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<tr>
<th>Topic</th>
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<th>Presenter(s)</th>
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<tbody>
<tr>
<td>1. Call to Order/Agenda Review</td>
<td></td>
<td>Mayor Myrick</td>
<td>5 min</td>
</tr>
<tr>
<td>2. Mayor's Communications</td>
<td></td>
<td>Mayor Myrick</td>
<td>5 min</td>
</tr>
<tr>
<td>3. Communications and Hearings from Persons Before the Board</td>
<td></td>
<td>Public</td>
<td>5 min</td>
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<tr>
<td>Written comments will be accepted for the Public Comment portion of the meeting. You can submit your comments at the following link: <a href="https://www.cityofithaca.org/FormCenter/Board-of-Public-Works-19/Board-of-Public-Works-Public-Comment-For-100">https://www.cityofithaca.org/FormCenter/Board-of-Public-Works-19/Board-of-Public-Works-Public-Comment-For-100</a> Written comments should be submitted no later than 4:00 pm on the day of the meeting.</td>
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<td>4. Response to the Public</td>
<td></td>
<td>Commissioners</td>
<td>5 min</td>
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<tr>
<td>5. Reports</td>
<td></td>
<td>Various</td>
<td>10 min</td>
</tr>
<tr>
<td>A. Special Committees of the Board</td>
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<td>B. Council Liaison</td>
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<td>C. Board Liaisons</td>
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<td>D. Superintendent and Staff</td>
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<tr>
<td>6. New Project Presentation</td>
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<td>7. Administration &amp; Communications</td>
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<td>8. Buildings, Properties, Refuse &amp; Transit</td>
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<tr>
<td>A. Resolution to Accept Easement at 401 E. State Street</td>
<td>Yes</td>
<td>Tim Logue, Engineering</td>
<td>5 min</td>
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<td>B. Resolution to Accept Title to Parcel 10 near former NYSDOT Sub-Residency</td>
<td>Yes</td>
<td>Tim Logue, Engineering</td>
<td>5 min</td>
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<td>9. Highways, Streets &amp; Sidewalks</td>
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<tr>
<td>A. Proposed Street Name Changes for Carpenter Circle</td>
<td>Yes</td>
<td>Tim Logue, Engineering</td>
<td>10 min</td>
</tr>
<tr>
<td>10. Parking &amp; Traffic</td>
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<tr>
<td>11. Creeks, Bridges &amp; Parks</td>
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<td>12. Water &amp; Sewer</td>
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<tr>
<td>A. Resolution for Remediation and Indemnification for NYSEG work at IAWWTF</td>
<td>Yes</td>
<td>Scott Gibson, Asst. Supt. Water &amp; Sewer</td>
<td>5 min</td>
</tr>
<tr>
<td>B. Discussion on elimination of 3rd shift at Water Treatment Plant</td>
<td>No</td>
<td>Scott Gibson, Asst. Supt. Water &amp; Sewer</td>
<td>10 min</td>
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<td>13. Adjournment</td>
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<td>Seconded by:</td>
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City of Ithaca Board of Public Works
October 19, 2021

Request to Dedicate a Public Way on the property at 401 East State/Martin Luther King Jr. Street – Resolution

WHEREAS, City Charter Section 63 authorizes the Board of Public Works to accept easements on behalf of the City of Ithaca; and

WHEREAS, the proposed development project at 401 East State Street has proposed that the City accept a public way on the property to connect the public sidewalk along East State/Martin Luther King Jr. Street south into the property, and

WHEREAS, staff from the Department of Public Works have no objection to a dedicated public way in this location so long as the City of Ithaca takes on no ownership or maintenance responsibilities and no liability for the public way, now therefore be it

RESOLVED, That pursuant to Section 63 of the City Charter, the City of Ithaca Board of Public Works hereby accepts a dedicated public way on the property at 401 East State/Martin Luther King Jr. Street, as shown on a survey map entitled “Subdivision Plat for No. 401 East State Street, City of Ithaca, Tompkins County, New York”, dated 5/25/2021, and Revised 8/17/2021, prepared by T.G. Miller, P.C., Engineers and Surveyors Parcel,” and be it further,

RESOLVED, That the Superintendent of Public Works is hereby authorized to execute any and all documents to implement this resolution, including but not limited to a deed or permanent easement to dedicate the public way to the City of Ithaca.
EASEMENT FOR PUBLIC WAY

By and Between

[GPA MANAGEMENT, LLC or JEWELS HERITAGE PROJECT, INC.] and

BVSHF III ITHACA, LLC

and

BOARD OF PUBLIC WORKS, FOR AND ON BEHALF OF THE CITY OF ITHACA, NEW YORK

_______, 2021

THIS EASEMENT FOR PUBLIC WAY (this “Easement”) is made and entered into this ______ day of ______, 2021, by and between [GPA MANAGEMENT, LLC and JEWELS HERITAGE PROJECT, INC.], a New York State corporation ("Grantor"), BVSHF III ITHACA, LLC, a Delaware limited liability company ("Blue Vista"), and the BOARD OF PUBLIC WORKS, for and on behalf of the CITY OF ITHACA, NEW YORK (the “City”), a municipal corporation organized under the laws of the State of New York. Grantor, Blue Vista, and the City may be referred to herein individually as a “Party” and collectively as the “Parties”.

Commented [VK1]: Who owns the land? We need confirmation that the party granting the easement actually has title and the ability to do so?
Preliminary Statement

WHEREAS, Grantor is the fee simple owner of that certain parcel of real property being particularly described on Exhibit A attached hereto (the “Grantor Property”);

WHEREAS, Blue Vista is the fee simple owner of that certain parcel of real property being particularly described on Exhibit B attached hereto (the “Blue Vista Property”);

WHEREAS, in connection with the development of certain property adjacent to the Grantor Property, Grantor desires to grant the City and Blue Vista two (2) public way easements for pedestrian access over portions of the Grantor Property approximately ten feet (10’) wide as more particularly described and depicted as on Exhibit C attached hereto (the “Easement Areas”), with one easement being an elevated walkway over a pedestrian bridge to be constructed on the Grantor Property (the “Elevated Walkway”), and the other easement being on the ground level of the Grantor Property (the “Ground Level Walkway”);

WHEREAS, Blue Vista desires to construct certain improvements within the Easement Areas, including a pedestrian bridge, pavement, and other related improvements, in connection with the use of the Easement Areas for pedestrian access.

WHEREAS, Blue Vista agree to maintain a stair and elevator within its building that can be used by the public to connect from the Elevated Walkway to the Ground Level Walkway and paved path to Fall Creek.

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Pedestrian Easements. Grantor does hereby grant and release unto the City and Blue Vista, and their respective successors and/or assigns, forever, perpetual, nonexclusive easements for pedestrian access, ingress, and egress upon, over, and across the Easement Areas for the benefit of the City, the public, Blue Vista, and the City’s and Blue Vista’s respective permittees, invitees, tenants, employees, contractors, and agents.

2. Temporary Construction Easement; Grantor Construction Obligations. Grantor, on behalf of itself, and its successors and assigns, hereby declares, grants, and conveys to Blue Vista, its successors and assigns, a temporary construction easement (the “TCE”) in, over, under, across, and through the Easement Areas and such portions of the Grantor Property adjacent thereto as reasonably necessary to undertake construction of the jointly (Grantor and Blue Vista) designed pedestrian bridge and related improvements within the Elevated Walkway and the construction of paving and other related improvements within the Ground Level Walkway, all as may be necessary for pedestrian access over and upon the Easement Areas (all such improvements referred to herein collectively as, the “Improvements”). Blue Vista and its agents, contractors, subcontractors, successors and assigns shall be entitled to use the TCE. The TCE shall expire and terminate automatically without the necessity of any further filings or recordation of any instruments upon Blue Vista’s completion of construction of the Improvements. Grantor shall be responsible for construction such improvements necessary to connect the Improvements constructed by Blue Vista to public sidewalk and right of way.

Commented [VK2]: Isn’t this development at six mile creek?
adjacent to the north of the Grantor Property (such improvements to be constructed by the
Grantor being referred to herein as the “Grantor Improvements”). In the event Grantor does not
complete construction of the Grantor Improvements, Blue Vista shall have the right to undertake
construction of the Grantor Improvements, and Grantor shall reimburse Blue Vista for all third-
party reasonable out-of-pocket expenses incurred by Blue Vista in constructing the Grantor
Improvements.

2a. Temporary Construction Easement; Grantor access for construction mobilization and
execution. Blue Vista on behalf of itself, and its successors and assigns, hereby declares, grants,
and conveys to Grantor its successor or assigns, a construction easement (the “CE”) in, over,
under, across, and through the Easement Areas and such portions of the Blue Vista paved areas
and Public Way as reasonably necessary to undertake construction. Grantor and its agents,
contractors, subcontractors, successors and assigns shall be entitled to use the CE.

3. Maintenance of/Damage to Public Way. Blue Vista, as owner of the Blue Vista
Property, shall maintain, repair, replace, and reconstruct (with Grantor agreed upon finishes and
construction details when replacement is being performed) the public way (as defined by the City
of Ithaca, NY), walkways, sidewalks, stairs and related improvements within the Easement Areas
as and when necessary to maintain the same in good condition and repair. Blue Vista shall
further keep the improvements within the Easement Areas free and clear of snow, ice, and other
debris. Blue Vista shall first obtain the written consent of the City prior to any closure of the
Easement Areas in connection with any maintenance, repair, replacement, or reconstruction by
Blue Vista of the improvements within the Easement Areas. The City shall have no obligation to
maintain, repair, replace, reconstruct, or provide any other services relating to the improvements
located within the Easement Areas, responsibility for which will rest solely with Blue Vista and
its successors and assigns.

4. Insurance. Blue Vista shall carry insurance for general liability, with minimum
limits of liability not less than $2,000,000 per occurrence and $5,000,000 in the aggregate, for
personal injury, including death, and/or property damage, arising out of or related to the use of
the Easement Areas, which policy shall name Grantor as an additional named insured. Blue
Vista shall deliver a certificate evidencing such coverage to Grantor by not later than the date of
recording of this Easement and thereafter upon written request. The policy shall include
coverage, by endorsement or otherwise, for the indemnity obligations in Section 4 below.

5. Indemnification. Blue Vista agrees to indemnify Grantor for and hold Grantor
harmless from any and all claims, loss, cost, expense and damages (including, without limitation,
reasonable attorney’s fees and disbursements and the cost of enforcing this indemnity) caused
directly by the existence of this Easement, the exercise of any rights by Blue Vista hereunder or
the use by Blue Vista or its permittees, invitees, tenants, employees, contractors, or agents of the
Easement Areas or the Grantor Property.

Blue Vista further agrees to indemnify the City for and hold the City harmless from any
and all claims, loss, cost, expense and damages (including, without limitation, reasonable
attorney’s fees and disbursements and the cost of enforcing this indemnity) arising from any
failure on Blue Vista’s part to exercise its obligations under Paragraph 3 of this Easement for
Public Way.
6. **No Interference.** No Party hereto shall erect, construct or develop any buildings, structures or improvements within the Easement Areas that interfere with the exercise of the other’s rights hereunder or with the use of or access to the Easement Areas, and no Party shall use the Easement Areas or any part thereof in a manner that interferes with the exercise of the other’s rights hereunder or with the use of or access to the Easement Areas.

7. **Reservation of Rights.** Grantor reserves all rights accruing to it from Grantor’s ownership of fee title to the Property, except to any extent that exercise of such rights or use of the Property unreasonably interferes or conflicts with the terms of this Easement or the exercise of the City’s or Blue Vista’s rights hereunder.

8. **Enlargement/Relocation.** The easement granted herein shall not be enlarged or extended to benefit any land other than the parcels benefitted in accordance with this Easement, or to permit any persons to use the easement other than the persons permitted to do so in accordance with this Easement, without the written consent, in each case, of Grantor. The Easement Areas shall not be relocated without each Parties’ consent, which consent shall not be unreasonably withheld, conditioned or delayed.

9. **Legal Action.** In the event a Party is required to pursue legal action to enforce the rights or obligations described herein, the prevailing Party shall be entitled to receive from the other (and a court order for) reimbursement of the prevailing Party’s reasonable attorneys’ fees and disbursements incurred in connection with the prosecution or defense of such claim, as the case may be. Each Party shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach, or enforce the observance of, the restrictions, obligations, covenants, and rights contained in this Easement in addition to all other remedies available at law or in equity.

10. **Waiver.** A Party hereto may waive any requirement to be performed by another Party, provided that such waiver shall be in writing and executed by the Party waiving the requirement, and no waiver shall constitute a waiver of any subsequent instance of such requirement or of any other requirement of this Easement.

11. **Jury Trial.** The Parties hereto waive all rights to a jury in any action brought under or in connection with this Easement.

12. **Binding Effect.** This Easement shall be binding upon and shall inure to the benefit of each of the Parties hereto and their respective successors and assigns and shall burden and run with the title to the Property.

13. **Amendment.** This Easement may be amended, modified or changed only by written instrument executed by all Parties.

14. **Headings.** Section and other headings contained in this Easement are for reference purposes only and are not intended to describe, interpret, define or limit the scope, extent or intent of this Easement or any provision hereof. Every covenant, term and provision of this Easement shall be construed simply according to its fair meaning and not strictly for or against any Party.
15. Severability. If any provision of this Easement or the application thereof to any person or circumstance for any reason and any extent shall be held invalid or unenforceable, the remainder of this Easement shall not be affected thereby, but rather is to be enforced to the greatest extent permitted by law.

16. Entire Agreement. This Easement represents the entire understanding and agreement among the Parties with respect to the subject matter hereof and supersedes all other negotiations, understandings and representations (if any) made by and among such Parties.

17. Counterparts; Signatures. This Easement may be executed in any number of counterparts with the same effect as if all of the Parties hereto had signed the same document. All counterparts shall be construed together and shall constitute one agreement.

18. Governing Law. This Easement shall be governed by and construed in accordance with the laws of the State of New York.

[SIGNATURES ON FOLLOWING PAGE]
IN WITNESS WHEREOF, Grantor, the City, and Blue Vista have executed, sealed and delivered this Easement as of the day and year first above written.

[GPA MANAGEMENT, LLC/],
a(n) __________________________
By: __________________________
Name: _________________________
Title: __________________________

[JEWELS HERITAGE PROJECT, INC.]
A New York State corporation ________________________________
By: __________________________
Name: _________________________
Title: __________________________

BOARD OF PUBLIC WORKS, for and on behalf of the CITY OF ITHACA, NEW YORK, a municipal corporation
By: __________________________
Name: _________________________
Title: __________________________

BVSHF III ITHACA, LLC,
a Delaware limited liability company
By: __________________________
Name: _________________________
Title: __________________________
STATE OF NEW YORK   )
COUNTY OF TOMPKINS   )  SS

On the _____ day of __________, in the year 2021 before me, the undersigned, a Notary Public
in and for said State, personally appeared _________________ personally known to me or
proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed
to the within instrument and acknowledged to me that he executed the same in his capacity, and
that by his signature on the instrument, the individual, or the person upon behalf of which the
individual acted, executed the instrument.

____________________________________
Notary Public

STATE OF NEW YORK   )
COUNTY OF TOMPKINS   )  SS

On the _____ day of __________, in the year 2021 before me, the undersigned, a Notary Public
in and for said State, personally appeared _________________ personally known to me or
proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed
to the within instrument and acknowledged to me that he executed the same in his capacity, and
that by his signature on the instrument, the individual, or the person upon behalf of which the
individual acted, executed the instrument.

____________________________________
Notary Public

STATE OF NEW YORK   )
COUNTY OF TOMPKINS   )  SS

On the _____ day of __________, in the year 2021 before me, the undersigned, a Notary Public
in and for said State, personally appeared _________________ personally known to me or
proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed
to the within instrument and acknowledged to me that he executed the same in his capacity, and
that by his signature on the instrument, the individual, or the person upon behalf of which the
individual acted, executed the instrument.

____________________________________
Notary Public
EXHIBIT A

DESCRIPTION OF THE GRANTOR PROPERTY

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

BEGINNING at a point in the South street line of East State Street, (aka East Martin Luther King Jr. Street) said point being located 832.27’ more or less westerly from the intersection of south line of East State Street & the extension of the centerline of Stewart Avenue,

RUNNING THENCE S 18°12'32" W a distance of 30.34' to a point;
RUNNING THENCE N 71°34'50" W a distance of 118.20' to a point;
RUNNING THENCE N 18°15'36" E a distance of 6.27' to a point;
RUNNING THENCE N 71°44'39" W a distance of 12.00' to a point;
RUNNING THENCE N 18°15'21" E a distance of 19.60’ to a point;
RUNNING THENCE S 71°44'39" E a distance of 0.22' to a point;
RUNNING THENCE N 17°38'13" E a distance of 4.57' to a point;
RUNNING THENCE N 71°35'14" W a distance of 0.16' to a point;
RUNNING THENCE N 18°19'58" E a distance of 1.93’ to a point;
RUNNING THENCE S 71°34'50" E a distance of 45.70' to a point;
RUNNING THENCE S 18°19'58" W a distance of 2.00' to a point
RUNNING THENCE S 71°34'50" E a distance of 84.46' to a point;
which is the point of beginning and place of beginning;

Said parcel having an area of 3,965 square feet, (0.091 acres)

SUBJECT TO covenants, restrictions, easements and encumbrances of record.

For a more particular description thereof, reference is hereby made to a survey map entitled “Subdivision Plat for No. 401 East State Street, City of Ithaca, Tompkins County, New York”, dated 5/25/2021, Revised 8/17/2021 prepared by T.G. Miller, P.C., Engineers and Surveyors, Ithaca, New York, filed concurrently herewith and incorporated herein by reference.
EXHIBIT B

DESCRIPTION OF THE BLUE VISTA PROPERTY

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

BEGINNING at a point in the east boundary line of GPA MANAGEMENT, LLC, which point is described as South 14 degrees 16 minutes 05 seconds West a distance of 28.71 feet from a point in the south line of East State Street:

thence South 14 degrees 16 minutes 05 seconds West a distance of 35.66 feet to a point;
thence South 67 degrees 34 minutes 43 seconds East a distance of 5.95 feet to a point;
thence South 60 degrees 15 minutes 03 seconds East a distance of 219.13 feet to a point;
thence South 46 degrees 45 minutes 32 seconds East a distance of 198.72 feet to a point;
thence Northwesterly for a distance of 766.9 feet, more or less along the northerly face of concrete wall, said course being further described by the following 4 courses and distances to a point,

1.) South 88 degrees 32 minutes 19 seconds West a distance of 71.88 feet
2.) North 71 degrees 32 minutes 12 seconds West a distance of 100.26 feet
3.) North 63 degrees 16 minutes 23 seconds West a distance of 342.52 feet
4.) North 71 degrees 58 minutes 53 seconds West a distance of 250.83 feet;

thence North 18 degrees 13 minutes 24 seconds East a distance of 160.88 feet to a point;
thence South 71 degrees 34 minutes 50 seconds East a distance of 91.97 feet to a point;
thence North 18 degrees 12 minutes 32 seconds East a distance of 17.92 feet to a point;
thence South 70 degrees 48 minutes 15 seconds East a distance of 184.01 feet to a point;
thence South 10 degrees 05 minutes 23 seconds West a distance of 6.53 feet to a point;
thence South 77 degrees 50 minutes 37 seconds East a distance of 97.28 feet to a point to the point or place of beginning.

Parcel containing 2.641 acres.

For a more particular description thereof, reference is hereby made to a survey map entitled “Subdivision Plat for No. 401 East State Street, City of Ithaca, Tompkins County, New York”, dated 5/25/2021, Revised 8/17/2021 prepared by T.G. Miller, P.C., Engineers and Surveyors, Ithaca, New York, filed concurrently herewith and incorporated herein by reference.
EXHIBIT C

DESCRIPTION AND DEPICTION OF THE EASEMENT AREAS

Ground Level Walkway:

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

BEGINNING at a point in the South line of East State Street said point being located 832.27’ more or less westerly from the Intersection of south line of East State Street & the extension of the centerline of Stewart Avenue,

RUNNING THENCE S 18°12’32" W a distance of 20.34’ to the true point and place of beginning;

RUNNING THENCE S 18°12’32" W a distance of 10.00’ to a point;

RUNNING THENCE N 71°34’50" W a distance of 96.97’ to a point;

RUNNING THENCE N 18°13’24” E a distance of 10.00’ to a point;

RUNNING THENCE S 71°34’50” E a distance of 96.97’ to a point, which is the point of beginning and place of beginning.

Said “easement area” having an area of 969 square feet.

SUBJECT TO covenants, restrictions, easements and encumbrances of record.

For a more particular description thereof, reference is hereby made to a survey map entitled “Subdivision Plat for No. 401 East State Street, City of Ithaca, Tompkins County, New York”, dated 5/25/2021, Revised 8/17/2021 prepared by T.G. Miller, P.C., Engineers and Surveyors, Ithaca, New York, filed concurrently herewith and incorporated herein by reference.
Elevated Walkway:

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

BEGINNING at a point in the Southerly edge of an existing concrete walk of East State Street, said point being located 899’ more or less westerly from the extension of the centerline of Stewart Avenue,

RUNNING THENCE S 18°25'10" W a distance of 35.84’ to a point;

RUNNING THENCE N 71°34'50" W a distance of 10.00’ to a point;

RUNNING THENCE N 18°25'10" E a distance of 35.74’ to a point;

RUNNING THENCE S 72°10'56" E a distance of 10.00’ to a point,

which is the point of beginning and place of beginning.

Said “easement area” having an area of 357 square feet.

SUBJECT TO covenants, restrictions, easements and encumbrances of record.

For a more particular description thereof, reference is hereby made to a survey map entitled “Subdivision Plat for No. 401 East State Street, City of Ithaca, Tompkins County, New York”, dated 5/25/2021, Revised 8/17/2021 prepared by T.G. Miller, P.C., Engineers and Surveyors, Ithaca, New York, filed concurrently herewith and incorporated herein by reference. As construction documents are developed further the starting point for the Elevated Walkway may be relocated within approximately seven feet of the indicated location to form a relationship with the Grantor design.
10' WIDE ELEVATED PUBLIC WAY TO STATE STREET THROUGH THE MONUMENT PLAZA

10' WIDE PUBLIC WAY ON GROUND FLOOR
Resolution Accepting Title to Parcel 10 near the former NYSDOT Sub-Residency and the Farmers Market

WHEREAS, the New York State Office of General Services was involved in the sale of the former NYSDOT sub-residency site on Third Street, near the Farmers Market, and

WHEREAS, as a part of that sale, NYSOGS identified Parcel 10 as shown on a map entitled, “NYSDOT City of Ithaca Third Street Sub-Residency Abandonment Plan, OGS Map No. 2703” prepared by Shumaker Consulting Engineering and Land Surveying, D.P.C., dated March 11, 2020, as lands under the jurisdiction of OGS, and

WHEREAS, pursuant to Section 75, subsection 10 of the of the Public Lands Law, the City of Ithaca petitioned OGS and was granted title to Parcel 10 for the purposes of a public street and an open area for conservation, and

WHEREAS, this deed has been recorded in the New York State Department of State Book of Patents No. 124, Page 17 on July 15, 2021, as well as in the Tompkins County Clerk’s Office as Instrument # 2021-09377 on August 13, 2021, but has not been formally accepted on behalf of the City, and

WHEREAS, in accordance with the City of Ithaca Charter Section 63, “The Board of Public Works may enter upon any lands for the purpose of survey and examination; may contract for, purchase and acquire, by grant, purchase, gift, condemnation or otherwise, in the name of the City of Ithaca all lands, water rights, easements, privileges and franchises and all other real and personal property whatsoever, either within or outside of the corporation limits of the City of Ithaca, which are necessary, in the judgment of the Board, for any of the purposes herein set forth and shall have the right to enter upon, take possession of and appropriate all such property and to do any and every act or thing that may be necessary to carry out the full intent and purpose of all the provisions contained in this Charter;” now, therefore, be it

RESOLVED, That the City of Ithaca Board of Public Works hereby agrees to accept Parcel 10 as described above for public street and open area purposes and agrees to maintain same.
Return To  
CITY OF ITHACA  
ENV

Maureen Reynolds, County Clerk  
Tompkins County Clerk  
320 North Tioga Street  
Ithaca, NY 14850  
(607) 274-5431

Document Type: **DEED**

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<td>CITY OF ITHACA</td>
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Receipt Number: 21-304477

<table>
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<th>Transfer Amt:</th>
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Property located in **City of Ithaca**

State of New York  
County of Tompkins  

Recorded on August 13th, 2021 at 1:47:03 PM with a total page count of 7.

Tompkins County Clerk

*This sheet constitutes the Clerk's endorsement required by section 319 of the Real Property Law of the State of New York*  

Do Not Detach
THE PEOPLE OF THE STATE OF NEW YORK, BY THE GRACE OF GOD, FREE
AND INDEPENDENT

TO ALL WHOM THESE PRESENTS SHALL COME, GREETING:

KNOW YE, That, pursuant to Section 75, subdivision (10) of the Public Lands Law and
Findings of the Commissioner of General Services dated June 15th, 2021,
and in consideration of the sum of One Dollar ($1.00), lawful money of the United States of
America, paid by the City of Ithaca, a municipal corporation, having an office and place of
business at 108 East Green Street, Ithaca, New York 14850 we have given and granted and by
these presents do hereby give and grant unto the said City of Ithaca, the owner of the land
adjacent to the land hereinafter described, its grantees or successors in interest, the following
described parcel of land:

All that piece or parcel of land formerly under the waters of the Cayuga
Inlet situate in the City of Ithaca, County of Tompkins, State of New York, being
bounded and described as follows:

Beginning at a point on the former westerly shoreline of the Cayuga Inlet,
(now filled in) at the intersection of the division line between lands of the People
of the State of New York as shown on Map No. 1 Parcel No. 1 dated
July 12, 1954 and filed in the Tompkins County Clerk’s Office on
February 2, 1955 on the south and lands of the City of Ithaca recorded in Liber
238 of Deeds at page 63 on the north, thence along said former westerly shoreline
North 22°01'46" East a distance of 190.14 feet to the southwesterly corner of
other lands of the City of Ithaca, recorded in the Department of State in Book 79
of Patents at page 145 also recorded in the Tompkins County Clerk’s Office in
 Liber 470 of Deeds at page 913 and shown on a map dated October 1960 and
recorded in the New York State Office of General Services as OGS Map No. 33
thence along said lands of the City of Ithaca the following two (2) courses and
distances:

1) S 55°26'14" E a distance of 78.44 feet to a point; and
2) N 82°46'51" E a distance of 44.97 feet to a point on the former
easterly shoreline of the Cayuga Inlet, (now filled in) at the intersection with lands
of the City of Ithaca recorded in Liber 433 of Deeds at page 73 on the east; thence
southerly along the former Cayuga Inlet Channel the following two (2) courses
and distances:
1) S 22°01'46" W a distance of 62.28 feet to a point; and
2) S 05°58'25" E a distance of 38.00 feet to a point at the northeasterly corner of lands conveyed to the People of the State of New York by Cornell University, recorded in the Tompkins County Clerk’s Office as Instrument No. 2020-06278; thence the following four (4) courses and distances along said lands:
   1) N 71°33'36" W a distance of 66.69 feet to a point on the former centerline of the Cayuga Inlet (now filled in);
   2) S 18°26'24" W a distance of 30.61 feet to a point;
   3) S 26°29'45" W a distance of 39.64 feet to a point; and
   4) S 32°06'04" W a distance of 35.55 feet to a point;

Thence through lands formerly under the waters of the Cayuga Inlet (now filled in) along an easterly extension of the first mentioned division line, North 58°28'14" West a distance of 60.53 feet to the point or place of beginning.

Containing 0.390 acre or 17,000 square feet of land more or less.


SUBJECT to permanent easements for sewer and water conveyed by the People of the State of New York to the City of Ithaca as described in a Deed dated August 19, 2020, recorded in the Department of State in Volume 62 of Miscellaneous Deeds and Title Papers at page 66.

SUBJECT to any covenants, conditions, restrictions, easements and right-of-way, if any, contained in instruments of record affecting said premises so far as the same may now be in force and effect.

THIS GRANT is made and accepted upon the condition that the said premises shall be improved and maintained for the purposes of a public street and an open area for conservation. In the event that the premises are not used for such purposes, the title hereby conveyed shall revert to the People of the State of New York and the Attorney General may institute an action in the Supreme Court for a judgment declaring a revesting of such title in the State.
TOGETHER WITH all and singular the rights, hereditaments and appurtenances to the
same belonging or in anywise appertaining.

TO HAVE AND TO HOLD the above described premises unto the said City of Ithaca,
its grantees or successors in interest forever, subject to the aforesaid condition.
IN WITNESS WHEREOF, our Commissioner of General Services has executed these letters patent in our name this 13th day of June, 2021.

NEW YORK STATE
OFFICE OF GENERAL SERVICES
By: RoAnn M. Destito
Commissioner

STATE OF NEW YORK
DEPARTMENT OF STATE
ss:

I hereby certify that the Great Seal of the State of New York was hereto affixed on the 23rd day of June, 2021.

Richard C.芦ves
Special Deputy Secretary of State

Approved as to form this 30th day of June, 2021.

LETITIA JAMES
Attorney General
By: Jeannine M. Kemp
Principal Attorney
The People of the State of New York

TO

City of Ithaca

LETTERS PATENT

STATE OF NEW YORK
Department of State

Recorded in Book of Patents

No. 124 at page 17

Date: 7-15-21
Rossana Rosado
Secretary of State

By Richard Zichermann
Special Deputy Secretary of State
Miscellaneous Records

Return to:

21
WHEREAS, in accordance with the City Code, Section 342-2, “No person shall assign any name to any new street without first submitting the proposed name to the Board of Public Works for its approval,” and

WHEREAS, on behalf of the owner, Whitham Planning & Design has requested to rename Carpenter Business Park Road and name the extension of Fifth Street west of Route 13, as shown on the enclosed map entitled “Road Name Diagram, Cayuga Park,” dated August 2, 2021, by Whitham Planning & Design, now, therefore be it

RESOLVED, that the Board of Public Works approves the request to rename Carpenter Business Park Road to Cayuga Park Lane, and be it further

RESOLVED, that the Board of Public Works approves the request to name Fifth Street Extension as such, and be it further

RESOLVED, that individual building numbers shall be assigned by the Director of Engineering as per the City Code and may not reflect those shown on the submitted map.
Re: Carpenter Circle Renaming Procedures

Jacob von Mechow <vonmechow@whithamdesign.com>
Mon 10/11/2021 11:05 AM
To: Tim Logue <TLogue@cityofithaca.org>
Cc: Michael Thorne <MThorne@cityofithaca.org>; Scott Whitham <whitham@whithamdesign.com>; Lisa Nicholas <LNicholas@cityofithaca.org>; JoAnn Cornish <JCornish@cityofithaca.org>; Rochelle Thewet <thewet@whithamdesign.com>

1 attachments (3 MB)
21.10.11_Road Name Diagram.pdf;

Hello Tim,
Please see the attached revised map with the "Circle" names removed.
Also, we have not received an agenda for tomorrow's meeting so just wanted to confirm. It is our understanding that we will have an opportunity to participate in the discussion at tomorrow's BPW meeting to answer any questions or concerns the board might have ahead of the vote to approve. Is there a "Zoom" link we can use to participate in the meeting?

Also, the client team wanted to confirm that the road name change is to "Cayuga Park Lane", not "Cayuga Park Rd" as written in your above email. They do not want to pursue other alternatives.

Thank you,

Jacob von Mechow
Senior Designer

WHITHAM PLANNING & DESIGN, PLLC

Landscape Architecture | Planning | Project Management

607.279.7151 | direct

142 East State Street Suite B Ithaca NY 14850

On Thu, Sep 16, 2021 at 11:01 AM Tim Logue <TLogue@cityofithaca.org> wrote:

Hi Jacob,
As you might have seen the other day, the BPW reviewed your request for street names at the Cayuga Park project. They would like to eliminate the Cayuga Circle North & Cayuga Circle South names, as they felt areas are parking access aisles, not streets and didn't need names. They were comfortable with Fifth Street Extension, although would also accept just Fifth Street. For the renaming of Carpenter Business Park Rd, they asked if there was some else besides Cayuga Park Rd that the owners would consider, something more creative, perhaps reflective of the context or history of the site. They were also mildly concerned that having the words Cayuga Park and
in the street name might lead to some confusion since we have a Cayuga Street and a Park Road, Park Street and Park Place. My guess is that they might ultimately accept Cayuga Park Road, but somewhat begrudgingly.

We ended by agreeing to put the item on the agenda for the October meeting with a resolution to approve Fifth St Extension and Cayuga Park Road, with a request to you and your colleagues to discuss alternatives for the later. If you can attend the October meeting, and bring an alternative, I think that would be best. Lastly, can you send me a revised map with the Circle names removed?

Sincerely,
Tim

Tim Logue
Director of Engineering Services
108 East Green Street
Ithaca, NY 14850
607.274.6535

"Children learn from what they see. We need to set an example of truth and action." Howard Rainer (Taos Pueblo-Creek educator and public speaker)

From: Jacob von Mechow <vonmechow@whithamdesign.com>
Sent: Thursday, August 26, 2021 11:26 AM
To: Tim Logue <TLogue@cityofithaca.org>
Cc: Michael Thorne <MThorne@cityofithaca.org>; Scott Whitham <whitham@whithamdesign.com>; Lisa Nicholas <LNicholas@cityofithaca.org>; JoAnn Cornish <JCornish@cityofithaca.org>
Subject: Re: Carpenter Circle Renaming Procedures

Hello Tim,
Thank you for the direction in the above email. Please see the attached diagram indicating streets extents and proposed names, as well as a memo explaining the request. Please let us know if there are any questions or anything else you will require.

Thank you,

Jacob von Mechow
Senior Designer

Landscape Architecture | Planning | Project Management
Resolution Agreement for Remediation and Indemnification between the Ithaca Area Wastewater Treatment Facility (IAWWTF) and New York State Electric & Gas Corporation (NYSEG)

WHEREAS, pursuant to a multi-site Order on Consent between New York State Department of Environmental Conservation (NYSDEC) and NYSEG to implement a full remedial program, to address contamination related to a former First Street Manufactured Gas Plant site (First Street MGP), and

WHEREAS, one such site was previously located on a portion of the IAWWTF parcel located at 525 Third Street, and

WHEREAS, the IAWWTF is a jointly owned plant with oversight through three Municipal Owners which includes the City of Ithaca, and

WHEREAS, in order for NYSEG to perform sampling, soil evaluations, assessments, and other work activities, NYSEG had been originally been granted permission to temporarily use, occupy, excavate and travel over the IAWWTF premises under previous access Agreements dated December 18, 2009 and amended by Addendum #1 in September 2010, and

WHEREAS, data collected by NYSEG at the time was summarized in a 2011 Record of Decision that contains a remedy for the environment at the IAWWTF site, and

WHEREAS, NYSEG prepared a remedial work plan in 2020 that provides a scope and methods for NYSEG to implement this plan, and

WHEREAS, NYSEG must again, temporarily access the IAWWTF to begin plan implementation, and

WHEREAS, NYSEG prepared an Agreement for Remediation and Indemnification which identifies the scope and methods of remediation, means and conditions of site entry, permitting, responsible ownership, interaction with plant personnel, and procedures for coordination and communication, among several other legal policy. Now therefore be it

RESOLVED, as joint owner of the IAWWTF, the City of Ithaca Board of Public Works approves said Agreement allowing NYSEG to enter into the IAWWTF property to fulfill the requirements within its Remedial Plan.
AGREEMENT FOR REMEDIATION AND INDEMNIFICATION

THIS AGREEMENT, effective ______________, 2021, is by and between NEW YORK STATE ELECTRIC & GAS CORPORATION, a corporation organized and existing under the laws of the State of New York and having a place of business at 18 Link Drive, Binghamton, New York 13904 (hereinafter referred to as “NYSEG”), and CITY OF ITHACA, 108 East Green Street, Ithaca, NY 14850, TOWN OF ITHACA, 215 N. Tioga Street, Ithaca, NY 14850, and TOWN OF DRYDEN, 93 East main Street, Dryden, NY 13053 (hereinafter collectively referred to as “Municipal Owners”).

RECITALS:

WHEREAS, the Ithaca Area Wastewater Treatment Facility (“IAWWTF”) is owned and operated by Municipal Owners, with oversight provided through a Special Joint Committee (“SJC”) composed of representatives from the three Municipal Owners; and

WHEREAS, pursuant to a multi-site Order on Consent between NYSEG and the New York State Department of Environmental Conservation (“NYSDEC”) which was executed on March 30, 1994, Index #DO-0002-9309 (NYSDEC, 1994, subsequently modified, and then, amended and restated December 5, 2016) (“Consent Order”), NYSEG is responsible for implementing a full remedial program, including tests for, and investigations and remediation of, contamination related to a former First Street Manufactured Gas Plant site (“First Street MGP Site”) that was previously located on a portion of the IAWWTF site located at 525 Third Street in the City of Ithaca (“Premises”); and

WHEREAS, NYSEG performed said sampling and evaluation, and the NYSDEC subsequently issued a March 2011 Record of Decision (“ROD”) that contains the remedy for the environment at the First Street MGP Site (the “Remedial Action”); and

WHEREAS, NYSEG prepared a Remedial Design Work Plan dated February 14, 2020 and approved by NYSDEC on July 29, 2020 (“RDWP”), that provides the scope and methods for NYSEG to implement the Remedial Action for the First Street MGP Site; the RDWP is attached as Exhibit A and made part hereof (collectively, the RDWP and any additional NYSDEC-approved supplemental work plan to the RDWP to implement the ROD are referred to as the “Work Plan,” and any Remedial Action implementation under the Work Plan is referred to as the “Work”); and

WHEREAS, NYSEG must temporarily use, occupy, excavate, install Work Plan elements in, on and under, and travel over, the Premises in order to implement and perform the Work; and
WHEREAS, the SJC recommended, and the governing bodies of the Municipal Owners approved, this Agreement to permit NYSEG to use the Premises for these purposes subject to the terms and conditions of this Agreement;

NOW, THEREFORE, the parties agree as follows:

Section 1. Grant. Municipal Owners, being the record owners of the Premises shown in Exhibit B, which is attached hereto and made part hereof, for and in consideration of the sum of One Dollar ($1.00) duly paid, the receipt and sufficiency of which is hereby acknowledged, and in further consideration of the performance of the covenants and agreements as herein set forth and expressed, do hereby grant to NYSEG, and its successors and assigns the following.

(a) A temporary license to enter upon, use, occupy, excavate, and/or install Work Plan elements in, on and under, and travel over, the Premises for the purpose of implementing and performing the Work. All of NYSEG’s Work shall be identified in, and performed in accordance with, the Work Plan to implement the ROD. NYSEG shall commence barrier wall installation and related activities no earlier than October 1, 2021. This license is granted for the accommodation of NYSEG’s employees, agents, environmental consultants, representatives, contractors, and subcontractors, as well as construction and other equipment, vehicles, materials, tools, accessories and other necessary items required for the performance of the Work.

(b) The temporary license also allows NYSEG to use, as a means of entering onto and departing from the Premises, the present and existing roads and driveways located on the Premises leading to adjoining streets, avenues and highways for all of the purposes set forth herein.

(c) The temporary license gives NYSEG non-exclusive rights to enter onto and use the Premises as described above. The license is limited in purpose and scope to the amount of access and activities reasonably required to perform the Work, and it does not create any relationship between NYSEG and Municipal Owners other than licensee and licensor.

(d) NYSEG shall consult with and receive the approval of the IAWWTF Chief Operator for the use of construction laydown areas on the Premises for the storage of machinery, equipment and spoils related to the Work.

(e) NYSEG shall provide Municipal Owners collectively with notification at least fifteen (15) business days before entering the Premises to commence implementation of the Work. This notification requirement applies both to the initial Work under the RDWP, and to Work pursuant to any additional NYSDEC-approved supplemental work plan to the RDWP. Such notification(s) shall be made by both telephone and email to the Ithaca Area Wastewater Treatment Plant Chief Operator at 607-273-8381 and CKilgore@cityofithaca.org, and to the City of Ithaca Mayor at 607-274-6501 and mayor@cityofithaca.org, or to such other telephone numbers and email addresses as Municipal Owners may designate in writing to NYSEG.
(f) NYSEG shall coordinate in person or by telephone or email with the Chief Operator or their designee before entering upon the Premises to start the initial Work on the Premises, and each time before entering upon the Premises to start Work pursuant to any additional NYSDEC-approved supplemental work plan to the RDWP. NYSEG agrees that it will coordinate with the Chief Operator to avoid and minimize to the maximum extent practicable any interference with the business operations, use and access described in Section 2(h) below. NYSEG agrees that, if so required by the Chief Operator, NYSEG will coordinate throughout the duration of the Work with any construction managers that are overseeing other projects on the Premises. NYSEG shall keep the Chief Operator or their designee informed in person or by telephone or email on a weekly basis of Work progress, including any request by NYSDEC or NYSEG to supplement the Work Plan, and NYSEG shall promptly respond to the Chief Operator’s requests for information about the Work. NYSEG shall perform the Work at times that are acceptable to the Chief Operator and in a manner and degree of thoroughness, competence, and care ordinarily exercised by professional consultants and contractors working on projects substantially similar in time and nature to the Work contemplated by this Agreement.

(g) Municipal Owners warrant good title to the Premises and have all requisite authority and right to grant NYSEG this license.

Section 2. Other Consideration. As further consideration for the foregoing grant, the Municipal Owners and NYSEG agree as follows:

(a) All Work to be performed under this Agreement shall be carried out at NYSEG’s sole cost and expense.

(b) NYSEG shall obtain, at its sole cost and expense, all permits and authorizations of whatever nature from governmental agencies as are necessary for conducting the Work. In connection with this Agreement, NYSEG will comply and will cause its employees, agents, environmental consultants, representatives, contractors and subcontractors to comply with all federal, state and local laws, regulations, permits, permit conditions, standards, directives, guidelines, and judicial and administrative orders and decrees, including the Consent Order and the Work Plan. NYSEG shall notify Municipal Owners of any Work Plan amendments or supplements approved by the NYSDEC within fifteen (15) days of such final amendment or supplement.

(c) NYSEG shall be responsible for the costs of any utilities (including gas, electric, wastewater treatment, and water supply) associated with the Work. NYSEG shall not permit any circumstance that results in any lien or encumbrance against the Premises or any part thereof for any work, labor or materials furnished to NYSEG or NYSEG’s employees, agents, environmental consultants, representatives, contractors, and subcontractors for any Work.

(d) NYSEG agrees to provide the Municipal Owners with all submissions to the NYSDEC regarding proposed, in-progress and completed Work at the same time NYSEG submits such documents to the NYSDEC.
(e) NYSEG shall provide Municipal Owners with copies of all Premises sampling data, test results and reports generated as a result of the license granted herein within fifteen (15) days of NYSEG’s receipt of such data, results and reports in final form. NYSEG may disclose such sampling data, test results and reports to appropriate federal, state, local and municipal environmental and/or health agencies when NYSEG reasonably deems it necessary in order to comply with applicable laws, rules, regulations, or orders. Except as provided in the immediately preceding sentence, and except with respect to such data, results and reports that have become publicly available other than by act or omission of NYSEG, NYSEG will maintain such results in confidence and will not otherwise disclose them to any third party without the Municipal Owner’s prior written consent.

Municipal Owners may elect to obtain split/duplicate samples, provided that a sample of sufficient size to split can feasibly be obtained. Municipal Owners shall inform NYSEG of their election prior to the start of any sampling event and shall provide the sample containers required by the laboratory that will analyze the samples on behalf of Municipal Owners. Municipal Owners shall pay the laboratory analysis costs for their samples.

(f) NYSEG shall be solely responsible for the proper handling, storage, treatment and/or disposal of all waste or other material generated as a result of the Work. Municipal Owners will not be identified as the generator of any waste material relating to the Work which is generated at or transported from the Premises. NYSEG will be allowed to temporarily store waste generated as a result of the Work on the Premises for a period not to exceed thirty (30) days from completion of the Work pursuant to the applicable Work Plan. Notwithstanding the foregoing, NYSEG will use its best efforts to minimize the time that any waste will be stored on the Premises. NYSEG shall store the waste on the Premises in compliance with all applicable laws. NYSEG shall stage the waste storage at location(s) on the Premises as directed by the Chief Operator.

(g) Except as specified below, at reasonable intervals but no later than thirty (30) days following the conclusion of all Work, NYSEG will, at its sole cost and expense cause to be removed from the Premises all debris, surplus or waste material, and equipment. As soon as practicable but no later than thirty (30) days following the conclusion of all Work, NYSEG shall restore the Premises as near as reasonably possible to the condition that existed before the conduct of such Work or, at NYSEG’s discretion and with the Municipal Owners’ written consent, to a better condition. Notwithstanding the foregoing, NYSEG will be permitted to leave in place the engineering controls, including the barrier wall and monitoring wells, which NYSEG has installed/will install and which NYSEG is required to maintain in order to comply with the Work Plan, Consent Order, and any applicable federal, state, or municipal laws, rules, or regulations. This right will survive the termination of this Agreement.

(h) NYSEG agrees that its Work and any fencing, equipment, and other materials to be used, operated, installed, or situated on the Premises will be performed, used, operated, installed or situated so as not to unreasonably interfere with the Municipal Owners’ business operations, and with use of and access to the Premises by the Municipal Owners and their customers, guests, invitees, contractors and subcontractors (except the Cayuga Waterfront Trail on the Premises, to the extent such interference is required by the Work Plan). Any obstruction
required for the performance of Work on the Premises will comply with the foregoing sentence, will be temporary only, and will be removed by NYSEG as soon as practicable following the completion of the activity requiring such obstruction. In addition, NYSEG will use its best efforts to minimize disruption to activities near the Premises.

(i) NYSEG will use its best efforts to prevent damage to personal property, structures and landscaping of the Municipal Owners. In the event that lawns, trees, other landscaping, fences, driveways, buildings, or other personal or real property or structures of the Municipal Owners are damaged or disturbed by NYSEG or its agents during the performance of the Work, NYSEG will repair and restore same in a timely manner as near as reasonably possible to the same condition that existed before the damage occurred. In the event that NYSEG does not perform the repairs and/or restoration to Municipal Owners’ satisfaction within thirty (30) days of the completion of the Work that caused said damage, Municipal Owners shall have the right, but not the obligation, to make such repairs and/or restoration and NYSEG shall reimburse Municipal Owners for the costs of the repairs and/or restoration.

(j) NYSEG must obtain the approval of the Chief Operator, who will consult with the City Forester, for all replacement vegetation. NYSEG shall replace any removed or damaged vegetation that had screened the IAWWTF from the Cayuga Waterfront Trail with approved vegetation that will provide comparable screening once the vegetation has matured. If any replacement vegetation dies or is dying within three years after its installation, NYSEG shall remove such dead or dying vegetation and install new approved vegetation in its place. This requirement shall survive Agreement expiration or termination.

(k) NYSEG hereby covenants, at its sole cost, risk and expense, to diligently and continuously develop, implement and complete to closure all Remedial Action activities related to the former First Street Manufactured Gas Plant as required by the Consent Order and the ROD and any revisions or amendments thereto, and in accordance with the directives of the NYSDEC and any permits or authorizations received from any applicable governmental authorities for the Work. This covenant specifically includes the obligation of NYSEG to promptly perform any Remedial Action activity ordered by any governmental authority. This covenant shall also include the obligation of NYSEG to maintain any financial assurances and pay any oversight fees and costs required or otherwise imposed by any governmental authority with respect to any such Remedial Action activity. Without limiting the foregoing, NYSEG shall be responsible, undertake and pay at its sole cost and expense for all Remedial Action activities pursuant to (i) any Work Plan amendments or new work plans approved by the NYSDEC, (ii) any NYSDEC-approved site management plan for the First Street MGP Site, and any NYSDEC-approved modification thereto (“SMP”) that will be developed as a required element of the environmental remedial program, and/or (iii) the Environmental Easement (as defined below) that Municipal Owners anticipate NYSDEC will require Municipal Owners to execute. NYSEG shall also be responsible, undertake and pay at its sole cost and expense for all Remedial Action activities to address and remediate any contamination related to the former First Street Manufactured Gas Plant that is discovered after the February 14, 2020 date of the Work Plan. The parties may approve amendments to this Agreement to address any amendments to the ROD, the implementation of the SMP, or NYSEG activities and work to address any newly discovered contamination.
For the purposes of this Agreement, “Remedial Action” includes any inspection, investigation (including subsurface investigations), study, monitoring, assessment, sampling and testing (including soil and/or groundwater sampling activities), laboratory or other analysis, or evaluation, cleanup, response, removal, remedial, corrective or other action to clean up, detoxify, decontaminate, treat, contain, prevent, cure, mitigate or otherwise remedy any release of any Hazardous Substance (as defined herein) arising out of or related to the operations of the former First Street Manufactured Gas Plant in order to implement the ROD to the satisfaction of NYSDEC, including any action to comply with any applicable environmental law or regulation or governmental approval for the Work.

For the purposes of this Agreement, “Hazardous Substance” means any pollutants, contaminants, chemicals, waste, substance or material that is subject to regulation, control or remediation under, or which may form the basis of liability under, any environmental laws or regulations.

(i) NYSEG shall be solely responsible at its own cost and expense for the proper handling of any Hazardous Substances containing soil or groundwater uncovered, disturbed, moved, redirected, retrieved or generated by Remedial Action activities, and shall pay all fees and taxes and sign all waste manifests for off-site disposal of any Hazardous Substances containing soil or groundwater collected in connection with any Remedial Action activity. NYSEG shall immediately notify Municipal Owners upon learning of any release of a Hazardous Substance at the Premises that results from or arises out of NYSEG’s access to and/or use of the Premises (including any Remedial Action activity) and shall promptly provide Municipal Owners copies of any notices, reports, documents or other communications to or from any governmental authority or other person concerning any such release. Such notification shall be made verbally within twenty-four (24) hours, and in writing within seventy-two (72) hours, of NYSEG’s knowledge of any such release; notifications shall be made to the telephone numbers and email addresses in Section 1(e) above. NYSEG shall be solely responsible, at its own cost and expense, for the proper cleanup, removal and/or remedy of any such release in accordance with applicable environmental laws and regulations.

(m) NYSEG shall be responsible for maintaining, or causing to be maintained, all engineering controls associated with the Remedial Action, including controls such as subsurface barrier walls, monitoring and recovery wells, and all associated piping and equipment located on the Premises following completion of the Work to NYSDEC’s satisfaction, and any additions or modifications in connection with the Remedial Action activities (collectively, the “Remedial Systems”), and such Remedial Systems shall remain the property and in the control of NYSEG. The expenses of maintaining, operating, repairing or modifying or constructing the Remedial Systems shall be borne by NYSEG and include all costs associated with personnel required to operate the Remedial Systems, utilities, maintenance, laboratory analyses, permit applications and fees, waste disposal, any emergency expenses, and any other incidental or miscellaneous expenses, not currently foreseen by the parties, that may arise in the future. NYSEG shall be responsible for properly closing or removing any monitoring or recovery wells and removing any other Remedial Systems located on the Premises in accordance with applicable environmental laws at the sooner of the following: (i) certification in writing from
all relevant governmental authorities to Municipal Owners that all Remedial Action activities required under environmental laws and regulations have been completed and no further action is required; (ii) a directive from a governmental authority having jurisdiction with which NYSDEC concurs, or (iii) the point at which such well or other portion of the Remedial Systems is no longer required or useful for the Remedial Action activities conducted hereunder and NYSDEC concurs in the closing or removing of such monitoring or recovery wells and removing any such other Remedial Systems or portion thereof.

(n) Insurance Requirements.

A. Throughout the term of this Agreement and beyond the term when explicitly required below, NYSEG and its Contractors and Subcontractors shall procure and maintain the insurance described in this Subsection n.

B. Notwithstanding any terms, conditions or provisions in any other writing between the parties, the Municipal Owners acknowledge and agree that NYSEG is self-insured and NYSEG hereby agrees to effectuate the naming of the City of Ithaca, Town of Ithaca, Town of Dryden, and Special Joint Committee as additional insureds on NYSEG’s insurance policies, with the exception of workers' compensation.

C. NYSEG agrees to indemnify the Municipal Owners and Special Joint Committee for any applicable deductibles.

D. NYSEG’s Contractors and Subcontractors shall purchase and maintain insurance of the following types of coverage and limits of liability and shall effectuate the naming of the City of Ithaca, Town of Ithaca, Town of Dryden, and Special Joint Committee as additional insureds on their insurance policies, with the exception of workers' compensation and disability benefits coverage:

1) Commercial General Liability (“CGL”) with limits of Insurance of not less than $1,000,000 each occurrence and $2,000,000 Annual Aggregate.

   a) If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project.

   b) CGL coverage shall be written on ISO Occurrence form CG 00 01 1093 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury.

   c) The City of Ithaca, Town of Ithaca, Town of Dryden, and Special Joint Committee shall be included as additional insureds on their CGL, using ISO Additional Insured Endorsement CG2010 (11/85) or CG2010 (04/13) AND CG2037 (04/13) or CG2037 (04/13) AND CG2038 (04/13) or an endorsement providing equivalent coverage to the additional insureds. This insurance for the additional insureds shall be as broad as the coverage provided for the named insured Contractor/Subcontractor. It shall apply as Primary and non-contributing
Insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured.

d) NYSEG’s Contractor and Subcontractor shall maintain CGL coverage for itself and all additional insureds for the duration of the project and maintain Completed Operations coverage for itself and each additional insured for at least 3 years after completion of the Work.

2) Automobile Liability

a) Business Auto Liability with limits of at least $1,000,000 each accident.
b) Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.

3) Commercial Umbrella

a) Umbrella limits must be at least $5,000,000.
b) Umbrella coverage must include as additional insureds all entities that are additional insureds on the CGL.
c) Umbrella coverage for such additional insureds shall apply as primary before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured other than the CGL, Business Auto Liability and Employers Liability coverages maintained by such Contractor/Subcontractor.

4) Workers’ Compensation and Employer’s Liability - Statutory coverage complying with the New York Workers’ Compensation Law and General Municipal Law. NYSEG’s Contractors and Subcontractors must submit one of the following forms:

- CE-200 - Certificate of Attestation of Exemption from NYS Workers’ Compensation, OR
- C-105.2 - Certification of NYS Workers’ Compensation Insurance, OR
- U-26.3 - State Insurance Fund version, OR
- SI-12 - Certificate of NYS Workers’ Compensation Self Insurance, OR

5) Disability Benefits Coverage - Statutory coverage complying with NYS Workers’ Compensation Law and General Municipal Law. NYSEG’s Contractors and Subcontractors must submit one of the following forms:

- CE-200 - Certificate of Attestation of Exemption from NYS Disability Benefits Coverage, OR
- DB120.1 - Certification of Disability Benefits Insurance, OR
6) Contractor’s Pollution Legal Liability, without asbestos exclusions, with limits of
Insurance of not less than $1,000,000 each occurrence and $2,000,000 Annual
Aggregate.

E. Waiver of Subrogation.
NYSEG and its Contractors and Subcontractors waive all rights against the City of Ithaca,
Town of Ithaca, Town of Dryden, Special Joint Committee, and their agents, officers,
directors and employees for recovery of damages to the extent these damages are covered
by Commercial General Liability, Commercial Umbrella Liability, Business Auto Liability,
Workers’ Compensation or Employer’s Liability insurance maintained per the
requirements stated above.

F. Where additional insured coverage is required by this Subsection n, attached to each
certificate of insurance shall be a copy of the Additional Insured Endorsement that is part
of the policies of NYSEG’s Contractor and Subcontractor.

G. All certificates and the insurance policies shall contain a provision that coverage
afforded under the policies will not be canceled or allowed to expire until at least 30 days
prior written notice has been given to Municipal Owners.

H. The insurance producer must indicate whether or not it is an agent for the companies
providing the coverage.

I. The insurance coverage described in this Subsection n is not intended to limit, nor does it
limit, the liability of NYSEG for breach of this Agreement or any agreement by NYSEG
herein to defend, indemnify and hold harmless the Municipal Owners and Special Joint
Committee.

J. NYSEG acknowledges that failure to obtain such insurance as described in this
Subsection n constitutes a material breach of contract and subjects it to liability for
damages, indemnification and all other legal remedies available to the Municipal Owners.
NYSEG and its Contractors and Subcontractors are to provide the Municipal Owners with
certificates of insurance, evidencing the above requirements have been met, prior to the
commencement of Work or use of facilities. The failure of the Municipal Owners to object
to the contents of the certificates, forms or endorsements, or the absence of same, shall not
be deemed a waiver of any and all rights held by the Municipal Owners.

(o) Municipal Owners do not waive any rights by signing this Agreement.

(p) Municipal Owners agree to fully cooperate in good faith with NYSEG, as may be
required, to prepare and establish the institutional controls (environmental easement and/or deed
restriction) with respect to the Premises, and to assist, as may be required, in obtaining NYSDEC’s
approval of such institutional controls provided that the institutional controls substantially conform
to the form of environmental easement attached hereto as Exhibit C (“Environmental Easement”).
Nothing in this Subsection affects NYSEG’s responsibilities and obligations under the ROD,
Consent Order, Work Plan or SMP (including revisions or amendments to any of them), or under
this Agreement.
Section 3. Termination. If NYSEG fails to comply with any material provision of this Agreement, the Municipal Owners may terminate this Agreement for default. Before terminating this Agreement for default, the Municipal Owners shall provide NYSEG with written notice of the violation of this Agreement, and NYSEG shall cure the violation within seven (7) days after receipt of said written notice; provided, however, if the matter in question is not reasonably susceptible of being cured within seven (7) days, then it shall not be a breach if NYSEG commences to cure such matter within such seven (7) day period and thereafter diligently and with continuity prosecute such cure to completion in a period not to exceed forty-five (45) days after the giving of such notice. If NYSEG fails to come into compliance as described in this Section, then the Municipal Owners may terminate this Agreement for default.

Notwithstanding the foregoing, the Municipal Owners reserve the right to immediately terminate for default where the violation is such that the Municipal Owners reasonably determine that it is necessary to do so to protect public health or public safety; provided, however, that upon exercising such right, Municipal Owners shall (i) promptly deliver to NYSEG written notice of termination identifying in reasonable detail the violation which endangers public health or public safety, and (ii) provide NYSEG with an opportunity to cure the violation, such that if a cure is achieved within forty-five (45) days after NYSEG’s receipt of written notice of termination, then this Agreement promptly shall be reinstated upon confirmation of such cure by Municipal Owners. Municipal Owners agree to diligently pursue such confirmation upon receiving written notice of cure from NYSEG.

Termination of this Agreement for default shall not affect or impair any rights or claims of Municipal Owners to damages for breach of this Agreement by NYSEG. Municipal Owners also reserve the right to pursue all other recoveries available to them in law or equity.

Section 4. Duration. Unless the Municipal Owners terminate the Agreement earlier, this Agreement will commence on the date listed at the beginning of this Agreement and continue until the Work is complete and NYSEG has met its obligations under this Agreement. NYSEG will notify Municipal Owners when the Work is complete, and it has met its Agreement obligations.

Section 5. Indemnification. NYSEG agrees to defend, indemnify and hold harmless the City of Ithaca, Town of Ithaca, Town of Dryden, Special Joint Committee and their respective elected officials, public officers, boards, employees, members and agents (collectively, the “Municipal Indemnified Parties”) from and against all claims, actions, suits, demands, damages, punitive damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including without limitation reasonable attorneys’ and experts’ fees and costs), whether or not involving a third party claim, which any or all of them may incur or be held liable, resulting from bodily injuries (or death) to any person, damage (including loss of use) to any property, other damages, contamination of or adverse effects on the environment (including the creation of or exacerbation of environmental conditions or liabilities), or permit violations (collectively, “Losses”), caused by, resulting from, related to, in connection with, or arising out of the acts or omissions of NYSEG or of NYSEG’s employees, agents, contractors or subcontractors, in connection with this Agreement. This indemnity shall include but not be limited to Losses related to: (i) a breach of, or failure to perform or comply with, any covenant or agreement of NYSEG contained in this Agreement; (ii) any access to, or Remedial Action activity conducted on, the
Premises by NYSEG pursuant to this Agreement, including any damage or injury to persons or property or any release of Hazardous Substances by NYSEG or NYSEG’s employees, agents, contractors or subcontractors; and (iii) any and all proceedings, judgments and losses incident to any of the foregoing or incurred in attempting to avoid the same or to oppose the imposition thereof, or in enforcing this indemnity. This indemnification shall not extend to the proportion of such Losses caused by a reckless or intentional wrongful act of the Municipal Indemnified Parties or, where NYSEG is not in breach of this Agreement and no emergency situation exists, by the Municipal Indemnified Parties’ negligence.

Section 6. Notices. Any notices or other communications given under or in relation to this Agreement shall be deemed given if delivered by hand, certified mail or commercial courier service upon the other party at the addresses set forth below. All notices shall be effective upon the date of receipt. NYSEG and Municipal Owners may change the address to which notices are sent by giving notice of such change in the manner set forth above to the other party. To the extent notice provisions in other Sections explicitly differ from those in this Section, the notice provisions in this Section shall not apply to notices given pursuant to those other Sections.

Notices to NYSEG are to be addressed to:

NYSEG
John Ruspantini
Manager - Programs/Projects, Environmental Remediation
P.O. Box 5224
Binghamton, NY 13902-5224

with a copy to:

Thomas F. Walsh
Barclay Damon LLP
2000 Five Star Bank Plaza
100 Chestnut Street
Rochester, NY 14604

Notices to Municipal Owners are to be addressed to:

Ithaca Area Wastewater Treatment Facility
Attention: Chief Operator
525 Third Street
Ithaca, New York 14850

with a copy to:

Ithaca City Attorney
108 East Green Street
Ithaca, New York 14850
Section 7. Severability. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement, or invalidate or render unenforceable such term or provision in any other jurisdiction.

Section 8. Amendments. No amendment to or modification of this Agreement shall be effective unless it is in writing, identified as an amendment to or modification of this Agreement, and signed by an authorized representative of each party hereto.

Section 9. Waiver. No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

Section 10. Assignment. This Agreement and the rights and obligations hereunder are not transferrable or assignable by any party hereto without the prior written consent of the other parties hereto, except that (i) NYSEG shall be permitted to assign this Agreement, without any prior consent, to any person or entity acquiring an ownership interest in NYSEG, and (ii) Municipal Owners shall be permitted to assign this Agreement, without any prior consent, to any person or entity acquiring an ownership interest in the IAWWTF, to any successor entity or governmental institution, or to any existing or future improvement district(s) or improvement area(s). No party hereto shall be permitted to unreasonably withhold, condition, or delay its consent to any assignment of this Agreement for which consent is duly requested by another party hereto. Any purported transfer or assignment in violation of this Section 10 shall be null and void.

Section 11. Governing Law; Choice of Forum. This Agreement and all matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to or giving effect to the conflict of laws provisions thereof. Each party irrevocably and unconditionally agrees that it shall not commence any action, litigation, or proceeding of any kind whatsoever against any other party in any way arising from or relating to this Agreement in any forum other than the courts of the State of New York sitting in the County of Tompkins. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts.

Section 12. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, executors, administrators, legal representatives, permitted successors, and permitted assigns.

Section 13. Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.

Section 14. Survival. In addition to those provisions that explicitly state they apply beyond the term of this Agreement, the rights and obligations of the respective parties under Section 5 (Indemnification), Section 11 (Governing Law; Choice of Forum), and Section 12 (Successors and
Assigns), shall survive the expiration or termination (for any reason) of this Agreement and remain in full force and effect.

Section 15. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the dates written below.
NEW YORK STATE ELECTRIC & GAS CORPORATION

By: ___________________________
Name: ___________________________
Date: _____________ Title: ___________________________

STATE OF NEW YORK )
COUNTY OF ___________ )

On the ___ day of __________, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared ______________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same, and that by his/her signature on the instrument, the individual or the person(s) upon behalf of which the individual acted, executed the instrument.

____________________________________
Notary Public
MUNICIPAL OWNERS:

CITY OF ITHACA

By: ___________________________
Name: Svante Myrick
Date: _____________    Title: Mayor

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

On the ___ day of __________, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared Svante Myrick, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same, and that by his/her signature on the instrument, the individual or the person(s) upon behalf of which the individual acted, executed the instrument.

____________________________________
Notary Public

APPROVAL AS TO FORM:

____________________________________
CITY OF ITHACA Attorney    (Date)

____________________________________
CITY OF ITHACA Controller    (Date)

____________________________________
CITY OF ITHACA Chair City Administration Committee (Date)
MUNICIPAL OWNERS:

TOWN OF ITHACA

By: ___________________________  
Name: Rod Howe  
Date: ______________   Title: Supervisor

STATE OF NEW YORK  
COUNTY OF TOMPKINS  

On the ___ day of __________, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared Rod Howe, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same, and that by his/her signature on the instrument, the individual or the person(s) upon behalf of which the individual acted, executed the instrument.

__________________________________  
Notary Public
MUNICIPAL OWNERS:

TOWN OF DRYDEN

By: ___________________________
Name: Jason Leifer
Title: Supervisor
Date: ______________

By: ___________________________
Name: Daniel Lamb
Title: Councilperson
Date: ______________

By: ___________________________
Name: Loren Sparling
Title: Councilperson
Date: ______________

By: ___________________________
Name: James Skaley
Title: Councilperson
Date: ______________

By: ___________________________
Name: Leonardo Vargas-Mendez
Title: Councilperson
Date: ______________
STATE OF NEW YORK )
                  : ss.
COUNTY OF TOMPKINS )

On the ___ day of __________, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared Jason Leifer, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same, and that by his/her signature on the instrument, the individual or the person(s) upon behalf of which the individual acted, executed the instrument.

____________________________________
Notary Public

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

On the ___ day of __________, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared Daniel Lamb, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same, and that by his/her signature on the instrument, the individual or the person(s) upon behalf of which the individual acted, executed the instrument.

____________________________________
Notary Public

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

On the ___ day of __________, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared Loren Sparling, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same, and that by his/her signature on the instrument, the individual or the person(s) upon behalf of which the individual acted, executed the instrument.

____________________________________
STATE OF NEW YORK )
     : ss.
COUNTY OF TOMPKINS )

On the ___ day of __________, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared James Skaley, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same, and that by his/her signature on the instrument, the individual or the person(s) upon behalf of which the individual acted, executed the instrument.

____________________________________
Notary Public

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

On the ___ day of __________, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared Leonardo Vargas-Mendez, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same, and that by his/her signature on the instrument, the individual or the person(s) upon behalf of which the individual acted, executed the instrument.

____________________________________
Notary Public
EXHIBIT A

REMEDIAL DESIGN WORK PLAN [Attached]
EXHIBIT B

[See attached survey map]
EXHIBIT C

Form of Environmental Easement

County: Automatic  Site No: Automatic  Document Type: Automatic

ENVIRONMENTAL EASEMENT GRANTED PURSUANT TO ARTICLE 71, TITLE 36
OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW

THIS INDENTURE made this ______ day of ________, 20__, between
Owner(s) Enter property owner(s) name, having an office at Enter property owner’s address,
County of Dutchess, State of New York (the "Grantor"), and The People of the State of New York
(the "Grantee."); acting through their Commissioner of the Department of Environmental
Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with
its headquarters located at 625 Broadway, Albany, New York 12233,

WHEREAS, the Legislature of the State of New York has declared that it is in the public
interest to encourage the remediation of abandoned and likely contaminated properties ("sites")
that threaten the health and vitality of the communities they burden while at the same time
ensuring the protection of public health and the environment; and

WHEREAS, the Legislature of the State of New York has declared that it is in the public
interest to establish within the Department a statutory environmental remediation program that
includes the use of Environmental Easements as an enforceable means of ensuring the
performance of operation, maintenance, and/or monitoring requirements and the restriction of
future uses of the land, when an environmental remediation project leaves residual contamination
at levels that have been determined to be safe for a specific use, but not all uses, or which includes
engineered structures that must be maintained or protected against damage to perform properly
and be effective, or which requires groundwater use or soil management restrictions; and

WHEREAS, the Legislature of the State of New York has declared that Environmental
Easement shall mean an interest in real property, created under and subject to the provisions of
Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which
contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with
engineering controls which are intended to ensure the long term effectiveness of a site remedial
program or eliminate potential exposure pathways to hazardous waste or petroleum; and

WHEREAS, Grantor, is the owner of real property located at the address of Enter street
address of property in the Choose municipality type of Enter property municipality, County of
Enter property county and State of New York, known and designated on the tax map of the County
Clerk of Enter clerk county as tax map parcel numbers: Enter Tax ID Section #. Block
Enter Tax ID Block #. Lot Enter Tax ID Lot #; being the same as that property conveyed to Grantor
by deed dated Enter Deed Date and recorded in the Enter county name or leave blank for NY City
deeds: County Clerk’s Office in Liber and Page Enter Instrument # or Liber and Page #s. The
property subject to this Environmental Easement (the "Controlled Property") comprises
approximately Enter Acreage +/- acres, and is hereinafter more fully described in the Land Title
Survey dated Enter original survey date and, if applicable, “and revised on” and revised survey
date prepared by Enter revised surveyor’s name or original surveyor’s name if not revised, which
will be attached to the Site Management Plan. The Controlled Property description is set forth in
and attached hereto as Schedule A; and

Environmental Easement Page 1
WHEREAS, the Department accepts this Environmental Easement in order to ensure the protection of public health and the environment and to achieve the requirements for remediation established for the Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

NOW THEREFORE, in consideration of the mutual covenants contained herein and the terms and conditions of Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement")

1. **Purposes.** Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. **Institutional and Engineering Controls.** The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees and any person using the Controlled Property.

   A. **(1) The Controlled Property may be used for:**

   Choose the allowable land use if current land use is selected, enter current use.

   **(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);**

   **(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP;**

   **(4) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Automatic County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;**

   **(5) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;**

   **(6) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;**

Environmental Easement Page 2
(7) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

(8) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;

(9) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP;

(10) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for Choose the correct list of inapplicable uses., and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. The SMP describes obligations that the Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. The SMP may be modified in accordance with the Department's statutory and regulatory authority. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, New York 12233
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

This property is subject to an Environmental Easement held by the New York State Department of Environmental Conservation
pursuant to Title 36 of Article 71 of the Environmental Conservation Law.

F. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

G. Grantor covenants and agrees that it shall, at such time as NYSDEC may require, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury, in such form and manner as the Department may require, that:
   (1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).
   (2) the institutional controls and/or engineering controls employed at such site:
      (i) are in-place;
      (ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and
      (iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;
   (3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;
   (4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;
   (5) the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;
   (6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and
   (7) the information presented is accurate and complete.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Property, including:
   A. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

   B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee interest to the Controlled Property, subject and subordinate to this Environmental Easement;

5. Enforcement

Environmental Easement Page 4
A. This Environmental Easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this Environmental Easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person violates this Environmental Easement, the Grantee may revoke the Certificate of Completion with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information:

County, NYSDEC Site Number, NYSDEC Brownfield Cleanup Agreement, State Assistance Contract or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to: Site Number: Enter DEC Site #
Office of General Counsel
NYSDEC
625 Broadway
Albany New York 12233-5500

With a copy to: Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, NY 12233

All notices and correspondence shall be delivered by hand, by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and

Environmental Easement Page 5
communicating notices and responses to requests for approval.

7. **Recordation.** Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. **Amendment.** Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. **Extinguishment.** This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation, or the Commissioner’s Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. **Joint Obligation.** If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

**IN WITNESS WHEREOF,** Grantor has caused this instrument to be signed in its name.

Enter Grantor’s Name:

By: ________________________________

Print Name: ________________________________

Title: __________________ Date: __________

Environmental Easement Page 6
Grantor's Acknowledgment

STATE OF NEW YORK  )
                     ) ss:
COUNTY OF           )

On the ______ day of ________, in the year 20 __, before me, the undersigned, personally appeared __________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name 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 - State of New York
THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE
PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of
Environmental Conservation as Designee of the Commissioner,

By:
Robert W. Schick, Director
Division of Environmental Remediation

Grantee's Acknowledgment

STATE OF NEW YORK )
) ss:
COUNTY OF ALBANY )

On the ______ day of ________, in the year 20__, before me, the undersigned,
personally appeared Robert W. Schick, personally known to me or proved to me on the basis of
satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within
instrument and acknowledged to me that he/she/ executed the same in his/her/ capacity as
Designee of the Commissioner of the State of New York Department of Environmental
Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon
behalf of which the individual acted, executed the instrument.

Notary Public - State of New York
SCHEDULE “A” PROPERTY DESCRIPTION

Enter Property Description