the right and then going along to the foot of the south hill, crossed Six Mile Creek and went south along the inlet flat” to Buttermilk Falls. They camped for two days under a tree near the falls to avoid the “multitude of gnats.” Then they, too, moved on.

In July 1788, six men from this second group made their way to the lake, their horses loaded with provisions. They settled on the flats where they planted hay on fields that the Indians had cleared, to be used as feed for cattle over the winter.

Hiding their tools in a burned out tree, they returned home, but returned in October driving 70 horses and cattle to over-winter here.

In the spring of the following year, in 1789, members of the first group returned, to settle on the flats. Jacob Yaple, Isaac Dumund and Peter Hinepaugh also planted hay in the clearings left by the Indians, leaving John Yaple to care for the crop over the summer. They returned in September with their families, about 20 people in all, and selected 400 acres as their future home. They built cabins, killed off the rattlesnakes, and are often cited as the first settlers.
According to an account by Nicoll Halsey, the first female to arrive in the area was 7-year-old Jane McDowell who came with her father in the spring of 1788. That fall, McDowell brought his wife and Jane’s four siblings. The Woodworth family came in 1789 and remained until 1793.

The land they encountered was covered with thorn and hazel bushes and crossed by streams, making travel difficult. There were also bears and wolves. These early settlers had neighbors, but far off in Owego, Elmira and several families farther north on the lake.

When Military Tract lots were given out to veterans of the war in 1791 the three settling families lost their title to the land and by 1795 all had left the immediate area.

The memorial stone in DeWitt Park names two men who came to Cayuga Lake, but there were others exploring and attempting to settle the area at the same time. What is worth remembered about these people is their difficult travel overland from their original homes to Cayuga Lake, and their need for food and shelter. It could not have been easy and, within five years, all of these early residents abandoned the area, just as most of the Iroquois had done a decade earlier.

The DeWitt Park memorial leaves out as much as it tells us.

Pieces of the Past appears every other Saturday. Carol Kammen is the Tompkins County historian and the author of several books on local history, most recently “Ithaca: A Brief History,” published by The History Press.
Monuments present complex issues, including here in Ithaca

Carol Kammen
Correspondent

The problem is not only Confederate generals.

The question for all of us is really about those signs and markers on the land that help define our history; they create a narrative of what our past was all about. It is generally, however, single-minded and insensitive to the complexity of the past.

Most monuments and street names tell the history that their creators thought important and memorable. That those criteria change over time is a good thing — not because the past changes, but because as we grow and learn more and look about, we begin to ask new questions, have new insights, and expand our ideas about how we remember.

All the problems with monuments are not in the South. We have some problematic signs and memorials right here at home that we should recognize. First up are two markers in Ithaca's DeWitt Park that are troublesome.

The first is the on the boulder facing North Cayuga Street that honors the “First White Settlers.” While this commemorates the earliest European Americans — and the one young black boy who accompanied them — to establish homesteads in our area, it presents a history that denies or obliterates those originally on the land.

That marker was placed in 1935 by a chapter of the Daughters of the American Revolution and the state of New York. Many markers were created in the 1920s and '30s following the 150th anniversary of the Revolutionary War. The
1930s was also the era of widespread automobile travel, so signs telling people where they were and what they were passing was considered a good thing.

The problem was not with placing the signs — and since cars went more slowly in those days, they could actually be read while passing by — but it is with who placed the signs and the reasons for the selection of events and people honored and commemorated.

Motives matter, as we are finding out with the Confederate generals whose statues mostly appeared not after the Civil War but during the 1890s, when they represented one way of life and the repression of generations of African-Americans.

While the Civil War was fought to end slavery, it was also fought to keep the Union together, and these generals represent officials who committed treason to the federal government. Their placement was to reinforce a specific way of life.

No one today would write the text on the “First White Settlers” monument in DeWitt Park in this way. The reason for this is that we have come, slowly I know, to see our past as diverse and complicated; we understand today that the early settlers on this land, mostly white Protestants and some African-Americans, were establishing homes and governments on land from which the Haudenosaunee were ejected in 1779 and then claimed by New York state in a series of treaties that left the Six Nations with little more than beads, blankets and booze.

Today, we see the text on this DeWitt Park marker as limited and unjust. The new blue town markers created by the Tompkins County Bicentennial Commission and erected over the past few months mention earlier claims to land we now regard as parts of the county. This recognition is not adequate compensation, but today we face the uncomfortable past; we do not brush past it.
The other problematic marker in DeWitt Park that to the Oregon Mission. In 1934, the First Presbyterian Church, the Cayuga Chapter of the Daughters of the American Revolution, and the state Department of Education created the monument. It was dedicated on May 12, 1935. It reads:

*The Oregon Mission*

_Sent out by First Presbyterian Church of Ithaca in 1834 in response to search of Nez Perce Indians for white man’s book from heaven under leadership of Rev. Samuel Parker. With him went Samuel Allis of Ithaca and Rev. John Dunbar of Auburn Seminary. In 1836 Rev. Henry Spalding of Bath and Bride Eliza Hart together with Dr. Marcus Whitman and Bride Narcissa Prentiss followed, these being two first white women to cross Rocky Mountains. The Whitman’s founded mission at Waiilatpu where they were martyred. The Spalding’s established mission at Lapwai, Idaho among Nez Perces, which continues to the present._

The plaque is factually correct. The Presbyterian Church in Ithaca has a long history of support for missionaries, and a number of them left from Ithaca — as did some from Ithaca who went later into the mission field (primarily the women missionaries are omitted) on this marker.

The DeWitt Park marker is culturally insensitive. This is not something that would have bothered people in 1935, but it does disturb us today because we have come to understand that our nation sits upon a world that was well-populated with peoples of various cultures and practices. The Nez Perce and other western Indians had cultural and religious practices that they hoped to augment rather than replace.

We should think about these things when enjoying DeWitt Park. Being there, we are standing upon land that unnamed hunter-gatherers probably passed over; that was part of the Cayuga Nation, members of the Six Nations; and that was lent to Tutelo Indians when they came north seeking a new home, having been displaced from their original lands.
Knowing a fuller past enriches us, just as the diversity of our population today enriches us and makes us stronger.

These problems of insensitivity do not exist only in the American South or in Ithaca. We can find problematic examples of signs and names all over Tompkins County.

*Carol Kammen is the Tompkins County historian and the author of several books on local history.*
MEMORANDUM

From: Bryan McCracken, Secretary, Ithaca Landmarks Preservation Commission
To: Members, City Administration Committee
Date: September 17, 2020
Subject: DeWitt Park, DeWitt Park Historic District – Proposal to Remove a Stone and Bronze Monument in DeWitt Park Known as the “First White Settlers” Marker

At their regularly scheduled monthly meeting on September 15, 2020, the Ithaca Landmarks Preservation Commission (ILPC) reviewed an application for a Certificate of Appropriateness, submitted by the City of Ithaca, to remove the “First White Settlers” marker located in the northwest corner of DeWitt Park in the DeWitt Park Historic District. As noted in the attached adopted resolution, the bronze marker was installed by the Cayuga Chapter of the Daughters of the American Revolution in 1933 to commemorate the arrival and settlement of Johnathan Woodworth and Robert McDowell in the area that would become the City of Ithaca. This marker is a City-owned improvement within a locally designated historic district, and as such, a Certificate of Appropriateness is required for its removal pursuant to Section 228-12 of the Municipal Code.

In their review of the application, the ILPC noted that the marker was installed outside of the DeWitt Park Historic District’s period of significance. In general terms, a period of significance is defined as the period during which the resources within a district gained their historic value. Resources constructed or installed during this period are considered to have historic materials or features that make them contributing elements of the district, and they are protected by the principles enumerated in the Landmarks Ordinance. Those constructed or installed outside of this period are considered non-historic or non-contributing and are not protected in the same way. As identified in the district nomination materials, the period of significance for the DeWitt Park Historic District is 1820 to 1930. As the “First White Settler” marker was installed outside of this period, the ILPC determined it did not possess historic materials or features subject to the protections of the Landmarks Ordinance, which narrowed the ILPC’s review to the assessment of the impact of the proposal on adjacent historic resources and the district as a whole. It was determined that the removal would not have a significant impact on the historic value of the area and the ILPC approved the application after a properly noticed public hearing. The written public comments from this public hearing are attached for your review.
RESOLUTION: Moved by D. Kramer, seconded by K. Olson.

WHEREAS, DeWitt Park is located in the DeWitt Park Historic District, as designated under Section 228-3 of the City of Ithaca Municipal Code in 1971, and as listed on the New York State and National Registers of Historic Places in 1971, and

WHEREAS, as set forth in Section 228-4 of the Municipal Code, an Application for a Certificate of Appropriateness dated August 28, 2020 was submitted for review to the Ithaca Landmarks Preservation Commission (ILPC) by the City of Ithaca, including the following: (1) two narratives respectively titled Description of Proposed Change(s) and Reasons for Changes(s); (2) two photographs documenting existing conditions, and

WHEREAS, the ILPC has also reviewed the DeWitt Park Historic District National Register Nomination Form, and the City of Ithaca’s DeWitt Park Historic District Summary Statement, and

WHEREAS, the proposed project involves the removal of a bronze and stone monument in the northwest corner of DeWitt Park known as the “First White Settlers” marker, and the donation of the bronze plaque to the History Center in Tompkins County for accession into their collection, and

WHEREAS, the issuance of a Certificate of Appropriateness is a Type II Action under the New York State Environmental Quality Review Act and the City Environmental Quality Review Ordinance for which no further environmental review is required, and

WHEREAS, the applicant has provided sufficient documentation and information to evaluate impacts of the proposal on the subject property and surrounding properties, and

WHEREAS, a Public Hearing for the purpose of considering approval of the Application for Certificate of Appropriateness was conducted at the regularly scheduled ILPC meeting on September 15, 2020, now therefore be it

RESOLVED, that the ILPC has made the following findings of fact concerning the property and the proposal:

As identified in the City of Ithaca’s DeWitt Park Historic District Summary Statement, the period of significance for the area now known as the DeWitt Park Historic District is 1820-1930.

As indicated in the National Register of Historic Places Inventory – Nomination Form, DeWitt Park was laid out by, and later named for, New York State’s first Survey General, Simeon DeWitt, in the early-19th century as the community’s “public square. ‘To ensure DeWitt Park became the center of the burgeoning village, DeWitt donated lots around it for a school, a church, and other civic uses.
Constructed within the period of significance of the DeWitt Park Historic District and possessing a high level of architectural integrity, the DeWitt Park is a contributing element of the DeWitt Park Historic District.

The proposal under consideration involves the removal of a marker installed by the Cayuga Chapter of the Daughters of the American Revolution (DAR) to commemorate Ithaca’s “First White Settlers” in 1933. The marker consists of a bronze plaque mounted to a stone boulder. The text upon the plaque reads: The First White Settlers in Ithaca Were Revolutionary Soldiers Jonathan Woodworth and Robert McDowell in 1788; Cabin Sites Near This Marker. The intent of the City’s proposal is to remove this marker, which purportedly presents incorrect and culturally insensitive information.

The marker was installed outside the DeWitt Park Historic District’s period of significance and, therefore, does not possess historic materials or features that are subject to protection under the Principles enumerated in Section 228-5 of the Municipal Code or the Secretary of the Interior’s Standards.

In consideration of this and all approvals of proposals for alterations, new construction or demolition in historic districts, the ILPC must determine that the proposed exterior work will not have a substantial adverse effect on the aesthetic, historical or architectural significance and value of either the landmark or, if the improvement is within a district, of the neighboring improvements in such district. In considering architectural and cultural value, the Commission shall consider whether the proposed change is consistent with the historic value and the spirit of the architectural style of the landmark or district in accordance with Section 228-6 of the Municipal Code. In making this determination, the Commission is guided by the principles set forth in Section 228-6B of the Municipal Code, as further elaborated in Section 228-6C, and by the Secretary of the Interior’s Standards for Rehabilitation, and in this case specifically the following principles and Standards:

Principle #2 The historic features of a property located within, and contributing to the significance of, an historic district shall be altered as little as possible and any alterations made shall be compatible with both the historic character of the individual property and the character of the district as a whole.

Standard #2 The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features and spaces that characterize a property will be avoided.

Standard #9 New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
As a non-contributing element, the ILPC’s evaluation of the proposed removal is limited to the assessment of the impact of the proposed work on adjacent historic structures and on the DeWitt Park Historic District as a whole, with the guiding principle being that the proposed work must not negatively impact the historic aesthetic quality of neighborhood.

With respect to Principle #2, Standard #2, and Standard #9, the removal of the marker will not remove distinctive materials and will not alter features and spaces that characterize the DeWitt Park Historic District.

**RESOLVED,** that, based on findings set forth above, the proposal will not have a substantial adverse effect on the aesthetic, historical, or architectural significance of DeWitt Park and the DeWitt Park Historic District as set forth in Section 228-6, and be it further

**RESOLVED,** that the Ithaca Landmarks Preservation Commission determines that the proposal meets the criteria for approval under Section 228-6 of the Municipal Code, and be it further

**RESOLVED,** that the ILPC approves the Application for a Certificate of Appropriateness.

**RECORD OF VOTE:**
Moved by: D. Kramer
Seconded by: K. Olson
In Favor: A. Smith, D. Kramer, K. Olson, S. Stein, E. Finegan
Against: S. Gibian
Abstain: 0
Absent: 0
Vacancies: 1

Notice: Failure on the part of the owner or the owner’s representative to bring to the attention of the ILPC staff, any deviation from the approved plans, including, but not limited to, changes required by other involved agencies or that result from unforeseen circumstances as construction progresses may result in the issuance by the building department of a stop work order or revocation of the building permit.
It is the intent of this report to provide preliminary historical background regarding the presence of the boulder and bronze tablet located near the western edge of DeWitt Park, immediately off of and facing the sidewalk on the west side of North Cayuga Street. As recounted on the tablet, the historical marker was intended to commemorate two Revolutionary soldiers, Jonathan Woodworth and Robert McDowell, who were described as the “First White Settlers” in Ithaca. The year of their settlement was given as 1788, and it was stated that their cabin sites were “Near This Marker.”

This boulder and its bronze tablet were erected in 1933 by the Cayuga Chapter of the Daughters of the American Revolution and the State of New York, one of a considerable number of physical objects conceived by both parties during the 1920s and 1930s and sited by one or both of them throughout the city and county to mark persons, places and events in Tompkins County’s history.

The local chapter of the Daughters of the American Revolution was organized in 1894, following the creation of the national society, founded in 1890, and earlier Sons of the American Revolution. As the Cayuga Chapter, it was stated to have been named from the Cayuga Indians. (Programs of the D.A.R. for 1936-1937. A Taughannock Chapter was organized in Trumansburg in 1920-21.) The organization sought to increase knowledge of persons significant in achieving American independence, promoting the diffusion of that knowledge and fostering patriotism and respect for institutions of American freedom.

Newspaper accounts and available brochures indicate that the chapter’s programs included social and cultural aspects, such as luncheons and musical performances (including patriotic “hymns”) as well as educational presentations on persons and events prominent in the early history of the nation. Presentations on women such as Martha Washington sometimes included skits with costumed performers, while there were lectures such as that on “The Influence of the American Indian on Early American Civilization” by Cornell University’s Erl A. Bates, an ethnologist and Extension advisor in the College of Agriculture who worked with Native Americans. Other discussions focused on how to encourage and help fund the study of American history in local schools.

Prominent among the Cayuga Chapter’s standing committees was that on Historic Spots. With its membership comprised of descendants of Revolutionary War soldiers, sites associated with those historical figures were a particular focus of the D.A.R., and ceremonies marking their graves in Tompkins County cemeteries were noted in the local press. A report given at the 1925 annual meeting of the D.A.R. commented that an early practice of using boulders was increasingly supplanted by plaques. The August 14, 1933 Ithaca Journal-News reported that the bronze tablet was “now attached” to this discussion’s subject boulder in DeWitt Park, whose specific date of installation has not been ascertained. Further information in the news article notes that the named Revolutionary soldiers in the plaque had local descendants; the two women identified by name and address were presumably D.A.R. members.

The local identification and recognition of historic persons and sites increased in the 1920s as two Sesquicentennials approached—that of the American Revolution and, in a more regional focus, that of Sullivan’s expedition. In early 1926, the State Board of Regents sought to obtain state appropriations for efforts to make 1926 and 1927 “history years” in order to assist in the celebration of various 150th anniversaries. The State’s Department of Education Department would subsequently embark on projects to identify and mark locations
associated with persons, sites and events, working under the direction of Dr. Alexander C. Flick, head of the department’s Division of Archives and History. Over the ensuing years, Dr. Flick worked with various local organizations in the program of historic markers, seeking suggestions for markers from Historian Lyman H. Gallagher and coordinating with bodies such as the D.A.R.’s Cayuga Chapter and with the regional Finger Lakes Association, founded in 1919 to promote education and tourism through the increasing use of the automobile. (At this point in the presentation, time constraints will force me to close these introductory comments, which I will expand on and continue for subsequent discussions within the City concerning the content and sequence of specific markers and programs.)

**Others more knowledgeable about our area’s early history have already contributed expanded and corrected information concerning the content of the marker’s text. My broader consideration of the monument’s existence will focus on contextual matters—the various programs of the Daughters of the American Revolution, or D.A.R., and the New York State historic marker program as operated by the State Education Department. As multiple circumstances have prevented my greater in-depth primary research on these topics as well as more extended comments on the substantial research I have already completed, information presented for your consideration will be not only general but introductory and unfortunately brief. A more complete report will be forthcoming for future City discussions, and further input from others would be welcomed.**
My comment refers to the proposed removal of the monument in Dewitt Park. This monument should be removed from Dewitt Park because it gives prominence to the view that this area was settled by white people only. This plaque belongs in The History Center where an accurate history of the settlement can accompany its display. I have heard our historian Carol Kammen talk about the black farmers and diverse other groups that settled here. I am proud that we have a rich history involving the efforts of many people with many values and beliefs.

Frances Helmstadter, 215 N. Cayuga St., # 103, Ithaca 607-272-3914
franhelmstadter@gmail.com
Dear Commissioners,

I am writing to express my support for removal of the White Settlers marker from DeWitt Park. While this marker may seem innocuous to many, it is symbolic of the white supremacist ideology that has caused and still causes so much suffering in the Ithaca, the USA and the world. The marker supports a skewed view of history that ignores that these settlers were settling on unceded native lands.

Our country is once again reckoning with its racist history and we in Ithaca would do well to respond by gracefully retiring this homage to white supremacy to the History Center where a fuller telling of Ithaca's history of inhabitation, settling, and white supremacy can be told.

I would like this message read on the record, if possible.

Respectfully,

Sabrina Johnston
Dear Anya and Bryan:

I wish to submit the following comment to be read at tonight's ILPC meeting:

I support the proposal to remove the "White Settlers" monument from Dewitt Park and donate it to The History Center. I also suggest replacing the monument with another that acknowledges the large-scale theft by white people of the land of the Cayuga Nation, including all of the land that we now call the City of Ithaca.

Thank you,

Harold Mills
100 Park Street
Ithaca, NY 14850
To: Ithaca Landmarks Preservation Commission  
City Hall  
108 East Green Street  
3rd Floor  
Ithaca, NY 14850  

FAX: 274-6558

From: Sarah Padula  
16 Stone Creek Drive  
Ithaca, NY 14850

September 13, 2020

My apologies for any typos  
My apologies for any inaccuracies from my memory or the internet

RE: Myrick’s request to remove settler’s monument.  **ATTN: read prior to Tuesday’s meeting**

A short introduction: I have lived my entire life in the Ithaca area, attended Ithaca schools from K-12, and taught in the Ithaca City School District for over 35 years.

I was extremely dismayed to read about Mayor Myrick’s request to remove a monument in DeWitt Park regarding the first settlers to this area.

These original settlers were important to the beginnings of Ithaca. They SHOULD be remembered.

But more importantly, these settlers came here at great risk. They believed in this area as a place to raise their families. There was no ill will on their part. They were not implying anything about any other race of peoples. They were innocent settlers looking to start their lives in a new place.

Myrick claims it is “of questionable historic accuracy”, but he offers no explanation using facts.

Removing and renaming places, monuments, street names and so on is getting out of hand. History happened. Although monuments to evil people are clearly not appropriate, recognizing people who had no ill will is reasonable.

This little monument to the first settlers is not offensive in any way! It implies nothing negative. If anyone chooses to put a negative spin on it, it likely has more to do with what is within themselves.
SNOWBALLING:

Now, let’s look at some other ideas that will show just how this could all snowball. For example, perhaps Washington Park and Washington Street here in Ithaca should be renamed. After all, it was George Washington who ordered the demise of the Haudenosaunee (Iroquois) living in this area. That was of no fault of the settlers. Sullivan’s Expedition, ordered by Washington, was intended to kill, burn down crops and housing of the Haudenosaunee, basically forcing them out of the area. This happened in 1779. The settlers came here TEN years later, in or about 1789.

Seneca Street, Cayuga Street, and Cayuga Lake could all be requested to be renamed because aren’t these names given to Haudenosaunee (Iroquois) by non-Native Americans? They could be considered disrespectful to the people and their language. Keep in mind, the word “Iroquois” was coined by the French.....a word that means something like slippery snake. In fact, as a teacher in the Ithaca City School District for over 35 years, part of my responsibility was teaching local history, and we were advised to no longer use the word “Iroquois” because it was considered disrespectful to the Haudenosaunee. So.....maybe Cayuga Street should be renamed Haudenosaunee Street. Do you see where I’m going with this?

It’s okay to recognize people who helped establish this community without turning them into evil people, or disrespect them by implying an agenda that does not fit their history, but rather fits one own’s perspective in today’s world.

And the first settlers certainly risked much in order to plant the seeds (figuratively and literally) that sprouted the beginnings for Ithaca, NY!

There’s absolutely no need to diminish the first settlers.

Respectfully,

Sarah L. Padula
Saturday, September 12, 2020

Ithaca Landmarks Preservation Commission
City Hall
108 E. Green Street, 3rd Floor
Ithaca, NY 14850

Re: DeWitt Park, DeWitt Park Historic District – Proposal to Remove a Stone and Bronze Monument Located in the Northwest Corner of DeWitt Park Known as the “White Settlers” marker.

To the members of the Ithaca Landmarks Preservation Commission,

On behalf of The History Center in Tompkins County, I am writing to detail and clarify our organization’s collaboration in the removal of the DeWitt Park “White Settlers” monument, should the process be approved by the Common Council on the recommendation of the Ithaca Landmarks Preservation Commission (ILPC).

The City of Ithaca has agreed to donate the bronze plaque to The History Center in Tompkins County, after it has been removed from the boulder. Per our collections policy, the plaque will be accessioned in the condition it is received. As part of the removal process, The History Center will film the removal of the plaque for our local history archives. After accessioning the plaque into our collections, we will work with local experts to contextualize the plaque’s historical claims, the period of its installation, and the current time of its removal to guide future interpretive work.

Like all museums, a small fraction of our collection is on display at any given time. Although we look forward to using the bronze plaque in future exhibits, there are no specific plans to put the plaque on display at this time. When appropriate, we look forward to working with the community to displaying the plaque within its proper context. If you have any questions regarding the accession process at The History Center in Tompkins County, I am at your disposal.

Sincerely,

Benjamin Sandberg
Executive Director
Dear Bryan:

Historic Ithaca supports the removal of the D.A.R. plaque from DeWitt Park. As the ILPC may already know, Tompkins County Historian Carol Kammen has indicated that the information on the plaque is factually incorrect. We hope that the plaque’s removal can be used to promote a community dialogue and help educate people to give them a fuller understanding of history. If any sort of new plaque or information is placed on that spot, we encourage the engagement of Sachem George and the Gayogo:ñ’ community in the creation and content of the text.

Thank you,
Christine

--
Christine O'Malley
Preservation Services Coordinator
Historic Ithaca, Inc.
212 Center St.
Ithaca, NY 14850
607.273.6633
christine@historicithaca.org
she/her
Protecting Tompkins County’s historic places since 1966
www.historicithaca.org
To the Commission,

I am 77 & have lived in Tompkins County/Ithaca for the last 72 years. I am 1961 Graduate of Ithaca High School. My family & I also owned & operated F&T Dist. Co Inc in Ithaca for 48 years.

I agree the Monument for the first Whites to settle in Ithaca should be restored after being vandalized. I disagree that it be removed from Dewitt Park & stored away.

If the Mayor wants to keep score on Black & White issues I suggest he commission an organization willing to research & fund a monument to the first Blacks to settle in Ithaca. That monument can then be placed in Dewitt Park along with the restored White monument.

In this way the history of Ithaca will live on in the light of day.

Thank you for your consideration.

Frank L. Prudence
The Greenwood Oak

My spirit came forth
from the Creator
into time
through an acorn
for a purpose

I came here
for a witness
for a provocation
and for a challenge

I desired to put down roots to crush this pavement
I desired to spread mighty branches to embrace the sky
I desired to wrap an immense trunk around time
and to gently, year by year, roll away this stone
and replace this message about the First White Settlers

I came to grow here for five hundred and twenty eight years
to watch you change
to watch you learn to live in this place
to see your children’s children
to the twentieth generation
to listen to my name echoing through their souls
and to respond with the voice of my leaves in the wind

But you would not abide.
You removed me
You dug me up

Yet my Spirit lingers in time
to bear witness as you keep on doing what you are doing
until you can’t do it anymore.

Maybe I will have to watch you all die
and we will meet again outside of time
to talk about how this all went down

A billion acorns rained on this place
I came through only one

I came into time
for a witness
for a provocation
and for a challenge

Is this your answer?
The Greenwood Oak was planted on Earth Day 2020, in De Witt park in Ithaca New York. The park is named after Simeon De Witt, the man who drew the map that solemnized the dispossession of the indigenous nations in what is now called New York.

The Greenwood Oak was planted in front of the plaque here commemorating the “First White Settlers” of Ithaca. The Oak was named in reference to Shawn Greenwood, an unarmed black man who was shot and killed by the Ithaca Police Department in 2010.

What were the chances that this tree would be allowed to grow here, and carry it’s name through time? How likely is it that we will ever turn away from racism, militarism, materialism, and the destruction of the earth that gives us life?

This plaque about the First White Settlers was installed 87 years before by the Daughters of the American Revolution and the State of New York. After another 87 years, the Greenwood Oak could have been big enough that no one would see the plaque unless they knew where to look for it.

The First White Settlers built their cabin on the land of the Cayuga Nation 232 years before. In another 232 years, the plaque could have been entirely obscured.

Columbus first enslaved indigenous people 528 years before. In another 528 years, The Greenwood Oak could have completed its life span, entirely covering the stone and the plaque, which would have been known to human beings only through the story they had passed down.

In July of 2020, The Greenwood Oak was dug up and removed from its place, and a single leaf was left on my doorstep. This is an answer to the provocation and the challenge of The Greenwood Oak, an answer which faithfully represents the spirit of Simeon De Witt, the founding fathers, the Daughters of the American Revolution, and The Empire State.

I am Todd Saddler. I planted The Greenwood Oak, and I recorded this poem. I keep this leaf as a relic, and I testify that the Spirit continues to bear witness. The Spirit lives and grows in power along with the consequences of our actions, whether good or bad.

It took a long time for us to get into the mess we are in. It will take a long time to get out of it, if we get out of it.