SPECIAL MEETING OF COMMON COUNCIL AGENDA

Date: Wednesday, February 01, 2023
Time: 6:00 P.M.
Location: City Hall, 108 E. Green Street 3rd Floor, Council Chambers
Watch Online: https://www.youtube.com/@CityofIthacaPublicMeetings

<table>
<thead>
<tr>
<th>ITEM</th>
<th>Voting Item?</th>
<th>Presenter(s)</th>
<th>Time Allotted</th>
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<tbody>
<tr>
<td>1.   Call to Order</td>
<td>No</td>
<td>Mayor Laura Lewis</td>
<td>1 Min</td>
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<tr>
<td>2.   Special Order of Business</td>
<td>Yes</td>
<td>Mayor Laura Lewis</td>
<td>3 min</td>
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<tr>
<td>2.1 Recommendation from Council Vacancy Committee</td>
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<td>3.   Meeting Wrap-Up</td>
<td>Yes</td>
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<td>3.1 Adjourn</td>
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<td></td>
<td>Meeting Length Estimate</td>
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<td>5 Min</td>
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## COMMON COUNCIL AGENDA

**Date:** Wednesday, February 01, 2023  
**Time:** 6:15 P.M.  
**Location:** City Hall, 108 E. Green Street 3rd Floor, Council Chambers  
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### ITEM 1. CALL TO ORDER
1.1 Agenda Review
1.2 Reports of Municipal Officials
1.3 Proclamations and Awards

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<tr>
<td>No</td>
<td>Mayor Laura Lewis</td>
<td>10 Min</td>
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### ITEM 2. SPECIAL ORDER OF BUSINESS
2.1 Oath of Office – Alderperson Vacancy Appointment

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<td>No</td>
<td>Mayor Laura Lewis</td>
<td>5 min</td>
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### ITEM 3. PETITIONS AND HEARINGS OF PERSONS BEFORE COUNCIL
3.1 Statements from the Public
The public can provide short statements during this portion of the meeting. 3 minutes is the maximum time allotted, but the chair reserves the right to modify the amount of time per individual at the start of the meeting. Only the first hour of the meeting is set aside for Public Comment.

*Written comments submitted will be compiled and entered into the record.*

3.2 Privilege of the Floor – Mayor and Council

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<td>No</td>
<td>Sign up for public comment here: <a href="https://tinyurl.com/7ts9zmku">https://tinyurl.com/7ts9zmku</a></td>
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<td>*Submit written comments here: <a href="https://tinyurl.com/mr9kdhw8">https://tinyurl.com/mr9kdhw8</a></td>
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### ITEM 4. SPECIAL PRESENTATION
4.1 “GND Update”

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<tr>
<td>No</td>
<td>Rebecca Evans</td>
<td>15 Min</td>
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### ITEM 5. CONSENT AGENDA
5.1 DPW – Amendment to Personnel Roster – Resolution
5.2 IFD – Approval of Grant and Budget Amendment – Resolution
5.3 IAWWTF – Approval of Boiler Replacement – Resolution
5.4 Finance/Chamberlain – Amendment to Personnel Roster – Resolution
5.5 DPW – Approval of Hector Street over Linderman Creek Culvert Rehabilitation – Resolution
5.6 DPW – Approval of N. Cayuga Street Bridge over Fall Creek Project – Resolution

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<td>Yes</td>
<td>Common Council</td>
<td>5 Min</td>
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### ITEM 6. CITY ADMINISTRATION COMMITTEE
6.1 Attorney – Approve Amended and Restated Dev. and Maint. Agreement with City Harbor - Resolution
6.2 IAWWTF – Approval of Plant to Plant Agreement and Multijurisdictional Agreement - Resolution
6.3 Planning, Building – Approve Amendments to the Energy Code Supplement - Resolution
6.4 City Controller’s Report

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<tr>
<td>Yes</td>
<td>V Kessler/M Thorne</td>
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<tr>
<td>Yes</td>
<td>C Brock, Alderperson</td>
<td>10 Min</td>
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<td>Yes</td>
<td>L Nicholas/R Fell-deWalt</td>
<td>10 Min</td>
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<tr>
<td>No</td>
<td>S Thayer, Controller</td>
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</table>
## 7. Reports from Council and Staff
- 7.1 Reports of Special Committees
- 7.2 Reports of Common Council Liaisons
- 7.3 Report of City Clerk
- 7.4 Report of City Attorney

### Time Allotted
10 Min

## 8. Executive Session
- 8.1 Executive Session to Discuss Pending Litigation
- 8.2 Executive Session to Discuss a Personnel Matter

### Voting Item
Yes

### Presenter(s)
Mayor Laura Lewis

### Time Allotted
30 Min

## 9. Meeting Wrap-Up
- 9.1 Next Meeting Date: March 1, 2023
- 9.2 Adjourn

### Voting Item
No

### Time Allotted
5 Min

### Meeting Length Estimate
190 Min

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**Hybrid Meetings**
Common Council has resumed meeting in person; however, due to limited seating capacity in Common Council Chambers, city staff and members of the public are encouraged to participate remotely if they would like to.

**How to Participate in Public Comment Virtually**
**Email Common Council Through the Agenda Link**
Written comments can be submitted to Common Council using this form: [https://tinyurl.com/mr9kdhw8](https://tinyurl.com/mr9kdhw8)
5.1 Amendment to Personnel Roster – DPW – Administrative Staff

WHEREAS, budget reductions during the COVID-19 pandemic reduced the number of administrative and financial staff in the Department of Public Works, creating a significant increase in workload and responsibility for three Financial Management Assistants (FMAs) in the Water & Sewer, Streets & Facilities, and Engineering/Parking Divisions; and

WHEREAS, in April 2021, in recognition of the increased workload and responsibility, the FMAs (Grade 6 Admin Unit) were promoted to Administrative Assistant (Grade 8 Admin Unit) using available funds at the time; however, the workload and responsibility for these three employees still exceeds the level expected from an Administrative Assistant position; and

WHEREAS, at Streets & Facilities and City Hall, the Administrative Assistants are currently performing work that is typically performed by Administrative Coordinators in other City departments; and

WHEREAS, at Water & Sewer, the Administrative Assistant currently supervises two other administrative staff along with managing an increased workload and responsibilities, which is typically performed by an Office Manager in other City departments; now therefore be it

RESOLVED, that the personnel roster of the Department of Public Works be amended as follows, effective June 14, 2023:

Add: one (1) Office Manager
Add: two (2) Administrative Coordinators
Defund: three (3) Administrative Assistants

and be it further

RESOLVED, that the Administrative Assistant positions shall remain on the DPW personnel roster in an unfunded capacity until such time as the employees successfully complete the civil service examination process for the new positions, at which time the Administrative Assistant positions shall be abolished, and be it further

RESOLVED, that the above changes shall be funded by using existing funds in the 2023 DPW budget, derived from currently vacant funded positions in accounts A5651, A5111, F8311, and G8111.
Date: January 4, 2023

To: Civil Service Commission  
Common Council

From: Michael Thorne, Superintendent of Public Works

Re: New Administrative Coordinator and Office Manager Positions in DPW

Dear Commission and Council Members,

Budget reductions during the COVID-19 pandemic reduced the number of administrative and financial staff in the Department of Public Works. The Manager of Fiscal Operations and the Executive Assistant positions were furloughed in 2020 and later eliminated in the 2021 budget, creating a significant increase in workload and responsibility for three Financial Management Assistants (FMAs) in the Water & Sewer, Streets & Facilities, and Engineering/Parking Divisions. In April 2021, in recognition of the increased workload and responsibility, the FMAs (Grade 6 Admin Unit) were promoted to Administrative Assistant (Grade 8 Admin Unit).

Funding for the promotions became available at that time from the resignation and defunding of a part-time FMA position. However, the workload and responsibility for these three employees still exceeds the level expected from an Administrative Assistant position. At Streets & Facilities, the Administrative Assistant provides support for nearly 70 employees, and at City Hall, the Administrative Assistant supports both the Engineering and Parking Divisions as well as the Superintendent’s office, representing 30 employees. In other City departments, this level of responsibility is typically performed by Administrative Coordinators. At Water & Sewer, the Administrative Assistant provides support for over 50 employees, and also supervises two other FMAs. This level of responsibility, along with the supervision of others, is typically performed by an Office Manager.

In the 2023 DPW budget, there is sufficient funding for an Office Manager and two Administrative Coordinators once the three Administrative Assistant positions are defunded. The cost differential of approximately $50K will be paid for from minor reductions in seasonal employee salary line items and several anticipated retirements from employees who are at the maximum pay step and would be replaced by employees at lower pay steps. I would like these changes to be effective June 14, 2023, when the employees become eligible for promotion to the new titles.

“An Equal Opportunity Employer with a commitment to workforce diversification.”
**5.2 IFD - Approval of Grant and Amendment to Authorized Budget**

WHEREAS, The Ithaca Fire Department is responsible for responding to and mitigating hazardous material incidents; and

WHEREAS, the Ithaca Fire Department is the designated Hazardous Materials Response Team for Tompkins County; and

WHEREAS, the Ithaca Fire Department has specialty hazardous materials detection equipment that has reached the end of its useful lifespan and is no longer supported by the manufacturer; and

WHEREAS, the estimated cost to replace the specialty hazardous materials detection equipment is $50,990; and

WHEREAS, the Ithaca Fire Department applied for and was awarded $45,900 through the 2022 Tompkins County Community Recovery Funds Grant; and

WHEREAS, the Ithaca Fire Department receives New York State Division of Homeland Security Hazardous Materials Grant Funding to pay for the balance of the cost of the hazardous materials detection equipment; now, therefore be it

RESOLVED, That Common Council authorize the Ithaca Fire Department to accept the Tompkins County Recovery Fund Grant for $45,900 to purchase specialized hazardous material detection equipment, and be it further

RESOLVED, that Common Council authorizes the City Controller to amend the authorized City Fire Department Budget to purchase the hazardous materials meter at a total cost of $50,990 as follows:

<table>
<thead>
<tr>
<th>Account Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Increase Revenue Account A3410-4089 Federal Funds</td>
<td>$50,990</td>
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<tr>
<td>Increase Appropriations Account A3410-5225 Other Equipment</td>
<td>$50,990</td>
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</table>
**QUOTE**

**Prepared For**

Gary Farwell  
Ithaca Fire Department  
310 W. Green St.  
Ithaca, NY, 14850 United States

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<thead>
<tr>
<th>Item &amp; Description</th>
<th>Part Number</th>
<th>Price</th>
<th>Qty</th>
<th>Discount</th>
<th>Amount</th>
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<tr>
<td>ThreatID GLS</td>
<td>200-00-2020</td>
<td>$35,990.00</td>
<td>1</td>
<td>$0.00</td>
<td>$35,990.00</td>
</tr>
<tr>
<td>ThreatID Powders/Liquids Module</td>
<td>200-00-2001</td>
<td>$15,000.00</td>
<td>1</td>
<td>$0.00</td>
<td>$15,000.00</td>
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Includes - Full spectrum FTIR spectrometer with hot-swappable batteries. Upgradeable sample interface for solids and liquids, gases or all. Integrated video beneath interface for ease of sample placement/verification of solids/liquids interface cleanliness. Large, hardened touch screen compatible with gloved hands.

ThreatAssist™ Chemical Properties Database - proprietary on-board chemical properties database provides instant access to actionable data on ALL library spectra including: Common name, physical appearance and common uses, IDLH and Vapor pressure as well as ghs hazard class pictograms and NFPA diamonds.

Reachback 1 Year Support Package - free software and library upgrades for life of support package. Full warranty on all parts and labor to repair system. Free loaner system during repair. 24/7/365 access to Ph.D chemists, product engineers and application specialists for spectral interpretation assistance and/or technical support.

Operational training is provided in an online, easy to access format using pre-supplied samples. Training session is recorded for use as refresher training or to train other shifts.

On-site training is available for an additional charge of $2500/day.

Lead time 6 to 8 weeks from time of order.  
Shipping: EXW Danbury  
Terms & Conditions  
Please see www.redwavetech.com for terms and conditions.
5.3 Resolution for Ithaca Area Wastewater Treatment Facility (IAWWTF) – Phase 3 Boiler Replacement

WHEREAS, on June 8, 2022, the Special Joint Committee (SJC) recommended to its municipal boards the approval of emergency funding for the Phase 1 replacement of the non-functional IAWWTF cast iron boiler, for a cost, with contingencies, not to exceed, Six Hundred and Fifty Thousand Dollars ($650,000), and

WHEREAS, municipal partners approved funding for the boiler replacement project on: July 6, 2022 by the City of Ithaca; August 18, 2022 by the Town of Dryden; and August 8, 2022 by the Town of Ithaca, and

WHEREAS, the IAWWTF received a contractor’s price proposal dated June 6, 2022 through Gordian, the accounting firm for the ezIQC program, in the amount of $601,580.56, and

WHEREAS, a purchase order was issued to J.W. Danforth, the approved contractor through the ezIQC program, in the amount of $351,580.56 for mobilization, purchase of the new boiler to ensure that the order would arrive before winter, demolition, and disposal, and

WHEREAS, remaining allowances for the labor, incidental materials, piping modifications, and boiler installation was granted by the SJC on October 12, 2022 in the amount of Two Hundred and Fifty Thousand Dollars ($250,000), which has since been referred to as “Phase 2”, and

WHEREAS, J.W. Danforth has provided a Phase 2 cost proposal in an amount, not to exceed $223,180.16, and

WHEREAS, work will be authorized for Phase 2 leaving a fund balance, of $75,239.28, and

WHEREAS, during Phase 1 construction, Danforth has discovered many age, process, and quality issues with existing infrastructure, and

WHEREAS, a Phase 3 cost proposal in the amount of $289,306.97 has been provided by J.W. Danforth outlining this additional work, which includes, pump replacements, boiler exhaust flue modifications, enhancements to combustion air intakes, glycol feeder improvements, automated controls, plumbing modifications for heat control, bonding, and engineering services, and

WHEREAS, staff endorses the funding of Phase 3 improvements, in the interests of better plant operational efficiency, and longevity, and

WHEREAS, in its January 11, 2023 meeting, the Special Joint Committee recommended that its municipal boards expand the Boiler Replacement Project Scope to include pump replacements, boiler exhaust flue modifications, enhancements to combustion air intakes, glycol feeder improvements, plumbing modifications for heat control, and automated controls, for a cost, with contingencies, not to exceed Two Hundred Fifty Five Thousand Dollars ($255,000); now, therefore, be it

RESOLVED, that Capital Project CP 423J, Boiler Replacement Project, be hereby amended by an amount not to exceed $255,000 for the purposes of funding said replacements, modifications and improvements for a new total project authorization of $905,000, and, be it further

RESOLVED, that the City of Ithaca share of the approved amount will be One Hundred Forty Five Thousand Seven Hundred and Seven Dollars ($145,707), and, be it further

RESOLVED, that funds necessary for said contract amendment be derived from the following sources as determined by the City Controller: operating funds, fund balance serial bonds, capital reserves, grants and Federal stimulus funds.
5.4 Amendment to Personnel Roster – City Chamberlain’s Office

WHEREAS, the Chamberlain’s Office is planning for the anticipated retirement of the Deputy City Chamberlain in 2023, and

WHEREAS, the succession plan includes hiring a temporary second Deputy City Chamberlain by May 2023 for the remainder of the year to ensure the smooth transition of information and duties; and

WHEREAS, the Chamberlain’s Office is working closely with HR; and the Ithaca Civil Service Commission will review the proposed addition of the temporary second Deputy City Chamberlain position at their February 15, 2023 meeting; now, therefore, be it

RESOLVED, that subject to the approval of the Ithaca Civil Service Commission, the Personnel Roster of the City Chamberlain’s Office be amended as follows:
Temporarily Add: One (1) Additional Deputy City Chamberlain 40 hours

and be it further

RESOLVED, that the funding for this change shall be derived from monies authorized in Restricted and Unrestricted Contingency as part of the 2023 Authorized Budget and shall not exceed $52,000, and be it further

RESOLVED, that Common Council hereby directs the Controller to move funds from Restricted and Unrestricted Contingency to the Chamberlain’s Office as necessary to account for said roster amendment.
WHEREAS, a Project for the Hector Street over Linderman Creek Culvert Rehabilitation, P.I.N. 375701 (the “Project”) is eligible for funding under Title 23 U.S. Code, as amended, that calls for the apportionment of the costs of such program to be borne at the ratio of 80% Federal funds and 20% non-federal funds, and

WHEREAS, the City of Ithaca desires to advance the Project by making a commitment of 100% of the non-federal share of the costs of Preliminary Engineering/Design; and

WHEREAS, preliminary engineering and design are exempt from further environmental review as Type II actions, now, therefore, the Common Council, duly convened does hereby

RESOLVED, that the Common Council hereby approves the above-subject project, subject to further environmental review of construction; and it is hereby further

RESOLVED, that the Common Council hereby authorizes the City of Ithaca to pay in the first instance 100% of the federal and non-federal share of the cost of Preliminary Engineering/Design work for the Project or portions thereof, and it is further

RESOLVED, that the sum of $150,000 is hereby appropriated from the issuance of serial bonds and made available to cover the cost of participation in the above phase of the Project, and it is further

RESOLVED, that Common Council hereby creates Capital Project # 921, Hector Street over Linderman Creek Culvert Rehabilitation, to include the Project costs of $150,000, and it is further

RESOLVED, that in the event the full federal and non-federal share costs of the project exceeds the amount appropriated above, the Common Council of the City of Ithaca shall convene as soon as possible to appropriate said excess amount immediately upon the notification by the NYSDOT thereof, and it is further

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

RESOLVED, That this project be undertaken with the understanding that the final cost of the Project to the City of Ithaca will be roughly 20% of said portion, currently estimated at $30,000 of the $150,000 authorized for this portion of the project, in monies and in kind services as managed by the Superintendent of Public Works and monitored by the City Controller, and be it further

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

RESOLVED, this Resolution shall take effect immediately.
To: City Administration Committee
From: Johnathan Licitra, Civil Engineer
Date: July 14, 2016
Re: Master Agreement for Hector Street over Linderman Creek Culvert Rehabilitation

Please find enclosed a resolution authorizing a new federal-aid, capital project to rehabilitate or reconstruct a very large culvert in the 900 block of Hector Street (NYS 79 touring route).

The project scope includes rehabilitation or replacement of a large diameter culvert in the 900 block of Hector. The existing 80-foot-long culvert is an unusual mix of concrete box culvert and round corrugated metal pipe. As part of the recent sidewalk project, a new headwall was installed on the inlet side with an extension to the existing round pipe—so the newer sidewalk from 2020 will likely not be disturbed. The majority of the culvert under the road has gaps and rust in the 48” metal pipe and large separations between the 48” concrete box walls. City of Ithaca Streets and Facilities asked Engineering to take on this somewhat complicated project and we have been able to get it on the Transportation Improvement Program (TIP) for Federal Aid.

Though the City has to front the monies for this project, 80% of the project costs are reimbursable from federal and state funding. At this point, I am only asking for approval for the design phase of the project. Once the design work is complete, construction funds will be made available and I will return for further approvals. As an engineering study, this project, so far, is a Type II action in accordance with the City and State environmental review laws. The environmental review of construction activities will be included in the scope of work for design and preliminary engineering.
WHEREAS, a project for the replacement of the North Cayuga Street Bridge over Fall Creek, P.I.N. 375700 (“the Project”) is eligible for funding under Title 23 U.S. Code as administered by the Federal Highway Administration (FHWA), as amended, that calls for the apportionment of the costs such program to be borne at the ratio of 80% Federal funds and 20% non-Federal funds, and

WHEREAS, the City of Ithaca desires to advance the Project by making a commitment of 100% of the non-Federal share of the costs of Scoping, Preliminary Design, and Final Design and

WHEREAS, this project has been determined to be a Type I Action under the City of Ithaca Environmental Quality Review Ordinance (“CEQRO”) §176-4 B Item (1) (m) and the State Environmental Quality Act (“SEQRA”) §617.4 (11), however the action at hand (engineering and design) is not subject to environmental review and the project will not proceed to construction until environmental requirements have been met, and

WHEREAS, on December 14, 2022, $450,000 (80% Federal and 20% non-Federal) project funding for the project made available by the New York State Department of Transportation to cover the cost of participation in Scoping, Preliminary Design, and Final Design; now therefore, the Common Council, duly convened does hereby

RESOLVED, that the Common Council hereby authorizes the City of Ithaca to pay in the first instance 100% of the Federal and non-Federal share of the cost of Scoping, Preliminary, and Final design thereof; and be it further

RESOLVED, that the sum of $450,000 is hereby appropriated from Capital Project #XXX and made available to cover the cost of participation in the above phases of the project; and it is further

RESOLVED, that in the event the full Federal and non-Federal share costs of the project exceeds the amount appropriated above, Common Council of the City of Ithaca shall convene as soon as possible to appropriate said excess amount immediately upon the notification by the NYSDOT thereof, and be it further

RESOLVED, That funds needed for said project shall be derived from the issuance of Serial Bonds with the City’s estimated share of the project cost not to exceed 20% or $90,000; and it is further

RESOLVED, That the Mayor of the City of Ithaca of the County of Tompkins be and is hereby authorized to sign all necessary Agreements with New York State Department of Transportation to secure Federal Aid and Marchiselli Aid on behalf of the City of Ithaca and the Superintendent of Public Works is authorized to sign all necessary construction documents, contracts, certifications and reimbursement requests, and be it further

RESOLVED, That the Superintendent of Public Works be and is hereby authorized to administer the above project, and be it further

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

RESOLVED, That this Resolution shall take effect immediately
MEMORANDUM

TO:       City Administration Committee
FROM:     Addisu Gebre, PE, PMP, Bridge Systems Engineer
DATE:     December 20, 2022
RE:       North Cayuga Street Bridge over Fall Creek Replacement Project

Please find attached a resolution seeking Common Council authorization to pay 100% of the Federal and non-Federal share of the project cost in the first instance.

On December 14, 2022, $450,000 in Federal funding for the project was made available by the New York State Department of Transportation to cover the cost of participation in Scoping, Preliminary Design, and Final Design. The City of Ithaca will be reimbursed for 80% of the eligible project cost up to $360,000 as a Federal share. Based on fund availability, the City of Ithaca could be reimbursed up to 15% of the eligible project cost ($67,500) as a State share.

The project will include the following:

- Replacing the existing bridge to eliminate structural deficiencies.
- Enhancing pedestrian and bike facilities, and
- Reconstructing the immediate approaches.

Construction is scheduled for spring 2025, and a public information meeting will be scheduled later next year.

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

cc: Tim Logue, Director of Engineering Services

“An Equal Opportunity Employer with a commitment to workforce diversification.”
WHEREAS, City Harbor, LLC (“City Harbor”) is the owner of certain real property located at 101 Pier Road (the “Property”) within the City of Ithaca, and

WHEREAS, City Harbor is in the process of developing the Property into a mixed-use residential project, and

WHEREAS, a Development and Maintenance Agreement between the City of Ithaca and City Harbor was executed on May 28, 2021 (“2021 Agreement”) which, among other things, obligated City Harbor to convey certain easements, obtain certain approvals, and to construct and maintain certain improvements at its own expense for the benefit of the public such as street improvements, pedestrian walks, and improvements relating to the Newman Municipal Golf Course, and

WHEREAS, since the approval of the 2021 Agreement, City Harbor has met various obligations set forth therein, including by recording certain easements, incorporating design requirements and staff approvals, and obtaining site plan approval from the City’s Planning and Development Board reflected in resolutions dated August 25, 2022 and October 25, 2022, and

WHEREAS, the City of Ithaca and City Harbor wish to amend and restate the 2021 Agreement for the purpose of reflecting these and other completed items, clarifying the outstanding obligations of the parties, incorporating the most up-to-date drawings and plans, and setting forth a prospective timeline and workplan for completion of the improvements, now, therefore, be it

RESOLVED, that the Common Council does hereby approve the execution of an Amended and Restated Redevelopment Agreement Between the City of Ithaca and City Harbor, LLC, regarding development of the Property and City Harbor’s construction and maintenance of related improvements, and be it further

RESOLVED, that the Mayor of the City of Ithaca, subject to review by the City Attorney, is hereby authorized to execute the above referenced agreement in a form substantially in conformance with the draft attached hereto.
MEMORANDUM

To: City Administration Committee  
From: Victor Kessler, Assistant City Attorney  
Date: January 18, 2023  
Re: Amended and Restated Development and Maintenance Agreement between the City of Ithaca and City Harbor, LLC

Dear members of the City Administration Committee,

Please find accompanying this memorandum a proposed Amended and Restated Development and Maintenance Agreement between the City of Ithaca and City Harbor, LLC (“Amended DA”), along with a copy of the 2021 agreement that it updates, and a redline comparing the two.

As members of the Committee may be aware, City Harbor, LLC is in the process of developing a mixed-use residential project located at 101 Pier Road (the “Development”). The Development received site plan approval in late 2022. The purpose of the Amended DA is to update the original 2021 agreement, reflecting obligations that have already been met, incorporating the latest design drawings and feedback from City staff, and making certain technical amendments, while preserving all benefits to the City negotiated in the prior 2021 agreement. The proposed Amended DA has been reviewed and approved by the City Attorney’s Office, the Department of Public Works, and the Department of Planning and Economic Development.

As reflected in the redline, the proposed changes include:

- Clarifying the scope of improvements to the Newman Golf Course
- Clarifying the timing of certain work, with the goal of minimizing potential interference with golf course operations and ensuring timely completion of street improvements
- Clarifying the scope of City Harbor’s obligations to maintain certain portions of City-owned property for a 50-year timeframe
- City Harbor to dedicate two parcels of land to City in reconstructed Pier Road in lieu of granting easements over the same
- Clarifying emergency access to Development over Harbor Lane
- Incorporating the most up-to-date drawings and reflecting completed items

Please feel free to reach out if you should have any questions. Staff will also be available to address any issues as you deliberate.
AMENDED AND RESTATED DEVELOPMENT AND MAINTENANCE AGREEMENT BETWEEN THE CITY OF ITHACA AND CITY HARBOR, LLC

THIS AMENDED AND RESTATED DEVELOPMENT AND OPERATING AGREEMENT (this “Agreement”) is made as of the ___ day of _________ 2023 (the “Effective Date”), between the CITY OF ITHACA (“City”) and CITY HARBOR, LLC (“City Harbor”).

WHEREAS,

a. City Harbor is the owner of property located at 101 Pier Road, City of Ithaca (the “City Harbor Property”) and intends to redevelop the City Harbor Property into a mixed-use residential project in accordance with the site plan (the “Site Plan”) approved by the City of Ithaca Planning Board by resolutions dated August 25, 2022 and October 25, 2022 (the “Redevelopment Project”);

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

c. Pursuant to the approved Site Plan for the Redevelopment Project, City Harbor will relocate Pier Road, construct street improvements, pedestrian walks, tree plantings, storm sewer structures, site lighting, relocate the Newman Golf Course parking lot, golf cart parking, tee boxes, and trees, and install netting near the 9th Green (collectively “Pier Road Improvements”) on a portion of City land as shown on the Exhibit A to this Agreement and any subsequent amendments thereto, and uphold all other obligations under this Agreement, including without limitation the maintenance of certain Pier Road Improvements as set forth in Paragraph 9 and depicted on Exhibit A;

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

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

NOW THEREFORE IT IS HEREBY AGREED THAT:

Term

1. This Agreement shall be for a term of fifty (50) years commencing on the date upon which all
of the following conditions have been fulfilled (the “Conditions Precedent”):

a. Site Plan approval.

b. Receipt of Notice of Award of satisfactory Tax Abatements from Tompkins County Industrial Development Agency for the Redevelopment Project, and closing on all construction financing and financial assistance necessary for construction of the Redevelopment Project.

c. Filing in the Tompkins County Clerk’s Office of a permanent easement to the City for certain street improvements constructed upon lands of City Harbor (the “Street Improvements Easement”).

d. Filing in the Tompkins County Clerk’s Office of a deed to the City conveying certain street improvements constructed upon lands of City Harbor (the “Pier Road Deed”).

e. Filing in the Tompkins County Clerk’s Office of a permanent public access easement to the City for a publicly accessible pedestrian promenade (“Promenade”) along the waterfront of Cascadilla Creek and Cayuga Inlet on lands of City Harbor (the “Promenade Easement”).

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

g. Completion of the Pier Road Improvements.

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

3. Upon termination, City Harbor shall be relieved of further responsibility for construction, maintenance, or repair of the Pier Road Improvements, and shall have no rights to the same as distinct from members of the public. In the event City Harbor commences work on the Pier Road Improvements but is unable to complete the approved improvements as set forth in this Agreement, unless otherwise accepted by the City, City Harbor agrees to restore Pier Road and its associated City owned facilities and improvements to their original condition or better. If City Harbor fails to complete such restoration within a reasonable time, the City may, but shall not be obligated to, complete said restoration upon no fewer than 30 days written notice to City Harbor, with the full costs of such restoration to be borne by City Harbor.

CITY HARBOR OBLIGATIONS

4. The Site Plan approved by the City of Ithaca Planning Board includes the City requirements for the Redevelopment Project, the Pier Road Improvements, and the Promenade. City Harbor agrees to construct the Redevelopment Project, Pier Road Improvements and Promenade in accordance with the approved Site Plan and subsequently approved amendments thereto, if any. A proposed final design for the portion of the Pier Road Improvements relating to the Newman Golf Course (“Newman Improvements”) is set forth on Exhibit A. The staging, site disturbance, or other such preparatory work for the Redevelopment Project may commence with the consent of the Director of Planning and Development or their designee and upon the issuance of an appropriate permit prior to the issuance of the building permit.

5. City Harbor will perform the improvements to the Newman Golf Course in a manner that will not unreasonably interfere with the use the golf course. Construction of the Pier Road Improvements shall take place as indicated in the Site Phasing Plan dated November 11, 2022, attached as Exhibit B hereto, which provides, inter alia, as follows:

   • Phase 1 (March 2023-October 2024)
     o Completion of tees and Newman parking lot by June 2023
     o Installation of permanent netting on 9th Green
- Construction of temporary drive near 9th Green
- Construction of site entrances

- Phase 2 (November 2024 – February 2025)
  - Pavement of portion of Pier Road and City Harbor parking lot
  - Relocation of site entrance #1

- Phase 3 (March 2025-June 2025)
  - Pavement of Pier Road Turnaround
  - Pavement of remainder of Pier Road

Moreover, City Harbor will either (a) perform the Newman Improvements at a time when the
pavement is closed for the season, or (b) in the event that performing the Newman
Improvements when the pavement is closed is not feasible, consult with the Director of
Planning and Development and Superintendent of Public Works or their designees to
develop and implement a plan—subject to approval by the City, which approval shall not be
unreasonably withheld—for minimizing disruption to golf course operations and visitors,
including by maintaining access to and adequate parking for the golf course during
disruption. In the event that the timeline established in the Site Phasing Plan cannot be
adhered to, City Harbor shall consult with the Director of Planning and Development and
Superintendent of Public Works or their designees to establish a revised timeline, subject to
the approval of the Director of Planning and Development or their designee.

6. City Harbor conveyed the Promenade Easement to the City of Ithaca by Promenade
   Easement Agreement dated February 22, 2022 and recorded in the office of the Tompkins
   County Clerk on February 23, 2022 as Instrument Number 2022-01876. The Promenade
   may be used by the public at any time as detailed in the Promenade Easement permitting
   round access by the public.

7. The construction of the Pier Road Improvements, including relocation of any underground
   utility lines, shall be the sole responsibility of City Harbor and subject to City specifications and
   applicable permits.

8. With respect to any portions of utilities or fixtures installed within City land that are placed
   adjacent to or cross the Ithaca Area Wastewater Treatment Facility (IAWWTF) outfall pipe
   ("Outfall"), running from the northern shore of Cascadilla Creek through the City
   Harbor parcel pursuant to an "Easement for Outfall Pipe Facilities" recorded in Liber 595,
   Page 509 with the Tompkins County Clerk on July 14, 1983, as amended by instruments
   recorded with the Tompkins County Clerk in Liber 608, Page 598, and as Instrument
   Number 2021-06377 and continuing through City land immediately to the north of the City
   Harbor Property, such subsurface utilities, lines and pipes installed within City land, and
crossing the Outfall pipe in a location where no sheet piles exist, must be encased in
steel casing sleeves. Where sheet piles exist, the steel casing sleeves must extend from
the sewage outfall pipe centerline to four feet beyond the sheet pile on either side of the
sewage outfall pipe. In carrying out such purposes and obligations under this Agreement,
City Harbor and its successors and assigns shall not interfere with the construction,
operation, maintenance, repair, or replacement of the Outfall or any other City facilities
or improvements, or cause injury or damage to the Outfall or any such City facilities or
improvements.

9. Maintenance of the Pier Road Improvements by City Harbor shall include the following:
   a. Except as provided below with respect to the Newman Improvements, City Harbor
will maintain at its own expense the Pier Road Improvements approved in the Site Plan in a safe, sound, clean and serviceable condition, in accordance with all applicable ordinances of the City, such that no hazard is posed to the public from the public's use of or proximity to the same, and will repair damage and defects in such improvements, as provided in this Agreement.

b. City Harbor will provide custodial and landscaping services to maintain the appearance of the improvements, including trash removal and routine care of vegetation within the improved areas delineated on the Site Plan and in accordance with the City's exterior property maintenance ordinance.

c. City Harbor will plow the street and sidewalks clear of snow within the improved areas delineated on the Site Plan to the City's reasonable standard and in compliance with the City's exterior property maintenance ordinance, or will contract for the same.

d. City Harbor will maintain and clean all storm sewer facilities installed and provide an easement to the City for access to stormwater lines installed on City Harbor property. In addition to storm sewer facilities installed on the City Harbor Property, City Harbor shall also be responsible for maintaining and cleaning storm sewer facilities installed within the as-built and relocated Pier Road right of way extending to the east of the connection to storm sewer lines serving and installed within the Newman Golf Course parking lot.

e. City Harbor shall not be responsible for maintaining City land beyond the limits delineated on the Site Plan, except that City Harbor shall maintain Pier Road, including the Pier Road turnaround, up to the Willow Avenue intersection.

f. Following its construction, City Harbor shall not be responsible for maintaining any portion of the Newman Golf Course or the improvements made thereto by City Harbor, but shall remain responsible for maintaining the netting noted on Exhibit A.

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

h. The foregoing does not convey any rights to the City land upon which the Pier Road Improvements sit. Any proposed alterations or work within City lands or the right of way must be approved prior to commencement of the work through a street permit or other formal City authorization and be performed in accordance with the Superintendent of Public Work's specifications.

10. The design of the Pier Road Improvements as set forth in the Site Plan have been approved by the Superintendent of Public Works to assure that City emergency and maintenance vehicles have access to City lands and utilities.

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

12. City Harbor will convey the two parcels of City Harbor Property shown as Parcel 1 and Parcel 2 on the attached Exhibit C prior to the time of completion of the Pier Road Improvements. Said parcels shall be maintained by City Harbor pursuant to paragraph 9 of this Agreement both before and after the conveyance.

13. City Harbor will convey to the City an easement for emergency access by police, fire, medical, and other emergency responders over and across the portion of City Harbor property
designated as “Harbor Lane” on Exhibit A.

City Obligations

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

15. Upon acceptance by the Superintendent of Public Works, the City shall be responsible for the storm sewer mains and catch basins installed within the outfall easement area, as authorized and installed pursuant to the Amendment to the Easement for Outfall Pipe Facilities, dated May 27, 2021 between City Harbor, LLC and the municipal owners and recorded with the Tompkins County Clerk on June 9, 2021 as Instrument Number 2021-06377, and the associated storm sewer lines continuing and serving the southern-most portion of the golf course and golf course parking lot.

16. The City will be responsible for the maintenance of the Newman Golf Course and once constructed, the improvements made to the Newman Golf Course by City Harbor pursuant to this Agreement and all trees or other vegetation outside the limits of the Pier Road Improvements shown on the Site Plan, except for the netting which shall be maintained by City Harbor as provided by paragraph 9 of this Agreement and indicated on Exhibit A.

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

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

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

20. Notwithstanding the foregoing paragraph, the City may not during the term of this Agreement alter, remove or destroy the location of Pier Road as set forth on the site Plan, including the Pier Road Turnaround or impede vehicular and pedestrian access to use of the Pier Road and the Pier Road Turnaround. Except for damage incidental to fire or rescue efforts to the City Harbor Property, any damage to the Pier Road Turnaround caused by the City shall be promptly repaired at the City's expense.

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

22. The City shall diligently and in good faith pursue the Street Permit process for the Pier Road Improvements delineated in the Site Plan and on Exhibit A. The City shall retain discretion to
approve or deny any Street Permit application in connection with the Redevelopment Project, but approvals shall not be unreasonably withheld and any denial shall not preclude City Harbor from amending an application or re-applying for a Street Permit to address any deficiencies identified with a denied application.

23. Notwithstanding any other provisions herein, the Agreement contained herein may be revoked or modified by the City (a) upon such notice as is practical, in the event of an emergency that threatens property or the public safety or welfare, or (b) upon at least one month’s notice that the Superintendent of Public Works has determined that City Harbor has failed to materially comply with any substantive term herein, and that City Harbor has not cured such breach within the notice period. No such failure to cure shall be deemed to exist if City Harbor has commenced to cure such breach within such period and provided that such efforts are prosecuted to completion with reasonable diligence.

Indemnification, Liability, and Insurance

24. City Harbor shall defend, indemnify, and hold harmless the City from and against all claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including without limitation reasonable attorney’s and experts’ fees and costs), whether or not involving a third party claim, which any or all of them may incur, resulting from bodily injuries (or death) to any person, damage (including loss of use) to any property, other damages, or contamination of or adverse effects on the environment caused by the acts or omissions of City Harbor sustained on the City land in the construction of the Pier Road Improvements and in the performance of the City Harbor maintenance obligations hereunder which affect the City land unless caused by or arising from defects in the City land or Pier Road Improvements that are (a) caused by any negligence or willful misconduct on the part of the City, or (b) as to which the City received prior written notice, as defined in Section C-107 of the City of Ithaca Charter, but then failed to so inform City Harbor within one week of receipt thereof.

25. Notwithstanding any other provision in this Agreement, with respect to the portions of the Pier Road Improvements that require protection of the Outfall, as described in paragraph 8 above, or that are installed above the Outfall, City Harbor agrees to fully 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, liabilities, obligations, losses, settlements, judgments, costs and expenses (including without limitation reasonable attorney’s and experts’ fees and costs), whether or not involving a third party claim, which any or all of them may incur, 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, or IAWWTF SPDES permit violations, caused by the acts or omissions of City Harbor or its employees, agents or subcontractors, in connection with this Agreement. This indemnification shall not extend to the proportion of damages, losses and claims caused by a reckless or intentional wrongful act of the Municipal Indemnified Parties or, where City Harbor is not in breach of this Agreement and no emergency situation exists, by the Municipal Indemnified Parties’ negligence.

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

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

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

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

30. Notwithstanding any other provision in this Agreement, with respect to the portions of
the Pier Road Improvements that require protection of the Outfall, as described in
paragraph 8 above, City Harbor shall maintain and provide proof of insurance in the
same amounts required by paragraph 29 above and naming the Municipal Indemnified
Parties as additional insured.

Miscellaneous

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

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

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

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

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

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

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

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

To City:

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

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

To City Harbor, LLC:

    Jessica Edger-Hillman
    303 East 14th Street
    Elmira Heights, New York 14903

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

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

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

By: ______________________
Name: ____________________
Title: _____________________
Date: _____________________

CITY HARBOR, LLC

By: ______________________
Name: ____________________
Title: _____________________
Date: _____________________

LIST OF EXHIBITS: Exhibit A - Site Plan dated 11/30/22.


Exhibit C- Survey Map Showing Parcels to Be Conveyed to The City Of Ithaca.
STATE OF NEW YORK )
COUNTY OF CHEMUNG )

On the _____ day of ____________, 2023 before me, the undersigned, 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 she executed the same in her capacity, and that by 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 )
COUNTY OF TOMPKINS )

On the _____ day of ____________, 2023 before me, the undersigned, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

____________________________________
Notary Public
WARNING: It is a violation of New York State Law for any person, unless acting under the direction of a licensed Architect, to alter this document in any way. If a document bearing the seal of an Architect is altered, the altering Architect shall affix to such document his seal and the notation "altered by" followed by his signature, the date of such alteration, and a specific description of the alteration.

DATE: 11/30/2022
PROJECT: E17-33
OTHER:
DRAWN BY:

EXHIBIT A
SITE PLAN
AMENDED AND RESTATED
DEVELOPMENT AND
MAINTENANCE AGREEMENT
BETWEEN
THE CITY OF ITHACA
AND
CITY HARBOR, LLC

THIS AMENDED AND RESTATED DEVELOPMENT AND OPERATING AGREEMENT (this "Agreement") is made as of the ___ day of 2023 (the "Effective Date"), between the CITY OF ITHACA ("City") and CITY HARBOR, LLC ("City Harbor").

WHEREAS,

a. City Harbor has acquired the property known as located at 101 Pier Road, City of Ithaca (the "City Harbor Property") and intends to redevelop the City Harbor Property into a mixed-use residential project in accordance with the site plan approved by the City of Ithaca Planning Board by resolutions dated August 25, 2022 and October 25, 2022 (the "Redevelopment Project");

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

c. As a condition of site plan approval, Pursuant to the approved Site Plan for the Redevelopment Project, City Harbor will commit to relocate Pier Road, construct and maintain street improvements, pedestrian walks, tree plantings, storm sewer structures, site lighting, relocate the Newman Golf Course parking lot, golf cart parking, tee boxes, and trees, and install netting near the 9th Green (collectively "Pier Road Improvements") on a portion of City land as shown on the attached Site Plan identified as Exhibit A, and to uphold all other obligations under this Agreement, including without limitation the maintenance of certain Pier Road Improvements as set forth in Paragraph 9 and depicted on Exhibit A;

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

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

NOW THEREFORE IT IS HEREBY AGREED THAT:

Term

---

Term
1. This Agreement shall be for a term of fifty (50) years commencing on the date upon which all
of the following conditions have been fulfilled (the “Conditions Precedent”):

a. Site Plan approval.

b. Receipt of Notice of Award of satisfactory Tax Abatements from Tompkins County
Industrial Development Agency for the Redevelopment Project, and closing on all
construction financing and financial assistance necessary to construct the
same for construction of the Redevelopment Project.

c. Filing in the Tompkins County Clerk’s Office of a permanent easement to the City
for certain street improvements constructed upon lands of City Harbor (the “Street
Improvements Easement”).

d. Filing in the Tompkins County Clerk’s Office of a deed to the City conveying certain
street improvements constructed upon lands of City Harbor (the “Pier Road Deed”).

e. Filing in the Tompkins County Clerk’s Office of a permanent public access
easement to the City for a publicly accessible pedestrian promenade (“Promenade”) along
the waterfront of Cascadilla Creek and Cayuga Inlet on lands of City Harbor (the
“Promenade Easement”).

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

g. Completion of the Pier Road Improvements.

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

3. Upon termination, City Harbor shall be relieved of further responsibility for construction,
maintenance, or repair of the Pier Road Improvements, and shall have no rights to the same
as distinct from members of the public. In the event City Harbor commences work on the Pier
Road Improvements but is unable to complete the approved improvements as set forth in this
agreement, unless otherwise accepted by the City, City Harbor agrees to restore
Pier Road and its associated City owned facilities and improvements to their original condition
or better. If City Harbor fails to complete such restoration within a reasonable time, the City
may, but shall not be obligated to, complete said restoration upon no fewer than 30 days
written notice to City Harbor, with the full costs of such restoration to be borne by City Harbor.

CITY HARBOR OBLIGATIONS

4. City Harbor shall timely apply for site plan review approval pursuant to The Site Plan approved
by the City of Ithaca Planning Board includes the City requirements for the Redevelopment
Project. The proposed site plan shall include the Pier Road Improvements for public use, and
the Promenade. The design and layout of the City Harbor agrees to construct the
Redevelopment Project, Pier Road Improvements and Promenade shall be presented and
approved as part in accordance with the approved Site Plan and subsequently approved
amendments thereto, if any. A proposed final design for the portion of the site plan for the
Redevelopment Project, City Harbor acknowledges that the adherence to the terms and conditions of this Agreement shall be a condition of
the site plan approval by the Newman Golf Course (“Newman Improvements”) is set forth on
Exhibit A. The staging, site disturbance, or other such preparatory work for the Redevelopment
Project may commence with the consent of the Director of Planning and Development Board
or their designee and upon the issuance of the City.

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

building permit.

5. City Harbor will perform the improvements to the Newman Golf Course in a manner that will
not unreasonably interfere with the use the golf course. Construction of the Pier Road Improvements shall take place as indicated in the Site Phasing Plan dated November 11, 2022, attached as Exhibit B hereto, which provides, *inter alia*, as follows:

- **Phase 1 (March 2023-October 2024)**
  - Completion of tees and Newman parking lot by June 2023
  - Installation of permanent netting on 9th Green
  - Construction of temporary drive near 9th Green
  - Construction of site entrances

- **Phase 2 (November 2024 – February 2025)**
  - Pavement of portion of Pier Road and City Harbor parking lot
  - Relocation of site entrance #1

- **Phase 3 (March 2025-June 2025)**
  - Pavement of Pier Road Turnaround
  - Pavement of remainder of Pier Road

Moreover, City Harbor will either (a) perform the Newman Improvements at a time when the golf course is closed for the season, or (b) in the event that performing the Newman Improvements when the golf course is closed is not feasible, consult with the Director of Planning and Development and Superintendent of Public Works or their designees to develop and implement a plan—subject to approval by the City, which approval shall not be unreasonably withheld—for minimizing disruption to golf course operations and visitors, including by maintaining access to and adequate parking for the golf course during construction. In the event that the timeline established in the Site Phasing Plan cannot be adhered to, City Harbor shall consult with the Director of Planning and Development and Superintendent of Public Works or their designees to establish a revised timeline, subject to the approval of the Director of Planning and Development or their designee.

6. City Harbor conveyed the Promenade Easement to the City of Ithaca by Promenade Easement Agreement dated February 22, 2022 and recorded in the office of the Tompkins County Clerk on February 23, 2022 as Instrument Number 2022-01876. The Promenade may be used by the public at any time as detailed in the Promenade Easement permitting year-round access by the public.

6.7. The construction of the Pier Road Improvements, including relocation of any underground utility lines, shall be the sole responsibility of City Harbor and subject to City specifications and final approval applicable permits.

7.8. With respect to any portions of utilities or fixtures installed within City land that are placed adjacent to or cross the Ithaca Area Wastewater Treatment Facility (IAWWT) outfall pipe (“Outfall”), running from the northern shore of Cascadilla Creek through the City Harbor parcel pursuant to an “Easement for Outfall Pipe Facilities” recorded in Liber 595, Page 509 with the Tompkins County Clerk on July 14, 1983, *as amended by instruments recorded with the Tompkins County Clerk in Liber 608, Page 596, and as Instrument Number 2021-06377* and continuing through City land immediately to the north of the City Harbor parcel, such subsurface utilities, lines and pipes installed within City land, and crossing the Outfall pipe in a location where no sheet piles exist, must be encased in steel casing sleeves. Where sheet piles exist, the steel casing
sleeves must extend from the sewage outfall pipe centerline to four feet beyond the sheet pile on either side of the sewage outfall pipe. In carrying out such purposes and obligations under this Agreement, City Harbor and its successors and assigns shall not interfere with the construction, operation, maintenance, repair, or replacement of the Outfall or any other City facilities or improvements, or cause injury or damage to the Outfall or any such City facilities or improvements.

8.9 Maintenance of the Pier Road Improvements by City Harbor shall include the following:

a. Except as provided below with respect to the Newman Improvements, City Harbor will maintain at its own expense the improvements approved in the Site Plan in a safe, sound, clean and serviceable condition, in accordance with all applicable ordinances of the City, such that no hazard is posed to the public from the public's use of or proximity to the same, and will repair damage and defects in such improvements, as provided in this Agreement.

b. City Harbor will provide custodial and landscaping services to maintain the appearance of the improvements, including trash removal and routine care of vegetation within the improved areas delineated on the Site Plan and in accordance with City's exterior property maintenance ordinance.

c. City Harbor will plow the street and sidewalks clear of snow within the improved areas delineated on the Site Plan to the City's reasonable standard and in compliance with the City's exterior property maintenance ordinance, or will contract for the same.

d. City Harbor will maintain and clean all storm sewer facilities installed and provide an easement to the City for access to stormwater lines installed on City Harbor property. In addition to storm sewer facilities installed on the City Harbor property, City Harbor shall also be responsible for maintaining and cleaning storm sewer facilities installed within the as-built and relocated Pier Road right of way extending to the east of the connection to storm sewer lines serving and installed within the Newman Golf Course parking lot.

e. City Harbor shall maintain and clean all storm sewer facilities installed and provide an easement to the City for access to stormwater lines installed on City Harbor property. In addition to storm sewer facilities installed on City Harbor property, City Harbor shall also be responsible for maintaining and cleaning storm sewer facilities installed within the as-built and relocated Pier Road right of way extending to the east of the connection to storm sewer lines serving and installed within the Newman Golf Course parking lot.

f. Following its construction, City Harbor shall not be responsible for maintaining any portion of the Newman Golf Course or the improvements made thereto by City Harbor, but shall remain responsible for maintaining the temporary netting noted on Exhibit A for so long as it remains installed.

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

h. The foregoing does not convey any rights to the City land upon which the Pier Road Improvements sit. Any proposed alterations or work within City lands or the right of way must be approved prior to commencement of the work through a street permit or other formal City authorization and be performed in accordance with the Superintendent of Public Work's specifications.

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

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

- The site plan shall accommodate the turning radius for an Ithaca Fire Department aerial ladder truck at the intersection of Pier Road and Willow Avenue, the intersection of Pier Road and Harbor Lane, and at the Pier Road Turnaround. The species, size and spacing of tree plantings on City land as recommended by the City Forester.

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

12. City Harbor will convey the two parcels of City Harbor Property shown as Parcel 1 and Parcel 2 on the attached Exhibit C prior to the time of completion of the Pier Road Improvements. Said parcels shall be maintained by City Harbor pursuant to paragraph 9 of this Agreement both before and after the conveyance.

13. City Harbor will convey to the City an easement for emergency access by police, fire, medical, and other emergency responders over and across the portion of City Harbor property designated as “Harbor Lane” on Exhibit A.

City Obligations

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

12.15. Upon acceptance by the Superintendent of Public Works, the City shall be responsible for the storm sewer mains and catch basins installed within the outfall easement area, as authorized and installed pursuant to the Amendment to the Easement for Outfall Pipe Facilities, executed May 27, 2021 between City Harbor, LLC and the municipal owners and recorded with the Tompkins County Clerk on June 9, 2021 as Instrument Number 2021-06377, and the associated storm sewer lines continuing and serving the southern-most portion of the golf course party and golf course parking lot.

13.16. The City will be responsible for the maintenance of the Newman Parking Lot/Golf Course and once constructed, the improvements made to the Newman Golf Course by City Harbor pursuant to this Agreement and all trees or other vegetation outside the limits of the Pier Road Improvements shown on the Site Plan, except for the netting which shall be maintained by City Harbor as provided by paragraph 9 of this Agreement and indicated on Exhibit A. Once constructed by City Harbor in a location approved by the City, the City will provide all services, labor and equipment necessary to maintain the Newman Golf Course 9th Green.

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

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

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

17.20. Notwithstanding the foregoing paragraph, the City may not during the term of this Agreement alter, remove or destroy the location of Pier Road as set forth on the site Plan, including the Pier Road Turnaround or impede vehicular and pedestrian access to use of the Pier Road and the Pier Road Turnaround. Except for damage incidental to fire or rescue efforts to the City Harbor structure or property, any damage to the Pier Road Turnaround caused by the City shall be promptly repaired at the City's expense.

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

19.22. Contingent upon the execution of this Agreement and the site plan approval for the Redevelopment Project, the City shall diligently and in good faith pursue the Street Work Permit process for the Pier Road Improvements, including the Pier Road Turnaround. The City shall retain discretion to either approve or deny any Street Work Permit, but approvals shall not be unreasonably withheld and any denial shall not preclude City Harbor from amending an application or re-applying for a Street Permit to address any deficiencies identified with a denied application.

20.23. Notwithstanding any other provisions herein, the Agreement contained herein may be revoked or modified by the City (a) upon such notice as is practical, in the event of an emergency that threatens property or the public safety or welfare, or (b) upon at least one month's notice that the Superintendent of Public Works has determined that City Harbor has failed to materially comply with any substantive term herein, and that City Harbor has not cured such breach within the notice period. No such failure to cure shall be deemed to exist if City Harbor has commenced to cure such breach within such period and provided that such efforts are prosecuted to completion with reasonable diligence.

Indemnification, Liability, and Insurance

21.24. City Harbor shall defend, indemnify, and hold harmless the City from and against all claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including without limitation reasonable attorney's and experts' fees and costs), whether or not involving a third party claim, which any or all of them may incur, resulting from bodily injuries (or death) to any person, damage (including loss of use) to any property, other damages, or contamination of or adverse effects on the environment caused by the acts or omissions of City Harbor sustained on the City land in the construction of the Pier Road Improvements and in the performance of the City Harbor maintenance obligations hereunder which affect the City land unless caused by or arising from
defects in the City land or Pier Road Improvements that are (a) caused by any negligence or willful misconduct on the part of the City, or (b) as to which the City received prior written notice, as defined in Section C-107 of the City of Ithaca Charter, but then failed to so inform City Harbor within one week of receipt thereof.

22.25. Notwithstanding any other provision in this Agreement, with respect to the portions of the Pier Road Improvements that require protection of the Outfall, as described in paragraph 8 above, or that are installed above the Outfall, City Harbor agrees to fully 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, liabilities, obligations, losses, settlements, judgments, costs and expenses (including without limitation reasonable attorney’s and experts’ fees and costs), whether or not involving a third party claim, which any or all of them may incur, 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, or IAWWTF SPDES permit violations, caused by the acts or omissions of City Harbor or its employees, agents or subcontractors, in connection with this Agreement. This indemnification shall not extend to the proportion of damages, losses and claims caused by a reckless or intentional wrongful act of the Municipal Indemnified Parties or, where City Harbor is not in breach of this Agreement and no emergency situation exists, by the Municipal Indemnified Parties’ negligence.

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

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

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

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

27.30. Notwithstanding any other provision in this Agreement, with respect to the portions of the Pier Road Improvements that require protection of the Outfall, as described in paragraph 8 above, City Harbor shall maintain and provide proof of insurance in the same amounts required by paragraph 26.29 above and naming the Municipal Indemnified Parties as additional insured.
Miscellaneous

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

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

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

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

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

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

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

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

To City:

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

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

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

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

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

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

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

LIST OF EXHIBITS: Exhibit A - Site Plan dated 11/30/22.


Exhibit C- Survey Map Showing Parcels to Be Conveyed to The City Of Ithaca.
STATE OF NEW YORK

COUNTY OF CHEMUNG

On the ___ day of ____________, 2023 before me, the undersigned, 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 she executed the same in her capacity, and that by 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

COUNTY OF TOMPKINS

SS.:
On the ____ day of _______, 2023 before me, the undersigned, 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 she executed the same in her capacity, and that by her signature on the instrument, the
individual or the person upon behalf of which the individual acted, executed the instrument.

____________________________________
Notary Public
6.2 Resolution to approve of the Plant to Plant Agreement and Multijurisdictional Pretreatment Agreement between the City of Ithaca, Town of Ithaca, Town of Dryden and Village of Cayuga Heights

WHEREAS, the Ithaca Area Wastewater Treatment Facility (IAWWTF), which is owned and operated by the IAWWTF Owners, treats municipal wastewater originating from the City and Town of Ithaca, as well as portions of the Town of Dryden, pursuant to a Joint Sewer Agreement dated December 31, 2003, as it may be amended; and

WHEREAS, the Village of Cayuga Heights Wastewater Treatment Plant (VCHWWTP), which is owned and operated by the Village of Cayuga Heights, treats municipal wastewater from the Village of Cayuga Heights as well as portions of the Towns of Ithaca, Dryden, Lansing, and the Village of Lansing under the terms of individual agreements with the Village of Cayuga Heights and their respective sewer use laws and ordinances; and

WHEREAS, the four municipalities believe that it is in their best interests to make full use of existing community assets before building new or expanding existing facilities, provided any proposed agreement makes allowance for future demands within those municipalities during the agreement period, and that the costs are distributed in accordance with the benefits received, including avoided costs; and

WHEREAS, because their mission is to serve the aforementioned municipalities, there is a history of cooperation between the owners of the two wastewater treatment plants focused on protecting the environment by cooperating in the treatment of sewage; and

WHEREAS, the municipalities’ Intermunicipal Wastewater Agreement dated December 31, 2003, endorses the concept of the Village of Cayuga Heights’ utilization of excess IAWWTF capacity to leverage the efficient treatment of waste without causing an environmental emergency and/or to comply with DEC point discharge regulations; and

WHEREAS, the IAWWTF Owners must implement and enforce a pretreatment program to control discharges from all IAWWTF industrial users pursuant to requirements set out in 40 CFR Part 403; and

WHEREAS, the Village of Cayuga Heights agrees to adopt a sewer use law that subjects the industrial users within its boundaries whose wastewater discharges are capable of flowing to the IAWWTF to the necessary pretreatment controls, and to implement and enforce that sewer use law, and

WHEREAS, the Special Joint Committee of the IAWWTF (SJC), at its meeting of January 11, 2023, voted to recommend to its municipal boards to approve the two agreements attached hereto (including any non-substantive changes made for clarity by the SJC Chair and Attorney): (A) Plant to Plant Agreement Between City of Ithaca, Town of Ithaca, Town of Dryden and Village of Cayuga Heights, and (B) Multijurisdictional Pretreatment Agreement Between City of Ithaca, Town of Ithaca, Town of Dryden and Village of Cayuga Heights, contingent on approval of both agreements by the City of Ithaca, Town of Ithaca, Town of Dryden and Village of Cayuga Heights with further recommendation that the effective date of the two agreements be as of August 15, 2021, now, therefore be it

RESOLVED, that the City of Ithaca Common Council approves the two agreements attached hereto (including any non-substantive changes made for clarity by the SJC Chair and Attorney): (A) Plant to Plant Agreement Between City of Ithaca, Town of Ithaca, Town of Dryden and Village of Cayuga Heights, and (B) Multijurisdictional Pretreatment Agreement Between City of Ithaca, Town of Ithaca, Town of Dryden and Village of Cayuga Heights, contingent on approval of both agreements by the City of Ithaca, Town of Ithaca, Town of Dryden and Village of Cayuga Heights; and be it further

RESOLVED, that the effective date of the two agreements be as of August 15, 2021.
Plant to Plant Agreement
Between
City of Ithaca, Town of Ithaca, Town of Dryden
And
Village of Cayuga Heights

This Agreement is made as of the 15th day of August, 2021, between the CITY OF ITHACA, Tompkins County, New York, TOWN OF ITHACA, Tompkins County, New York, and TOWN OF DRYDEN, Tompkins County, New York (hereafter collectively referred to as “IAWWTF Owners”), and VILLAGE OF CAYUGA HEIGHTS, Tompkins County, New York.

WITNESSETH:

WHEREAS, the Ithaca Area Wastewater Treatment Facility (IAWWTF), which is owned and operated by the IAWWTF Owners, treats municipal wastewater originating from the City and Town of Ithaca, as well as portions of the Town of Dryden, pursuant to a Joint Sewer Agreement dated December 31, 2003, as it may be amended; and

WHEREAS, the Village of Cayuga Heights Wastewater Treatment Plant (VCHWWTP), which is owned and operated by the Village of Cayuga Heights, treats municipal wastewater from the Village of Cayuga Heights as well as portions of the Towns of Ithaca, Dryden, Lansing, and the Village of Lansing under the terms of individual agreements with the Village of Cayuga Heights and their respective sewer use laws and ordinances; and

WHEREAS, the parties believe that it is in their best interests to make full use of existing community assets before building new or expanding existing facilities, provided any proposed agreement makes allowance for future demands within those municipalities during the agreement period, and that the costs are distributed in accordance with the benefits received, including avoided costs; and

WHEREAS, because their mission is to serve the aforementioned municipalities, there is a history of cooperation between the owners of the two wastewater treatment plants focused on protecting the environment by cooperating in the treatment of sewage; and

WHEREAS, the parties’ Intermunicipal Wastewater Agreement dated December 31, 2003, endorses the concept of the Village of Cayuga Heights’ utilization of excess IAWWTF capacity to leverage the efficient treatment of waste without causing an environmental emergency and/or to comply with DEC point discharge regulations; and

WHEREAS, the overarching history of past agreements and purpose of this agreement is to foster a cooperative framework among the owners of their respective wastewater treatment plants and those who are served.
NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements herein contained, the parties agree as follows:

Section 1 –Historical Overview, Agreement Basis, and Assumptions

1.1 Exhibit A contains an Historical Overview, Basis for Diversions, and Engineering Assumptions, all of which provide historical background information and assumptions for VCHWWTP’s flow diversions to the IAWWTF prior to August 15, 2021 and provide some information about the basis for VCHWWTP’s flow diversions made on and after August 15, 2021. Updated background information and assumptions on which this Agreement is based are in the Exhibit B memo titled “Flow Diversion Pricing Methodology” dated August 2, 2021, and updated January 11, 2023. Should these assumptions prove to be wrong, the parties shall amend this Agreement so the IAWWTF Owners are fairly compensated for their actual costs.

Section 2 –Implementation of and Payment for Flow Transfers

2.1 The parties agree that on and after August 15, 2021, the Village of Cayuga Heights is permitted to make short-term flow diversions to the IAWWTF on both emergency and nonemergency bases through the Kline Road bypass (shown in Exhibit C) from the properties within the portion of the Village of Cayuga Heights shown on Exhibit D. The Village of Cayuga Heights shall operate the bypass to (a) divert to the IAWWTF flows from the Village of Cayuga Heights’ Kline Road interceptor that exceed the capacity of the Sunset Road sewer pipe to take flows to the VCHWWTP, as well as b) temporarily fully divert to the IAWWTF flows from the Village of Cayuga Heights’ Kline Road interceptor. When possible, the Village of Cayuga Heights shall provide twenty-four (24) hour advance telephone and email notification to the IAWWTF’s Chief Operator prior to any flow diversions. The Village of Cayuga Heights shall follow up with written notice as provided in Section 6.1 of this Agreement. The bypass may not divert flows from any properties not shown on Exhibit D without an amendment to this agreement or a new agreement with the IAWWTF Owners that includes as parties all municipalities contributing to the diverted flows (the Village of Cayuga Heights and, as relevant, the Village of Lansing and/or the Town of Lansing). Notwithstanding the foregoing, if the IAWWTF notifies the Village of Cayuga Heights that diverted flows would result in the IAWWTF violating its SPDES permit, then during the period of time stated in the notice, the Village of Cayuga Heights will not divert flows above the volume or flow rate stated in the notice. The IAWWTF may close the bypass if the Village of Cayuga Heights fails to comply with the notice. The Village of Cayuga Heights hereby grants the IAWWTF and its representatives a non-exclusive license to enter the inlet valve vault on Kline Road for this purpose.

2.2 Pursuant to the terms of the IAWWTF Owners’ Joint Sewer Agreement, flows to the IAWWTF originating from the Village of Cayuga Heights, which lies wholly within the Town of Ithaca, are deemed to be Town of Ithaca flows. The Town of Ithaca’s own flows to the IAWWTF, plus the diverted flows via the Kline Road bypass, may not exceed the Town of Ithaca’s owned capacity in the IAWWTF.
2.3 The Village of Cayuga Heights will pay the IAWWTF for three sets of charges: for IAWWTF treatment of diverted flows, for IAWWTF carrying (capacity) costs, and for conveyance of the diverted flows to the IAWWTF. In addition, the Village of Cayuga Heights shall pay fees to the IAWWTF when the Kline Road flow monitoring station is inoperable or provides inaccurate readings over a continuous period of more than three (3) hours. The methodologies to calculate these charges and fees, along with frequency of billing and payment due dates, are set forth in Section 4 and Exhibit B.

2.4 The parties are concurrently entering into a new multijurisdictional pretreatment agreement. If in the future it is contemplated that flows in the Village of Cayuga Heights sewer system from (a) the Village of Lansing, (b) the Town of Lansing, and/or (c) properties in the Village of Cayuga Heights not shown on Exhibit D be diverted to the IAWWTF, the Village of Lansing and Town of Lansing must enter into multijurisdictional pretreatment agreements with the IAWWTF Owners and the Village of Cayuga Heights before flows from their respective jurisdictions can be diverted to the IAWWTF, and the Village of Cayuga Heights and the IAWWTF Owners must amend their multijurisdictional pretreatment agreement to apply to all Village of Cayuga Heights flows that can be diverted to the IAWWTF.

Section 3 – Treatment

3.1 The IAWWTF will properly treat and dispose of all transferred flows. The transferred flows must comply with the requirements of the sewer use laws and ordinances of the municipalities in which they originate and, if more stringent, the pretreatment laws adopted by the IAWWTF Owners. This is to ensure that the flows do not cause pass through violations, interference with plant operations, sludge contamination, a threat to IAWWTF worker safety or nuisance odors. Verification testing required by permits or as needed by plant operations will be a cost of this Agreement. If such testing is performed by the IAWWTF on flows diverted from the Kline Road bypass, the costs will be billed to the Village of Cayuga Heights at cost and paid within forty-five (45) days of receipt of the bill or paid on such other terms as may be mutually agreed upon.

3.2 The IAWWTF Owners’ uniform pretreatment laws are attached as Exhibit E. A copy of the IAWWTF operating permit issued by NYSDEC is available upon request to the IAWWTF Chief Operator.

Section 4 – Monitoring Station and Measurement of Flows

4.1 Transferred flows shall be routed through the existing sewage flow monitoring station that the Village of Cayuga Heights paid for and installed at the Kline Road bypass. The Village of Cayuga Heights shall pay for and perform, or cause to be performed, installation of a battery backup system, monitoring station readings, inspections, maintenance, repairs, and replacements of equivalent or better equipment for the Kline Road bypass monitoring station. The Village of Cayuga Heights shall provide
to the IAWWTF on a monthly basis data from its consultant (LECTRE) specifying the quantities of diverted flows broken down by date at 5-minute intervals on a midnight-to-midnight basis. Such information may be transmitted by email or other means agreed on by the parties. In addition, the IAWWTF shall have live and continuous access to the LECTRE dashboard data from the Kline Road monitoring station and from the sewage flow monitoring stations immediately upstream and downstream of the Kline Road monitoring station. The Village of Cayuga Heights shall permit LECTRE to provide the IAWWTF with such dashboard data access.

4.2 The Village of Cayuga Heights shall inspect the Kline Road flow monitoring station after every rain event to determine if it is functioning properly. This will be accomplished remotely via the LECTRE dashboard unless it is unavailable or unless there is indication that an in-person inspection is warranted.

4.3 Whenever the Village of Cayuga Heights determines or learns from the IAWWTF that the Kline Road monitoring station is inoperable or providing inaccurate readings, the Village of Cayuga Heights shall, as soon as practicable, (a) provide telephone and email notice to the IAWWTF, and (b) repair or replace the monitoring station so that it functions properly. The IAWWTF will notify the VCHWWTP as soon as practicable whenever the IAWWTF determines or suspects that the monitoring station is inoperable or providing inaccurate readings. In an emergency situation when the IAWWTF cannot contact VCHWWTP personnel, the Village of Cayuga Heights hereby grants the IAWWTF and its representatives a non-exclusive license to enter the monitoring station vault on Kline Road for purposes of flow monitoring station access and inspections.

4.4 The IAWWTF will use LECTRE dashboard data to determine diverted flow volumes for the purpose of calculating charges to the Village of Cayuga Heights, except as follows.

(a) When the Kline Road flow monitoring station is inoperable or provides inaccurate readings over a continuous period of three (3) hours or less (the “Outage Period”), the substitute reading for each missing reading shall be the average of the last reading prior to the Outage Period and the first reading after the Outage Period.

(b) When the Kline Road flow monitoring station is inoperable or provides inaccurate readings over a continuous period of more than three (3) hours (a "Gap"), as reported to the parties by their consultant LECTRE, Inc. on a quarterly basis, or as shown by LECTRE dashboard data, the quarterly invoice from IAWWTF to the Village of Cayuga Heights will contain a charge for such Gaps that is derived from an analysis of the weather data obtained from the Game Farm Road readings at [http://www.nrcc.cornell.edu/wxstation/ithaca/ithaca.html](http://www.nrcc.cornell.edu/wxstation/ithaca/ithaca.html) (or similar website) during the times of the Gaps. If the weather data shows that during the 24 hour period before a Gap starts, or at any time during a Gap, there is a) any precipitation, or b) regardless of precipitation the temperature measures at 33 degrees Fahrenheit or above if the Gap occurs during the months of January, February, March, November or December, then a flow through the Kline Road bypass will be assumed that equals the average gallons per
minute that have flowed through the Kline Road bypass during the quarterly period for which the invoice is prepared. That average gallons per minute shall be multiplied by the number of minutes in the Gap, and then multiplied by the Treatment Rate used for that quarterly invoice to compute the extra charge on such invoice for the Gaps identified as described above.

Section 5 – Agreement Modification

5.1 This Agreement constitutes the entire Agreement of the parties. It may be amended only by the written consent of all of the parties, with each party executing and acknowledging the document containing the amendment through its duly authorized representative.

Section 6 – Notification

6.1 Where notification is required by the terms of this Agreement, it shall be delivered by hand, overnight courier, or mail, during business hours, to the following addresses. Notices are deemed effective upon receipt.

For notice to the IAWWTF Owners:

Chair, Special Joint Committee
Ithaca Area Wastewater Treatment Plant
535 Third St.
Ithaca, NY 14850

With copies to:

Assistant Superintendent of Public Works
City of Ithaca Water & Sewer Division
510 First St.
Ithaca, NY 14850

Town Engineer
Town of Ithaca
215 N. Tioga St.
Ithaca, NY 14850

Town Engineer
Town of Dryden
65 E. Main St.
Dryden, NY 13053

For notice to the Village of Cayuga Heights:
Section 7 – Length of Agreement

7.1 Unless terminated earlier pursuant to this Agreement, this Agreement shall continue in force until December 31, 2025. This Agreement shall automatically terminate if one or both of the following agreements terminate and are not substituted by new agreement(s): the Intermunicipal Wastewater Agreement dated December 31, 2003, or the 2023 Multijurisdictional Pretreatment Agreement between the Village of Cayuga Heights and the IAWWTF Owners. Upon the expiration of the original term, this Agreement may be renewed for additional terms of at least five (5) years each upon the written consent of all the parties. The parties shall review the Exhibit B memo titled “Flow Diversion Pricing Methodology” every five (5) years that this Agreement is in effect to verify the assumptions and projections on which this Agreement is based. The parties agree to use their best efforts to renegotiate the terms of this Agreement if actual experience varies significantly from the assumptions and projections in the Basis for Agreement.

Section 8 – Termination and Bypass Closure

8.1 The IAWWTF Owners or the Village of Cayuga Heights may terminate this Agreement with adequate prior notice. Notice from the IAWWTF Owners to the Village of Cayuga Heights must be provided four (4) years in advance to provide the Village of Cayuga Heights time to respond, design, and build alternate facilities. Notice from the Village of Cayuga Heights to the IAWWTF Owners must be provided one (1) year in advance. These periods are based on the assumption that no capital investments are needed at the IAWWTF to meet the terms of this Agreement. Other periods of notice will be acceptable if agreed to by all parties or as may be agreed to should a capital improvement be necessary or desirable.

8.2 However, nothing in this Agreement is intended to result in the IAWWTF violating the terms of its operating permit with NYSDEC. The IAWWTF Owners may withdraw, in whole or in part, from the terms of this Agreement if withdrawal is necessary to comply with the IAWWTF’s SPDES permit.

8.3 The IAWWTF Owners may send a notice to the Village of Cayuga Heights if the Village is not in compliance with any provision of this Agreement or the Multijurisdictional Pretreatment Agreement among the parties of even date. If the Village of Cayuga Heights fails to come into compliance within forty-five (45) days of the notice, the IAWWTF Owners may enter and close the Kline Road bypass or terminate this Agreement upon an additional forty-five (45) days’ notice.

Section 9 -- Dispute Resolution
9.1 Disputes should initially be referred to the individuals responsible for the plant operations, which will be the Chief Operators of both plants and their immediate supervisors. If resolution cannot be reached by these four individuals, the matter shall be referred in writing to the two boards responsible for plant operations, currently the Village Trustees for VCHWWTP and the Special Joint Committee for the IAWWTF. Ultimately, the parties may seek whatever recourse is available under the law, but no sooner than ninety (90) days after the matter has been referred to the respective boards in writing.

Section 10 – General Items

10.1 Liability Requirements. For purposes of this paragraph, the IAWWTF Owners shall constitute one party, and the Village of Cayuga Heights shall constitute the other party. To the extent permitted by law, each party agrees to fully defend, indemnify and hold harmless the other party and its elected officials, public officers, employees, and agents (the “Indemnitees”) from and against all claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including without limitation reasonable attorney’s fees and costs), whether or not involving a third party claim, which any or all of them may incur, resulting from bodily injuries (or death) to any person, damage (including loss of use) to any property, other damages, or contamination of or adverse effects on the environment, caused by, resulting from or arising out of the acts or omissions of the indemnifying party, or of the indemnifying party’s elected officials, public officers, employees, and agents, in connection with this Agreement. This responsibility shall not be limited by reason of any insurance coverage the indemnifying party may provide. To the extent the Indemnitees are negligent, a party’s duty to indemnify the Indemnitees shall not extend to the proportion of loss attributable to the Indemnitees’ negligence. Negligence shall include, in addition to negligence founded upon tort, negligence based upon the party’s failure to meet applicable professional standards. Nothing in this section or in this Agreement shall create or give to third parties any claim or right of action against the parties beyond such as may legally exist irrespective of this section or this Agreement.

10.2 Governing Law: This Agreement shall be governed under the laws of the State of New York, without regard to, or the application of, New York State’s choice of law provisions. The parties further agree that the Supreme Court of the State of New York held in and for the County of Tompkins shall be the forum to resolve disputes arising out of either this Agreement or work performed according thereto. The parties waive all other venue or forum selections. The parties may agree between themselves on alternative forums.

10.3 Non-assignment Clause: No party may assign or transfer its rights and interests in this Agreement to another entity without the prior written consent of all of the other parties. Notwithstanding the foregoing, if one or more parties dissolve into, merge with, or wholly annex another party or parties, the party remaining after the dissolution, merger or annexation, or the new merged municipality, as the case may be, shall retain all of the
rights and interests in this Agreement that were held by the involved parties immediately prior to the dissolution, merger or annexation.

10.4 Each party represents and warrants that (a) this Agreement has been presented to its governing body; (b) its governing body has approved this Agreement by a majority vote of the full possible voting strength of that governing body; and (c) if required, all steps by way of public hearings and/or referendum or otherwise have been taken by the time of execution of this Agreement. Resolutions of each governing body approving this Agreement are attached to this Agreement as Exhibit F.

In Witness hereto, the parties have caused this Agreement to be executed by their duly authorized officers, effective on the day and year aforementioned.

[SIGNATURE PAGES FOLLOW]
CITY OF ITHACA

Dated: ___________________________ By: ________________________________
Laura Lewis, Mayor
City of Ithaca

STATE OF NEW YORK )
COUNTY OF TOMPKINS )

On the ___ day of __________, 2023, before me, the undersigned, a Notary
Public in and for said State, personally appeared Laura Lewis, 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
TOWN OF ITHACA

Dated: _________________________  By: ________________________________

Rod Howe, Supervisor
Town of Ithaca

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

On the ___ day of ____________, 2023, 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
TOWN OF DRYDEN

Dated: ______________________
By: _______________________

Jason Leifer, Supervisor
Town of Dryden

Dated: ______________________
By: _______________________

Daniel Lamb, Councilperson
Town of Dryden

Dated: ______________________
By: _______________________

Loren Sparling, Councilperson
Town of Dryden

Dated: ______________________
By: _______________________

______, Councilperson
Town of Dryden

Dated: ______________________
By: _______________________

Leonardo Vargas-Mendez, Jr.,
Councilperson
Town of Dryden

STATE OF NEW YORK

COUNTY OF TOMPKINS

On the ___ day of __________, 2023, 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 __________, 2023, 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 __________, 2023, 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.

__________________________
Notary Public
On the ___ day of __________, 2023, 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
Dated: ______________________   By: ______________________________
Linda Woodard, Mayor
Village of Cayuga Heights

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

   On the ___ day of __________, 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared Linda Woodard, 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

HISTORICAL OVERVIEW, BASIS FOR DIVERSIONS & ENGINEERING ASSUMPTIONS

Overview and Method

The Village of Cayuga Heights was originally served by a downtown plant, so much of the Village, as well as portions of the northeast quadrant of the Town of Ithaca, can use gravity and topography to redirect wastewater flows to the current downtown (IAWWTF) plant. Demand exists now for new sewer service in areas of the Village and Town of Lansing, and the Town of Dryden, close to the Village of Cayuga Heights and the Ithaca-Tompkins Regional Airport. When this issue was studied in the early 2000s, additional demand also existed in northern portions of the Town of Lansing such as the Lansing School District complex and homes in the Ladoga Park area, whose individually owned facilities were considered for replacement with connections to municipal treatment facilities. The water quality in Cayuga Lake can be improved by connecting individual properties whose on-site treatment systems are built in areas of high water table or shallow bed rock.

In 2005, the VCHWWTP diverted existing wastewater flows from the VCHWWTP to the IAWWTF via the Kline Road bypass to free up capacity in the VCHWWTP. Flows diverted from areas south of the Village’s plant can reach the downtown plant by gravity. The parties intended that this load sharing approach make use of existing treatment capacity at the IAWWTF, relieve existing excess demand at the VCHWWTP, and allow adequate flexibility to meet projected demands over the next twenty (20) years while adjusting for real demands as they develop. While during this time frame most, if not all, of the municipalities approved a written plant to plant agreement for this permanent flow diversion, apparently it was never signed.

In 2021, the VCHWWTP determined that the VCHWWTP had the capacity to treat wastewater flows within the Kline Road catchment area of up to 500,000 gallons per day under normal operating conditions. The Village of Cayuga Heights proposed to stop the continuous diversions of flows to the IAWWTF that had been in place since the Kline Road bypass became operational. In order to operate within its treatment capacity, the Village of Cayuga Heights requested to divert wastewater flow rates exceeding 500,000 gallons per day to the IAWWTF based on the terms and conditions agreed to by the parties and to divert flows to the IAWWTF as necessary to remain within their treatment capacity.

In 2022, the VCHWWTP determined it was preferable to fully open the Kline Intercept to receive all flows to the VCHWWTP and allow flows that exceed the capacity of the Sunset Road sewer pipe to be diverted to IAWWTF via the Kline Road Intercept. Village of Cayuga Heights has requested the ability to temporarily fully divert all wastewater flows from the Village of Cayuga Heights Kline Road Intercept based on the
terms and conditions agreed to by the parties and to divert flows to the IAWWTF as necessary to remain within their treatment capacity.

**Basis for Diversions**

In the early 2000s, to explore the feasibility of continuous diversions of flows from the Village of Cayuga Heights to the IAWWTF, a series of meetings were held between engineers representing the six communities being served by the two plants. The then-current operation of the two plants, then-current flow contributions by the six communities, and estimates for changes in flows were reviewed. Since then-current and anticipated future flows were still within the existing combined treatment capacity, a more detailed review was made of sub-area flows and topography to consider the feasibility of the proposed solution. The initial implementation appeared simple and the benefits to the VCHWWTP would be immediate.

As described above, in 2021 the Village of Cayuga Heights determined that the VCHWWTP had the capacity to treat all flows under normal operating conditions that otherwise would have gone through the Kline Road bypass, except flows exceeding 500,000 gallons/day. The Village of Cayuga Heights modified the bypass infrastructure to limit flows through the bypass in this way, effective August 15, 2021. The bypass infrastructure may also be (and has been) operated to temporarily fully divert to the IAWWTF flows from the Village of Cayuga Heights’ Kline Road interceptor. Exhibit B provides further details about flows through the bypass.

**Engineering Assumptions**

The municipalities looked at plant treatment capacity limitations and collection system wastewater flows in terms of volume and time, i.e. gallons per minute (gpm) or million gallons per day (MGD). The age of major portions of the collection system, the makeup of local municipal wastewater (due to the largely residential, professional, and high technology makeup of the communities), and the configuration of both plants made this approach to capacity reasonable. Peaking factors (peak flow/average flow) appeared to be comparable for the plants and the portions of the collection systems for which data was available. Should other wastewater properties that limit a plant’s permitted capacity come into play, e.g. biological treatment, chemical treatment, or solids handling, the parties agree to use their best efforts to amend this Agreement.

The preliminary review of plant operations at the IAWWTF did not uncover any disproportionate impacts or costs that would be triggered by receiving the diverted flows. No ratchet effect or sudden increase was anticipated in chemical, electrical, or staffing demands at the plant. This was due to the relative size of the two plants (13.1 MGD and 2.0 MGD) and the actual size of the anticipated flow transfers. Should these items develop at a later date, the parties agree to amend this Agreement.
EXHIBIT B

FLOW DIVERSION PRICING METHODOLOGY

Date: 02 August 2021, updated 11 January 2023, with assumptions based on data collected in NetDMRs and the 2021 and 2022 IAWWTF Budget.

The Parties agree to enable the Village of Cayuga Heights Wastewater Treatment Plant (VCH plant) to temporarily divert flows to the Ithaca Area Wastewater Treatment Facility (IAWWTF) by installing a weir at the Kline Road intercept whereby either a) flow rates that exceed the capacity of the Sunset Road sewer pipe to take flows to the VCHWWTF are directed to the IAWWTF for wastewater treatment (peak flow shaving), or b) flows are fully diverted to IAWWTF for brief periods of time (full diversion). Prior to the installation of the weir, all flows from the catchment area were treated by the IAWWTF.

The IAWWTF will see a higher cost per customer from losing the customer base of the portion of the Village of Cayuga Heights which had previously been included in Town of Ithaca flows. The VCH plant will see a larger customer base and higher annual flow as a result of reclaiming these customers and modifying the Kline Road intercept.

The flows from the portion of the Village of Cayuga Heights served by the Kline Road bypass as shown on Exhibit D will be diverted to IAWWTF during periods of peak flow shaving or full diversion as described above, and the IAWWTF will need to maintain capacity to handle these Kline Road diverted flows. The additional annual cost will be charged to the VCH plant to fund IAWWTF’s maintenance of Kline Road diverted flow capacity, in addition to premium treatment rates charged to VCHWWTP to treat flows monitored and received during flow events, which will serve as an incentive to reduce infiltration and inflow in the portion of the Village of Cayuga Heights served by the Kline Road bypass. The Parties recognize that pricing should incorporate allocating costs in accordance with benefits received, as well as costs avoided by VCH by not having to increase the capacity of its plant. The parties also recognize the mutual benefits of cooperation among the only two (2) wastewater treatment facilities at the southern end of Cayuga Lake which according to the U.S. EPA is currently a threatened body of water.

The Village of Cayuga Heights will pay three sets of charges: for IAWWTF treatment of diverted flows, for IAWWTF carrying (capacity) costs, and for conveyance of the diverted flows to the IAWWTF. The Village of Cayuga Heights will also pay fees, as

1 Item 8 of the 2003 Intermunicipal Wastewater Agreement states: “Each Treatment Facility will set its own O&M rate for each of the Parties it serves. The O&M rates shall include an economic incentive to reduce inflow and infiltration. The Treatment Facilities will adjust the O&M rates periodically to account for collection system improvements made by one or more Parties that reduce infiltration and inflow.”
provided in Section 4.4(b), when the Kline Road flow monitoring station is inoperable or provides inaccurate readings over a continuous period of more than three (3) hours.

See Section 4 of the Agreement for diverted flow measurement provisions, including Section 4.4 (methodologies to calculate diverted flow volumes when the flow monitoring station is inoperable or providing inaccurate readings).

**Charges for IAWWTF treatment of diverted flows**

\[
\text{Treatment costs} = \text{diverted flow volume} \times \text{Premium Treatment Rate}
\]

Treatment costs for 2021 and 2022 are due within forty five (45) days of the Village of Cayuga Heights’ receipt of an invoice for same after full execution of this Agreement. The invoice shall outline all charges and associated gallons treated. All other treatment costs will be billed on a quarterly basis and are due within forty five (45) days of invoice receipt.

The Premium Treatment Rate for each calendar year is calculated by dividing the then-current year IAWWTF budget by the rolling five (5) year average of gallons of wastewater treated (based on actual data collected the previous five years from July to June). The resulting quotient is then multiplied by 1,000 to determine the cost to treat 1,000 gallons of wastewater. The resulting product is then multiplied by three (3). That product is the Premium Treatment Rate.

\[
\left( \frac{\text{annual budget}}{\text{5 year avg of wastewater treated (gal)}} \times 1,000 \right) \times 3 = \text{Premium Treatment Rate}
\]

**Charges for IAWWTF Carrying Costs**

IAWWTF Carrying Costs for each calendar year are calculated by determining the percentage of IAWWTF capacity that had to be reserved for diverted flows (divide the highest flow diverted over a rolling 24 hour period by 13.1 MGD, which is the IAWWTF’s design capacity). Multiply that percentage by the then-current IAWWTF calendar year budget. Multiply that product by 5% (the 5% is an assumed carrying cost/year for the IAWWTF Owners).

\[
\left( \frac{\text{highest diverted flow (gal)}}{13,100,000} \right) \times \text{annual budget} \times .05 = \text{annual carrying cost}
\]

Carrying Costs for 2021 and 2022 are due within forty five (45) days of the Village of Cayuga Heights’ receipt of an invoice for same after full execution of this Agreement. All other Carrying Costs will be billed on an annual basis and are due within forty five (45) days of invoice receipt.

**Annual Fee charge for conveyance (transmission) of diverted flows to the IAWWTF**
The parties have agreed that the Annual Fee covering conveyance (aka transmission) of Village of Cayuga Heights wastewater to the IAWWTF is fixed at Ten Thousand Five Hundred Dollars and No Cents ($10,550.00) per calendar year. This amount will be billed on an annual basis and is due within forty-five (45) days of invoice receipt. The 2021 and 2022 Annual Fees are due within forty-five (45) days of the Village of Cayuga Heights’ receipt of an invoice for same after full execution of this Agreement.

**Fees for Inoperable/Inaccurately Recording Flow Meter**

When the Kline Road flow monitoring station is inoperable or provides inaccurate readings over a continuous period of three (3) hours or less, the diverted flow for that period shall be calculated, recorded and charged as set forth in Section 4.4(a).

When the Kline Road flow monitoring station is inoperable or provides inaccurate readings over a continuous period of more than three (3) hours and flow diversions occur (or are reasonably expected to be occurring during periods when the Kline Road bypass is open), the diverted flow for that period shall be calculated, recorded and charged as set forth in Section 4.4(b).
**Exhibit B**

### Calculation Worksheet for 2021 Treatment Rate

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
<th>Amounts</th>
<th>Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Wastewater Treated (Annual - Based on 5 yr ave)*</td>
<td>2,262,144,200</td>
<td>gallons</td>
</tr>
<tr>
<td>2.</td>
<td>2021 Budget</td>
<td>$3,225,999</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Cost to treat 1,000 gallons</td>
<td>$1,426.1</td>
<td>(budget/wastewater treated) times 1,000</td>
</tr>
<tr>
<td>4.</td>
<td>Treatment Rate charged to VCH</td>
<td>$4.782</td>
<td>cost to treat 1,000 gallons times 3</td>
</tr>
</tbody>
</table>

* amounts based on NetDMRs July-June

<table>
<thead>
<tr>
<th>Calculation</th>
<th>Amounts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kline Flows 8/15/2021-12/31/2021</td>
<td>2,805,984</td>
</tr>
<tr>
<td>Treatment charges</td>
<td>$12,004.67</td>
</tr>
</tbody>
</table>

### Calculation Worksheet for 2021 Carrying Costs

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
<th>Amounts</th>
<th>Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.</td>
<td>Reserve Capacity **</td>
<td>830,153,170</td>
<td>gallons</td>
</tr>
<tr>
<td>6.</td>
<td>% of plant capacity needed in reserve to serve VCH</td>
<td>6.3370%</td>
<td>= reserve capacity/13.1 MGD plant capacity</td>
</tr>
<tr>
<td>7.</td>
<td>2021 Budget</td>
<td>$3,225,999</td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>2021 Budget x % of reserve capacity needed</td>
<td>$204,433.08</td>
<td>= budget x % of plant capacity needed in reserve</td>
</tr>
<tr>
<td>9.</td>
<td>Plant Financing Costs</td>
<td>5.00%</td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td>Annual Carrying Costs</td>
<td>$10,221.65</td>
<td>= cost to maintain reserve capacity to treat VCH flows</td>
</tr>
<tr>
<td>11.</td>
<td>Carrying Cost per day</td>
<td>$28.00</td>
<td></td>
</tr>
<tr>
<td>12.</td>
<td>Pro-rated Carrying Costs for 139 days</td>
<td>$3,892.63</td>
<td></td>
</tr>
</tbody>
</table>

** 2021 reserve capacity based on 2021 peak flow event, occurring on Oct 26, 2021 delivered over a 24-hour period beginning 6:25am. Each year reserve capacity to be based on the peak flow event of that calendar year.

The initial partial year consisted of 139 days from August 15, to December 31, 2021. The maximum peak flow diversion to IAWWTF during this initial partial year was 830,153.17 gallons. This was 6.3370% of capacity that had to be reserved (830,153.17 / 13,100,000 = 6.3370%). In 2021, the IAWWTF Budget was $3,225,999.00, and 6.3370% of that was $204,433.08. Multiply this by the IAWWTF Owners' assumed carrying cost of 5% per year, which results in $10,221.65 or $28.00/day. This yields a prorated Carrying Cost for 2021 of Three Thousand Eight Hundred Ninety-Two Dollars and Sixty-Three Cents ($3,892.63).

### Annual Fee

<table>
<thead>
<tr>
<th>Calculation</th>
<th>Amounts</th>
<th>Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>13 Annual Fee ***</td>
<td>$10,550,000</td>
<td>$28.9041 per day</td>
</tr>
<tr>
<td>14 Pro-rated Annual Fee for 139 days</td>
<td>$4,017.67</td>
<td></td>
</tr>
</tbody>
</table>

***Annual Fee agreed upon by the parties

For the initial partial year consisting of 139 days from August 15, 2021 to December 31, 2021, the 2021 Annual Fee for conveyance costs is prorated to Four Thousand Seventeen Dollars and Sixty-Seven Cents ($4,017.67).

| total gallons of sewage received* | 2,146,623,000 | 2015-2016 |
| 2,247,852,000 | 2016-2017 |
| 2,217,890,000 | 2017-2018 |
| 2,467,820,000 | 2018-2019 |
| 2,230,536,000 | 2019-2020 |

** 2021 5-year average of gallons of sewage received = 2,262,144,200
## Exhibit B

### Calculation Worksheet for 2022 Treatment Rate

<table>
<thead>
<tr>
<th>Calculation</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wastewater Treated (Annual - Based on 5 yr ave)*</td>
<td>2,228,320,400 gallons = 6.10 MGD</td>
</tr>
<tr>
<td>2022 Budget</td>
<td>$3,251,769</td>
</tr>
<tr>
<td>Cost to treat 1,000 gallons</td>
<td>$1.459 = (budget/5 yr ave wastewater treated) times 1,000</td>
</tr>
<tr>
<td>Treatment Rate charged to VCH</td>
<td>$4.378 = cost to treat 1,000 gallons times 3</td>
</tr>
</tbody>
</table>

* amounts based on NetDMRs

Kline Flows 1/1/2022 - 12/31/2022: 10,683,233
Treatment charges: $46,769.85

### Calculation Worksheet for 2022 Carrying Costs

<table>
<thead>
<tr>
<th>Calculation</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reserve Capacity **</td>
<td>512,918.24 gallons = 0.5129 MGD</td>
</tr>
<tr>
<td>% of plant capacity needed in reserve to serve VCH</td>
<td>3.9154% = reserve capacity/13.1 MGD plant capacity</td>
</tr>
<tr>
<td>2022 Budget</td>
<td>$3,251,769</td>
</tr>
<tr>
<td>2022 Budget x % of reserve capacity needed</td>
<td>$127,319.97 = budget * % of plant capacity needed in reserve</td>
</tr>
<tr>
<td>Plant Financing Costs</td>
<td>5.00%</td>
</tr>
<tr>
<td><strong>Annual Carrying Costs</strong></td>
<td>$6,366.00</td>
</tr>
</tbody>
</table>

** 2022 reserve capacity based on 2022 peak flow event, occurring on March 7, 2022 delivered over a 24-hour period beginning 8:40am. Each year reserve capacity to be based on the peak flow event of that calendar year.

The maximum peak flow diversion to IAWWTF during 2022 was 512,918.24 gallons. This was 3.9154% of capacity that had to be reserved (512,918.24 / 13,100,000 = 3.9154%). In 2022, the IAWWTF Budget was $3,251,769.00, and 3.9154% of that was $127,319.97. Multiply this by the IAWWTF Owners’ assumed carrying cost of 5% per year, which results in a Carrying Cost for 2022 of Six Thousand Three Hundred Sixty-Six Dollars ($6,366.00).

### Annual Fee

<table>
<thead>
<tr>
<th>Calculation</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Fee ***</td>
<td>$10,550,000</td>
</tr>
</tbody>
</table>

***Annual Fee agreed upon by the parties

Total gallons of sewage received:

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Gallons</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016-2017</td>
<td>2,247,852,000</td>
</tr>
<tr>
<td>2017-2018</td>
<td>2,217,890,000</td>
</tr>
<tr>
<td>2018-2019</td>
<td>2,467,820,000</td>
</tr>
<tr>
<td>2019-2020</td>
<td>2,230,536,000</td>
</tr>
<tr>
<td>2020-2021</td>
<td>1,977,504,000</td>
</tr>
</tbody>
</table>

2022 5-year average of gallons of sewage received = 2,228,320,400
Village of Cayuga Heights parcels discharging to IAWWTP via Town of Ithaca
EXHIBIT E

UNIFORM PRETREATMENT LAWS FOR IAWWTF
EXHIBIT F

GOVERNING BODY RESOLUTIONS

(to be added)
MULTIJURISDICTIONAL PRETREATMENT AGREEMENT
BETWEEN
CITY OF ITHACA, TOWN OF ITHACA, TOWN OF DRYDEN AND
VILLAGE OF CAYUGA HEIGHTS

This Agreement is entered into this __________ day of ___________, 2022, between the City of Ithaca, Tompkins County, New York, Town of Ithaca, Tompkins County, New York, Town of Dryden, Tompkins County, New York, and Village of Cayuga Heights, Tompkins County, New York (hereinafter jointly referred to as the "Parties").

RECITALS

1. The City of Ithaca, Town of Ithaca and Town of Dryden (hereinafter jointly referred to as the “IAWWTF Owners”) jointly own and operate the Ithaca Area Wastewater Treatment Facility (“IAWWTF”).

2. Pursuant to a separate agreement with the IAWWTF Owners, the Village of Cayuga Heights will utilize the IAWWTF to treat some of the wastewater originating in the “Old Village” area of the Village of Cayuga Heights.

3. Facilities located in or that may locate in the “Old Village” area of the Village of Cayuga Heights may contribute wastewater that includes industrial waste to the municipal sewer system, and at times that wastewater will flow to the IAWWTF. Facilities contributing industrial wastewater are hereinafter referred to as industrial users.

4. The IAWWTF Owners must implement and enforce a pretreatment program to control discharges from all IAWWTF industrial users pursuant to requirements set out in 40 CFR Part 403. In this Agreement, the Village of Cayuga Heights agrees to adopt a sewer use law that subjects the industrial users within its boundaries whose wastewater discharges are capable of flowing to the IAWWTF to the necessary pretreatment controls, and to implement and enforce that sewer use law.

AGREEMENT

1.A. The Village of Cayuga Heights will adopt and diligently enforce a sewer use law applicable to IAWWTF users within its boundaries whose wastewater discharges are capable of flowing to the IAWWTF, with pretreatment provisions that are no less stringent than and are as broad in scope as the uniform pretreatment sewer use laws of the IAWWTF Owners (City of Ithaca Code Chapter 264; Town of Ithaca Code Chapter 216; Town of Dryden Code Chapters 222 and 257. The Village of Cayuga Heights will forward to the IAWWTF Owners for review a draft of the its proposed sewer use law applicable to IAWWTF users within sixty (60) days of the effective date of this Agreement. The Village of Cayuga Heights will adopt its revised sewer use law within sixty (60) days of receiving approval from the IAWWTF Owners of its content.

B. Whenever the IAWWTF Owners revise their pretreatment sewer use laws, they will forward a copy of the revisions to the Village of Cayuga Heights. The Village of Cayuga Heights will adopt revisions to its sewer use law applicable to IAWWTF users that are at least as stringent as those adopted by the IAWWTF Owners.
Owners. The Village of Cayuga Heights will forward to the IAWWTF Owners for review its proposed revisions within sixty (60) days of receipt of the IAWWTF Owners’ revisions. The Village of Cayuga Heights will adopt its revisions within sixty (60) days of receiving approval from the IAWWTF Owners of its content.

C. Within sixty (60) days of the effective date of this Agreement, the Village of Cayuga Heights will adopt and diligently enforce pollutant specific local limits applicable to IAWWTF users within its boundaries that address at least the same pollutant parameters and are at least as stringent as the local limits enacted by the IAWWTF Owners. If the IAWWTF Owners make any revisions or additions to the IAWWTF's local limits, they will forward to the Village of Cayuga Heights a copy of such revisions or additions within sixty (60) days of enactment thereof. The Village of Cayuga Heights will adopt any such revisions or additions within sixty (60) days of receipt thereof.

2.A. The Village of Cayuga Heights will take all actions necessary to ensure that industrial users within its boundaries that discharge to the IAWWTF are subject to an approved pretreatment program to the extent required by 40 CFR 403.8, including the performance of all technical and administrative duties necessary to implement and enforce its sewer use law against IAWWTF industrial users located in its jurisdiction. The Village of Cayuga Heights will: (1) update the industrial waste survey; (2) issue permits to all industrial users of the IAWWTF required to obtain a permit; (3) conduct inspections, sampling, and analysis; (4) perform enforcement activities; and (5) perform any other technical or administrative duties the Parties deem appropriate. In addition, the Village of Cayuga Heights will take emergency action to stop or prevent any discharge which presents or may present an imminent danger to the health or welfare of humans, which reasonably appears to threaten the environment, or which threatens to cause interference, pass through, or sludge contamination.

B. The Village of Cayuga Heights will maintain current information on IAWWTF industrial users located in its jurisdiction. The Village of Cayuga Heights will update the industrial waste survey by January 1 of each year for IAWWTF industrial users located in its jurisdiction. The Village of Cayuga Heights will forward a copy of this survey to the IAWWTF’s Chief Operator within five (5) days of its completion.

C. Whenever a new IAWWTF industrial user proposes to begin operations in the Village of Cayuga Heights, or any time an existing IAWWTF industrial user proposes to increase its discharge by at least twenty percent (20%) or 5,000 gallons per day, whichever is greater, or proposes to change its discharge, or any time it is requested by the IAWWTF Owners, the Village of Cayuga Heights will require that such industrial user respond to an industrial user questionnaire supplied by the IAWWTF. Such response shall be due prior to any proposed implementation and (where applicable) permit issuance by the Village of Cayuga Heights’ Chief Operator, or, if the IAWWTF Owners request the questionnaire, within fifteen (15) days of the IAWWTF Owners’ request. The Village of Cayuga Heights will forward a copy of the completed questionnaire immediately upon receipt to the IAWWTF’s Chief Operator for review.

D. The Village of Cayuga Heights will provide the IAWWTF Owners or their designees access to all records or documents relevant to the pretreatment program for any IAWWTF industrial user located in the Village of Cayuga Heights.

E. The Village of Cayuga Heights will inspect and sample all IAWWTF industrial users located in its jurisdiction each year. The Village of Cayuga Heights will
submit advance written notice of scheduled inspections to the IAWWTF’s Chief Operator sufficient to provide the opportunity for IAWWTF personnel to attend all inspections. If an inspection is in response to an emergency situation and such notice is not possible, the Village of Cayuga Heights will make every effort to informally notify the IAWWTF of the impending inspection so IAWWTF personnel may attend. The Village of Cayuga Heights will forward copies of all inspection reports to the IAWWTF’s Chief Operator within fourteen (14) days of the inspection. The Village of Cayuga Heights will submit to the IAWWTF its procedures for sampling and analyses, including all procedures in place for quality assurance and quality control. All procedures will conform to those set out in 40 CFR Part 136, except as otherwise required by the U.S. Environmental Protection Agency.

F. The IAWWTF may, with notice to the Village of Cayuga Heights, conduct inspections and sampling at any IAWWTF industrial user’s facility located within the Village of Cayuga Heights, as it deems necessary.

G. The Village of Cayuga Heights will issue permits to all IAWWTF industrial users required to be permitted under its sewer use law located in its jurisdiction. Permits must be issued prior to any discharge that is capable of flowing to the IAWWTF. Permits for IAWWTF industrial users must contain, at a minimum, appropriate effluent limitations, monitoring and reporting requirements, a statement of duration, a statement of nontransferability, a statement of applicable civil and criminal penalties, and any other conditions requested to be included in the permit by the IAWWTF. After the Village of Cayuga Heights drafts a permit, it will forward a copy thereof to the IAWWTF’s Chief Operator for review and comment at least sixty (60) days prior to the expected date of issuance. Within forty-five (45) days of receipt of the proposed permit, the IAWWTF will either approve the permit or request the Village of Cayuga Heights to make additions, deletions, or changes. No permit will be issued if the IAWWTF objects.

H. The Village of Cayuga Heights will submit a monthly report to the IAWWTF’s Chief Operator on the compliance status of each IAWWTF significant industrial user located within its jurisdiction and any enforcement response taken or anticipated. Such report will include the time frames for initial enforcement actions, as well as any subsequent enforcement actions.

I. The Village of Cayuga Heights will enforce the provisions of its sewer use law and permits applicable to IAWWTF users. In the event the Village of Cayuga Heights fails to take adequate enforcement action against noncompliant IAWWTF users in the Village of Cayuga Heights on a timely basis, the IAWWTF Owners or their designees will take such action on behalf of and as agent for the Village of Cayuga Heights.

3. The IAWWTF Owners or their designees may take emergency action, whenever they deem necessary, to stop or prevent any discharge to the IAWWTF which presents, or may present, an imminent danger to the health or welfare of humans, which reasonably appears to threaten the environment, or which threatens to cause interference, pass through, or sludge contamination. The IAWWTF Owners will provide informal notice to the industrial user and the Village of Cayuga Heights of their intent to take emergency action prior to taking action. The opportunity to respond, however, may be limited to a hearing after the emergency powers of the IAWWTF Owners have been exercised.

4. The Village of Cayuga Heights shall not allow an industrial user located outside the jurisdictional boundaries of the Village of Cayuga Heights to discharge into the
IAWWTF via the Village of Cayuga Heights’ sewer system. The foregoing shall not apply to any users located in the Town of Ithaca or Town of Dryden that discharge into the IAWWTF via the Village of Cayuga Heights sewer system, because these Towns are co-owners and operators of the IAWWTF and already have sewer use laws in place that regulate IAWWTF users within their jurisdictions.

5. The Village of Cayuga Heights will indemnify the IAWWTF Owners for all damages, fines, and costs either incurred as a result of industrial waste discharged to the IAWWTF from users located within the Village of Cayuga Heights or from the failure of the Village of Cayuga Heights to comply with this Agreement.

6.A. If any term of this Agreement is held to be invalid in any judicial action, the remaining terms of this Agreement will be unaffected.

B. The Parties will review and revise this Agreement to ensure compliance with the Federal Clean Water Act (42 U.S.C. §1251 et seq.) and the rules and regulations (see 40 CFR Part 403) issued thereunder, as necessary, but in any event such review and necessary revisions shall occur at least every three (3) years on a date to be determined by the Parties.

C. The IAWWTF Owners may terminate this Agreement by providing one (1) year’s written notice to the Village of Cayuga Heights. All benefits and obligations under this Agreement will cease one (1) year from receipt of such notice. If notice of termination is given pursuant to this paragraph, the Parties will substitute a new agreement to replace this Agreement, unless one or more of the agreements listed in Paragraph 7 below permitting the Village of Cayuga Heights to send wastewater to the IAWWTF are also terminated.

7. This Agreement shall become effective on the date it is fully executed. Unless terminated sooner as provided in this paragraph or in Paragraph 6.C above, the term of this Agreement shall end on December 31, 2025. The Parties may agree in writing to renew this Agreement for additional terms. A Party that does not intend to renew shall so notify the other Parties at least one (1) year before the end of the then-current term. Notwithstanding the foregoing, this Agreement shall automatically terminate if one or both of the following agreements terminate and are not substituted by new agreement(s): the Intermunicipal Wastewater Agreement dated December 31, 2003, or the 2022 plant to plant agreement between the Village of Cayuga Heights and the IAWWTF Owners.

8. This Agreement constitutes the entire Agreement of the Parties. It may be amended only by the written consent of each of the Parties, with each Party executing and acknowledging the document containing the amendment through its duly authorized representative.

9. This Agreement shall be governed by the laws of the State of New York.

10. Each Party represents and warrants that (a) this Agreement has been presented to its governing body; (b) its governing body has approved this Agreement by a majority vote of the full possible voting strength of that governing body; and (c) if required, all steps by way of public hearings and/or referendum or otherwise have been taken by the time of execution of this Agreement. Resolutions of each governing body approving this Agreement are attached to this Agreement as Exhibit A.

11. No Party may assign or transfer its rights and interests in this Agreement to another entity without the prior written consent of all of the other Parties.
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers and sealed with their corporate seals on the day(s) and year set forth below.
CITY OF ITHACA

Dated: _______________________

By: _____________________________

Laura Lewis, Acting Mayor
City of Ithaca

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

On the ___ day of _____________ in the year 2022 before me, the undersigned, a Notary Public in and for said State, personally appeared Laura Lewis, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

___________________________________
Notary Public
TOWN OF ITHACA

Dated: _________________________

By: _____________________________

Rod Howe, Supervisor
Town of Ithaca

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

On the ___ day of _____________ in the year 2022 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 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
TOWN OF DRYDEN

Dated: _______________________
By: _____________________________

Jason Leifer, Supervisor
Town of Dryden

Dated: _______________________
By: _____________________________

Dan Lamb, Councilperson
Town of Dryden

Dated: _______________________
By: _____________________________

Jim Skaley, Councilperson
Town of Dryden

Dated: _______________________
By: _____________________________

Loren Sparling, Councilperson
Town of Dryden

Dated: _______________________
By: _____________________________

Leonardo Vargas-Mendez, Jr.,
Councilperson
Town of Dryden

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

On the ___ day of _____________ in the year 2022 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 individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacity, and that by their signature on the instrument, the individuals, or the person upon behalf of which the individuals acted, executed the instrument.

_____________________________
Notary Public
STATE OF NEW YORK)  ss.: 
COUNTY OF TOMPKINS)  

On the ___ day of _____________ in the year 2022 before me, the undersigned, a Notary Public in and for said State, personally appeared Dan Lamb, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacity, and that by their signature on the instrument, the individuals, or the person upon behalf of which the individuals acted, executed the instrument.

__________________________________           
Notary Public

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

On the ___ day of _____________ in the year 2022 before me, the undersigned, a Notary Public in and for said State, personally appeared Jim Skaley, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacity, and that by their signature on the instrument, the individuals, or the person upon behalf of which the individuals acted, executed the instrument.

__________________________________           
Notary Public

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

On the ___ day of _____________ in the year 2022 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 individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacity, and that by their signature on the instrument, the individuals, or the person upon behalf of which the individuals acted, executed the instrument.

__________________________________           
Notary Public

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

On the ___ day of _____________ in the year 2022 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 individuals whose names are
subscribed to the within instrument and acknowledged to me that they executed the same in their
capacity, and that by their signature on the instrument, the individuals, or the person upon behalf
of which the individuals acted, executed the instrument.

_____________________________________
Notary Public
STATE OF NEW YORK
COUNTY OF TOMPKINS) ss.:

On the ___ day of _________ in the year 2022 before me, the undersigned, a Notary Public in and for said State, personally appeared Linda Woodard, 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
GOVERNING BODY RESOLUTIONS

[to be attached]
6.3 A Resolution to Approve Amendments to the Ithaca Energy Code Supplement


WHEREAS, the purpose of Article VII is to reduce greenhouse gas emissions from new construction and renovation of buildings, advance best practices in the design of affordable buildings, and facilitate a rapid and orderly transition to supply building energy needs from non-fossil fuel sources, and

WHEREAS, the IECS was adopted and implemented in May 2021, and

WHEREAS, periodically amending the IECS to ensure that it is clear and up-to-date is necessary to further the purposes of Article VII, and

WHEREAS, Section 146-57 requires Common Council approval for certain types of amendments to the IECS, including substantive changes to point values, and

WHEREAS, Common Council finds that updating the definitions contained in the IECS, making dormitories eligible to earn density points, adjusting point values to further incentivize the development of electric vehicle parking spaces, and making certain other changes will further the purposes of Article VII, now, therefore, be it

RESOLVED, that the Director of Planning and Development or her designee are hereby authorized to amend the IECS to implement the changes to definitions, OP1 Development Density, OP3 Electric Vehicle Parking Spaces, OP6 Custom Energy Improvement, and any and all other changes outlined in the memorandum submitted in connection with this resolution.
MEMO TO CITY ADMINISTRATION

January 19, 2023

Proposed amendments #2 to the Ithaca Energy Code Supplement

Overview

The Ithaca Energy Code Supplement (IECS), adopted in 2021, is scheduled to become more stringent on January 1, 2023. Due to the updated regulations, the City will need to refile the IECS with New York State Fire Prevention and Building Code Council in January. In conjunction with the refiling, Town and City staff had collaborated on some amendments under consideration by both the Town and the City. The amendments are intended to bring clarification; however some may be considered to be substantive. (Other amendments which need more analysis and discussion will be considered later in 2023.)

Below are three proposed amendments to the IECS, and two proposed amendments to the IECS Reference Manual. Included in this memo is a red-lined version of the IECS which shows the exact changes proposed. Only the affected portions of the IECS are included in this document.

Proposed Amendments to the IECS

Amendment 1: Definitions.

For clarification and to avoid potential future issues, in 302 GENERAL DEFINITIONS, edit IECS definitions of FLOOR AREA and MAJOR RENOVATION and add a definition of HEATING PLANT.

OLD DEFINITION: FLOOR AREA – The total square footage of all levels as measured from the inside finished surface of the walls, but excluding outside courts, unconditioned garages, and uninhabitable crawl spaces and attics.

NEW DEFINITION: FLOOR AREA – The total floor surface of all levels as measured from the inside perimeter of the exterior or separation walls, exclusive of vent shafts, courts, and un-conditioned spaces.

HEATING PLANT – One or more appliances that serve as the primary source of heating for the building or space, whether located in the building or not.

MAJOR RENOVATION – Any construction or renovation to an existing structure, building, separated occupancy, tenant space, or unit under consideration, other than a repair or addition, that meets these two requirements:

1) The WORK AREA exceeds seventy-five percent of the FLOOR AREA, and
2) The proposed work involves two or more of the following:
a. Replacement or new installation of fifty percent or more of the rated capacity of the HEATING PLANT

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exhaust, or ventilation and air conditioning systems are not considered renovations of the heating system to the HEATING PLANT.

b. Construction that involves disassembly or uncovering of greater than fifty percent (50%) of the area of the above-grade portion(s) of the BUILDING THERMAL ENVELOPE that serves the FLOOR AREA in the building.

c. Changes to lighting, including but not limited to new installation, replacement, relocation, or removal of lamps, lighting, or other illumination fixtures in greater than 50% of the building throughout fifty percent or more of the FLOOR AREA. Space within a building interior-FLOOR AREA that is not currently lit, and is not proposed to be lit, shall not count toward the fifty percent (50%) calculation.

**Amendment 2: OP1 Development Density.**

Through an oversight, dormitories are not currently eligible for this point, which was intended to be available to all buildings. Change IECS language to allow dormitories to earn this point.

**C402.5.1 OP1 Development Density**

C402.5.1.1

DU = the number of all Residential dwelling units and/or sleeping units on the entire parcel occupied by the building

C402.5.1.2

DU shall include all dwelling units and/or sleeping units on the parcel occupied by the building, including those in existing buildings.

**R502.5.1 OP1 Development Density**

R502.5.1.1

DU = the number of all Residential dwelling units and/or sleeping units on the entire parcel occupied by the building

R502.5.1.2

DU shall include all dwelling units and/or sleeping units on the parcel occupied by the building, including those in existing buildings.

**Amendment 3: OP3 Electric Vehicle Parking Spaces.**

Increase the number of points available for point OP3 from one to two and make each point easier to earn. Essentially, about the same number of EV chargers that would earn 1 point today will earn 2 points in 2023. This change is aligned with the existing rule where, effective January 1, 2023, all points awarded from the Efficient Electrification section will be doubled. The rationale is the same: the regional electric grid is cleaner than it was when the IECS was adopted, and getting cleaner, meaning that a switch from fossil fuels to electric power is more impactful than it used to be. These changes to the electrification section (already in IECS) and the EV Parking Spaces point (proposed) will help applicant projects attain the 12 points that will be required starting January 1, 2023.

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Replace Table C402.5.3.1 (1) and Table R502.5.3.1 (1) - Required Number of Electric Vehicle Parking Spaces with the following table (the same table is used for each section).

<table>
<thead>
<tr>
<th>Residential Space</th>
<th>Commercial Space</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Dwelling Units (DU)</td>
<td># of EV Spaces Required for Residential Portion 1 pt.</td>
</tr>
<tr>
<td>1 to 6</td>
<td>NA</td>
</tr>
<tr>
<td>7 to 12</td>
<td>1</td>
</tr>
<tr>
<td>13 to 18</td>
<td>2</td>
</tr>
<tr>
<td>19 to 24</td>
<td>2</td>
</tr>
<tr>
<td>25 to 27</td>
<td>3</td>
</tr>
<tr>
<td>28 to 35</td>
<td>3</td>
</tr>
<tr>
<td>36 to 42</td>
<td>4</td>
</tr>
<tr>
<td>43 to 49</td>
<td>4</td>
</tr>
</tbody>
</table>

The numbers listed above are examples.

For 1 to 24 Dwelling Units:
EV Spaces required for each point SR = 0.081 × DU

For 25 or more Dwelling Units:
SR = [(0.13 × DU) + 1] ÷ 1.853

Complete calculations for Residential and Commercial space separately, add results, then round up to the nearest whole number. SR + SC = ST (Total EV Parking Spaces required)

“An Equal Opportunity Employer with a commitment to workforce diversification”
Replace Table C402.5.1 (2) and Table R502.5.3.1 (2) - Sample Calculation for required number of EV Parking Spaces with the following table (the same table is used for each section).

**Sample Calculation**
44,300 sq ft mixed-use building. 26 Dwelling Units (DU) and 6,000 sq ft Commercial Area (CA).

To earn one point

\[
\begin{align*}
SR &= \left[ (0.13 \times 26) + 1 \right] \div 1.853 \\
SR &= (3.38 + 1) \div 1.853 \\
SR &= 4.38 \div 1.853 = 2.364
\end{align*}
\]

**2.364 EV spaces are required for Residential portion**

\[
\begin{align*}
SC &= 0.151 \times 6 \\
SC &= 0.906
\end{align*}
\]

**0.906 EV spaces are required for Commercial portion**

\[
\begin{align*}
ST &= SR + SC \text{ rounded up} \Rightarrow ST = 2.364 + 0.906 = 3.27, \text{ round up} \\
4 \text{ EV spaces are required for the building to earn one point.}
\end{align*}
\]

To earn two points

\[
\begin{align*}
SR &= 2.364 \times 2 = 4.728 \\
SC &= 0.906 \times 2 = 1.812 \\
ST &= SR + SC \text{ rounded up} \Rightarrow ST = 4.728 + 1.812 = 6.54, \text{ round up} \\
7 \text{ EV spaces are required for the building to earn two points.}
\end{align*}
\]

In the following four sections:
- **C402.5.1 OP1 Development Density**
- **R502.5.1 OP1 Development Density**
- **C402.5.2 OP2 Walkability**
- **R502.5.2 OP2 Walkability**

Make the following change in the “Restrictions” paragraph.
Restrictions: A maximum of two three points total may be earned for points using up to two (maximum) of the following: OP1 Development Density, OP2 Walkability, and OP3 Electric Vehicle Parking Spaces combined.

In the following two sections:
- **C402.5.3 OP3 Electric Vehicle Parking Spaces**
- **R502.5.3 OP3 Electric Vehicle Parking Spaces**

Make the following change.

One point Up to two points may be earned for installing ELECTRIC VEHICLE PARKING SPACE(s) and related infrastructure that meet the requirements of this subsection.
Restrictions: A maximum of two three points total may be earned for points using up to two (maximum) of the following: OP1 Development Density, OP2 Walkability, and OP3 Electric Vehicle Parking Spaces combined.

“An Equal Opportunity Employer with a commitment to workforce diversification”
Change tables C404.5 Changes in 2023 to Summary Table for Prescriptive Compliance Path/Easy Path and R504.5 Changes in 2023 to Summary Table for Prescriptive Compliance Path/Easy Path to show that up to two points may now be earned for OP3 and to restate the restriction noted above.

Change OP1 and OP2 details field.
1 point for achieving sufficient development density on the building parcel. A maximum of two-three points total may be earned for points OP1, OP2, and OP3 combined.

1 point if the building meets the walkability criteria. A maximum of two-three points total may be earned for points OP1, OP2, and OP3 combined.

Change OP3 points available field.
1 - 2

Change OP3 Details field.
Up to 2 points 1 point for installing EV parking spaces and related infrastructure. A maximum of two-three points total may be earned for points OP1, OP2, and OP3 combined.

[end of amendments]

Additions to Reference Manual:

Addition 1: Definitions

HEATING PLANT: Examples of heating plants include, but are not limited to one or more boilers, furnaces, electric resistance heaters, and/or heat pumps.


There has been some confusion from applicants as to the best content and format of information to submit to show compliance with OP6 Custom Energy Improvement. The Reference Manual contains non-essential information to help understand and use the IECS, such as background information and commentary. To maintain flexibility, we are NOT amending the IECS. The following language and graphic are similar to what will be added to the Reference Manual.

To document point OP6, energy use data should be included for the following items:

1) Optional: Baseline, code-compliant building, NOT factoring in any beyond-code energy efficiency measures.
2) Baseline, code-compliant building, factoring in all energy efficiency measures EXCEPT those contributing to points for OP6 Custom Energy Improvement (see note 1). So, if EE1 and Ai5 are being used for compliance, those would be factored in here.
3) Baseline, code-compliant building, factoring in all efficiency measures INCLUDING OP6 Custom Energy Improvement (see notes 2 and 3). This is the proposed building.
4) Energy savings due to efficiency measures being used for OP6 (step 3 result minus step 2 result)
Note 1: Code-compliant means including all state and other codes EXCEPT Ithaca Energy Code Supplement.

Note 2: Please clarify in words what specific measures are being counted under OP6 (e.g., Energy recovery and better insulation) and the basic details of each measure. You can refer to other parts of your submission for details as applicable. This will help code staff complete plan review and building inspection.

Note 3: The point here is to isolate the measure(s) receiving credit under OP6, after all other improvements have been accounted for.

[end of additions to Reference Manual]