

**PERMANENT WATER AND ACCESS
EASEMENTS AND RIGHTS-OF-WAY FOR CITY OF ITHACA WATER MAIN**

THIS PERMANENT WATER AND ACCESS EASEMENTS AND RIGHTS-OF-WAY FOR CITY OF ITHACA WATER MAIN (this “Easement”) is made this ___ day of _____, 2021, by and among CITY OF ITHACA, TOWN OF ITHACA and TOWN OF DRYDEN, all New York municipal corporations (collectively, “Municipal Owners”), and the CITY OF ITHACA (“City”).

RECITALS:

WHEREAS, pursuant to the Joint Sewer Agreement (revised December 31, 2003, and last amended February 20, 2019) among the City of Ithaca, Town of Ithaca and Town of Dryden, the Municipal Owners presently own, operate and maintain the Ithaca Area Wastewater Treatment Facility (“IAWWTF”), located at 525 Third Street, City of Ithaca, County of Tompkins, State of New York, on property owned by them and described in the Warranty Deed with Lien Covenant dated December 22, 2011, which was recorded in the Tompkins County Clerk’s Office on December 27, 2011 as Instrument Number 585279-001, Tax Map Parcel Number 24.-1-1.2 (“IAWWTF Property”); and

WHEREAS, the City has requested permission to construct and install a water main on IAWWTF Property from the northern IAWWTF Property boundary on Cascadilla Creek to Station 2+05, and from Station 2+05 to Station 0+00 (“New Water Main”), which New Water Main will connect to an existing water main owned by the City and located on the IAWWTF Property, all as depicted in the Utility Plan Sheet C402 drawing titled “Phase 1 City Harbor Development, City Harbor, LLC and the Guthrie Clinic, 101 Pier Road, Ithaca, New York” initially dated July 14, 2020, and last revised on April 9, 2021, attached and incorporated as Exhibit A; and

WHEREAS, the New Water Main benefits the IAWWTF and Municipal Owners because the New Water Main will (a) create a loop in the City’s water distribution system that will provide water service redundancy to the IAWWTF; (b) eliminate water quality issues at the existing dead-end City water main located on the IAWWTF Property; and (c) significantly increase fire flows to the IAWWTF Property; and

WHEREAS, the parties wish to execute this Easement to establish and confirm the rights of the City to construct and maintain the New Water Main;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant of the New Water Main Easement. Municipal Owners hereby grant and convey to the City a nonexclusive twenty (20) foot wide permanent easement and right-of-way, centered on the as-built New Water Main, over, across and under the IAWWTF Property in the locations described in the second Whereas clause above and as depicted on Exhibit A (the “Easement Area”) for the lawful construction, reconstruction, location, relocation, maintenance,

repair, replacement, extension, operation, and inspection of the New Water Main and its ancillary facilities (the “New Water Facilities”), which the City shall require from time to time for the provision of water services and related infrastructure to the IAWWTF Property and adjoining properties. It is agreed that the New Water Facilities shall be the property of and shall be under the control and supervision of the City. Except in emergency situations, City shall not undertake construction until Municipalities’ engineers approve in writing the City’s construction plans.

2. Access. Municipal Owners grant and convey to the City an easement and right-of-way for persons, vehicles and equipment to pass over and across the IAWWTF Property to the extent reasonably necessary to access and undertake actions permitted under this Easement that are within the Easement Area. The City shall provide the IAWWTF’s Chief Operator (or the person in any successor position) not less than twenty-four (24) hours written notice prior to entry except that, in cases of emergency, the City shall be permitted to access the Easement Area without any prior written notice to the Chief Operator, so long as the City provides the Chief Operator with verbal notice of such access as soon as practicable after the onset of the emergency. To the greatest extent reasonably possible, the City shall schedule and carry out its activities and operations within and about the Easement Area so as to limit any interruption of or interference with the IAWWTF’s activities and operations. If such interruption or interference is necessary, it shall be temporary in nature and designed to limit any restriction of access to and from the remaining lands of the IAWWTF.

3. Grant and Acceptance of Water and Access Easements Only. The above-described grants to the City of the New Water Main and access easements are for the limited purposes set forth in paragraphs 1 and 2 above. This Easement is not an offer of dedication to the City, or City acceptance of dedication, of any vehicular travel lane or paved areas within the Easement Area.

4. Environmental Compliance.

(a) The City agrees to comply with all applicable requirements set forth in any work plan, site management plan or environmental easement affecting the IAWWTF Property both as may be required and approved by the New York State Department of Environmental Conservation (“NYSDEC”) (collectively, the “Environmental Documentation”); in each case to the extent the Environmental Documentation incorporates requirements governing the City’s activities regarding the New Water Facilities (including the City’s construction, maintenance, repair, replacement and operation of the New Water Facilities). The City recognizes that compliance with the Environmental Documentation may include, but not be limited to: the use of a qualified environmental professional provided and paid for by the New York State Electric and Gas Corporation (“NYSEG”) to design and submit a work plan for approval to the NYSDEC in advance of the City’s disturbing the ground surface for the City’s activities under this Easement; the City’s compliance with the NYSDEC-approved work plan; oversight of the work by the NYSEG-provided qualified environmental professional; and noninterference with NYSEG’s proper management, testing, characterization, monitoring, investigation, treatment, remediation, transport, and disposal of wastes. Notwithstanding the foregoing, nothing in this Section 4(a) shall be deemed to shift any liability or responsibility to the City that is NYSEG’s liability or responsibility under applicable laws, orders, settlements or contracts, including the multi-site Order on Consent between NYSEG and the NYSDEC (“NYSEG Consent Order”), which was

executed on March 30, 1994, Index #DO-0002-9309 (NYSDEC, 1994, amended and restated November 2016), pursuant to which NYSEG is responsible for implementing a full remedial program, including tests for, and investigations and remediation of, contamination related to a former First Street Manufactured Gas Plant that was previously located on the IAWWTF Property.

(b) If during excavation for purposes related to this Easement the City encounters visible or olfactory evidence of contaminated soil, fill material or groundwater, the City will immediately cease excavation and contact Municipal Owners and the NYSEG-provided qualified environmental professional as soon as practicable. The City will not recommence its excavation until Municipal Owners authorize recommencement.

5. Restoration of Surface. Upon completion of any activities the City undertakes pursuant to this Easement that disturb the surface of the Easement Area, the City shall (a) leave the Premises in a neat and presentable condition, (b) place and compact to 95% modified Proctor density engineered backfill (or other backfill as approved in writing by the Municipal Owners' engineers), and (c) restore at the City's expense the surface and any improvements thereon as nearly as practicable to at least as good a condition as existed prior to the City activities. The City shall provide Municipal Owners with reasonable notice and the opportunity to remove, at the City's expense, any surface facilities and improvements prior to surface disturbance of the Easement Area.

6. Reserved Rights of Municipal Owners. Municipal Owners expressly reserve the right to use and install improvements (except buildings with foundations) on, in and under the surface and subsurface of the Easement Area, to cross and recross the Easement Area, and to grant future easements in the Easement Area, provided that any construction of improvements within, or any other use of, the Easement Area by Municipal Owners shall not interfere with, obstruct, or endanger any rights of the City under or with respect to the easements, cause injury or damage to the New Water Facilities, or affect the New Water Facilities' physical integrity or function. Municipal Owners further expressly reserve the right to relocate said easements and rights-of-way and the New Water Facilities, in whole or in part, at Municipal Owners' sole expense, in accordance with plans and specifications approved by the City.

7. Insurance. The City shall maintain insurance coverage in the form and not less than the amounts contained in the Insurance Requirements, attached and incorporated herein as Exhibit B. Each policy of insurance maintained pursuant to this paragraph by the City shall name the Town of Ithaca and Town of Dryden as additional insureds in connection with the easements granted to the City herein. Upon request of the Town of Ithaca or the Town of Dryden, the City shall furnish to them current certificates of insurance evidencing maintenance of the insurance policies required hereunder. The parties hereby agree that they shall deposit any insurance proceeds for IAWWTF damage or IAWWTF liabilities arising from the insurance provided herein into the IAWWTF's joint activity account. The parties further agree that any insurance proceeds for IAWWTF damage or IAWWTF liabilities arising from the insurance provided herein shall first be used to repair, replace or pay for the IAWWTF facilities or IAWWTF liabilities.

8. Indemnification.

(a) In connection with the grant of the easements herein, and to the fullest extent permitted by law, the City of Ithaca agrees to fully defend, indemnify, and hold harmless the Town of Ithaca, Town of Dryden, the Special Joint Committee established to oversee the operation of the Ithaca Area Wastewater Treatment Facility, 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 attorneys’ 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 Ithaca Area Wastewater Treatment Facility SPDES permit violations, caused by the acts or omissions of the City of Ithaca or of the City of Ithaca’s employees, agents, subcontractors, guests and invitees related to or arising out of their municipal work, activities, facilities or other improvements performed or located within the Easement Area or within areas the City uses to exercise its access rights hereunder. Notwithstanding the foregoing, to the extent the Municipal Indemnified Parties are negligent or act with willful misconduct, the City’s duty to indemnify them shall not extend to the proportion of loss attributable to the Municipal Indemnified Parties’ negligence or willful misconduct.

(b) In connection with the grant of the easements herein, and to the fullest extent permitted by law, Municipal Owners agree to fully defend, indemnify, and hold harmless the City of Ithaca and its respective elected officials, public officers, boards, employees, members, and agents (collectively, the “City of Ithaca Indemnified Parties”) from and against all claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs, and expenses (including, without limitation, reasonable attorneys’ and experts’ fees and costs), whether or not involving a third party claim, which any or all of them may incur, 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, caused by the acts or omissions of Municipal Owners or of their employees, agents, or subcontractors, related to or arising out of Municipal Owners’ work, activities, facilities, or other improvements performed or located within or without the Easement Area. Notwithstanding the foregoing, to the extent the City of Ithaca Indemnified Parties are negligent or act with willful misconduct, the Municipal Owners’ duty to indemnify them shall not extend to the proportion of loss attributable to the City of Ithaca Indemnified Parties’ negligence or willful misconduct.

(c) Notwithstanding the foregoing, nothing in this Section 8 shall be deemed to shift to a party any liability or expense that is NYSEG’s liability or expense under the NYSEG Consent Order.

9. Liens and Encumbrances. The City shall not allow any claim, lien or other encumbrance arising from its use of the Easement Area to accrue against or attach to the easement premises or any other portion of the IAWWTF Property, but if any lien or notice of lien is so filed, the responsible party shall promptly bond and discharge any lien or notice of lien that may be so filed. Municipal Owners shall send to the City timely written notice of any lien so filed of which

Municipal Owners have notice, and the City shall send to Municipal Owners timely written notice of any lien so filed of which the City has notice.

10. Notices. All notices, requests, consents, claims, demands, waivers, and other communications under this Easement (each, a “Notice”) must be in writing and addressed to the receiving party at its address set forth below (or at such other address as the receiving party may designate from time to time in accordance with this Section). Unless otherwise agreed herein, all Notices must be delivered by: personal delivery; nationally recognized overnight courier; certified mail, return receipt requested, postage prepaid; or e-mail. A Notice sent by e-mail shall be effective only if it requests a “return receipt” confirmation and the recipient sends the return receipt to the sender upon the recipient’s opening of the message, or if the recipient responds to the e-mail. All Notices shall be effective upon the date of receipt.

Notices to City of Ithaca are to be addressed to:

City of Ithaca
108 East Green Street
Ithaca, New York 14850
clerksoffice@cityofithaca.org

with a copy to:

Ithaca City Attorney
108 East Green Street
Ithaca, New York 14850
attorney@cityofithaca.org

Notices to Municipal Owners are to be addressed to:

Ithaca Area Wastewater Treatment Facility
Attention: Chief Operator
525 Third Street
Ithaca, New York 14850
CKilgore@cityofithaca.org

with a copy to:

Special Joint Committee Chair
Ithaca Area Wastewater Treatment Facility
525 Third Street
Ithaca, New York 14850
cbrock@cityofithaca.org

11. Severability. If any term or provision of this Easement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any jurisdiction, such invalidity,

illegality, or unenforceability shall not affect any other term or provision of this Easement or invalidate or render unenforceable such term or provision in any other jurisdiction.

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

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

14. Assignment; Successors and Assigns. City of Ithaca and its successors and assigns are hereby expressly granted the right to assign this Easement, or any part thereof, or interest therein, without any prior consent and without prejudice or recourse. The easements and related rights-of-way shall at all times be deemed to be and shall run with the land, be permanent and perpetual, and inure to and be binding upon the successors, heirs, legal representatives, and assigns of the parties named in this Easement.

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

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

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

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed as of the date first written above.

City of Ithaca:

CITY OF ITHACA

By: _____
Name: _____
Title: _____

Municipal Owners:

CITY OF ITHACA

By: _____
Name: _____
Title: _____

TOWN OF ITHACA

By: _____
Name: _____
Title: _____

TOWN OF DRYDEN

By: _____
Name: _____
Title: _____

[add additional signature lines for Dryden Town Board members]

EXHIBIT A

[Insert Utility Plan Sheet 402]

EXHIBIT B

INSURANCE REQUIREMENTS

The City shall procure and maintain insurance against any and all losses, costs, expenses, claims, liabilities, actions, or damages, including liability for death or injuries to any person or persons, damage to property, or contamination of or adverse effects on the environment, arising at any time during and/or arising out of or in any way connected with the City's use or occupancy of the Easement Area.

The following are the minimum required insurance coverages:

a. Commercial General Liability

Bodily Injury and Property Damage:	\$1,000,000 Each Occurrence
Products/Completed Operations:	\$2,000,000 Aggregate
Personal Injury & Advertising Injury:	\$1,000,000 Each Person/Organization
General Aggregate:	\$2,000,000 Per Location Basis
Damage to Rented Premises:	\$1,000,000

b. Business Automobile Liability

Combined Single Limit applicable to all Owned, Non-Owned and Hired Autos	\$1,000,000 Each Accident
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c. Excess "Umbrella" Liability

Bodily Injury and Property Damage:	\$5,000,000 Each Occurrence
General Aggregate:	\$5,000,000 Per Location Basis

d. Workers' Compensation & Employers' Liability

Workers Compensation Limits:	Statutory Limits
Employers Liability Limits:	
• Each Accident	\$1,000,000
• Disease Each Employee	\$1,000,000
• Disease Policy Limit	\$1,000,000

1. The insurance carriers providing the required coverages shall be licensed to do so in New York State, and shall be rated no lower than "A- X" by the most recent Best's Key Rating Guide unless otherwise agreed to by the City of Ithaca.

2. All policies must be endorsed to include the Town of Ithaca and Town of Dryden as additional insureds on a primary and non-contributory basis.

3. The City shall deliver upon request of the Town of Ithaca or Town of Dryden a Certificate of Insurance (including copies of the Additional Insured) acceptable to the requesting party certifying that policies of insurance for the required coverages have been issued and are in effect. Upon expiration or cancellation of any policy, the City shall immediately deliver to the Town of Ithaca and Town of Dryden a Certificate of Insurance evidencing proper renewal or replacement of the policy.