

## SITE ACCESS AND INDEMNIFICATION AGREEMENT

This Site Access and Indemnification Agreement ("Agreement") is dated July 2, 2024 between the **City of Rochester ("City")** and **New York State Department of Environmental Conservation ("DEC")**.

**WHEREAS, DEC** desires to use property located at **62-64 Scio Street, Rochester, New York, 14604**, which is owned by City, for storage while conducting remediation work at **527-533 East Main Street, New York 14604**; and

**WHEREAS, DEC** has advised the **City** that it will indemnify and hold City harmless from claims resulting from its use as set forth below;

**NOW, THEREFORE**, in consideration of the **City** allowing the **DEC** and/or its contractors to stage storage containers and construction materials within those containers at **62-64 Scio Street, Rochester, New York 14604 ("Premises")** during the pendency of its remediation work at **527-533 East Main Street, Rochester, New York 14604 ("Purposes")**, **DEC** and **City**, intending to be legally bound agree as follows:

1. **DEC** shall make every effort to minimize any adverse impact of its entry on and occupancy of your property. The **City** is not responsible for the safety and/or security of **DEC** and/or its contractor's materials, equipment, vehicles, or personnel while utilizing the **Premises** subject to Paragraph 2 below.
2. Subject to the availability of lawful appropriations, and as provided by New York State's Court Of Claims Act and Section 17 of the New York State Public Officers Law, **DEC** hereby agrees to indemnify and hold harmless the **City** for any and all causes of action in law or equity, arising directly from the negligence of **DEC** or its employees, agents, consultants, contractors, and subcontractors to the extent attributable to said negligence, in the use and access of the **Premises**, for the **Purposes** as described above.

The duty to indemnify and hold harmless shall be conditioned upon delivery to the Attorney General by the **City** of the original or a copy of any summons, complaint, process, notice, demand or pleading within five (5) days of receipt.

**DEC**, for and on behalf of its employees, agents, consultants, contractors, and subcontractors hereby releases the **City** from any liability directly arising from the use and access of the **Premises** to the extent said liability is directly attributable to the negligence of **DEC** or its employees, agents, consultants, contractors, and subcontractors.

The **City** hereby acknowledges that this indemnification, hold harmless, and release agreement is given in consideration of allowing **DEC** to use the **Premises** on the stated dates, for the stated **Purposes**, and that the consideration is fair and adequate.

3. **DEC** is self-insured and shall provide a letter confirming its self-insurance upon request.

4. The terms of this Agreement constitute the entire agreement between the **CITY** and **DEC**. No waiver or modification to these terms shall be binding unless agreed to in writing signed by the parties. The invalidity of any part hereof shall not affect the validity of the remainder. Except as provided herein, the failure of either party to assert any right at any time hereunder shall not prevent its subsequent assertion of the same or different rights.
5. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.
6. This Agreement represents a license that is limited in purpose and scope to the least amount of access and time reasonably required to undertake and complete the stated Purposes herein and does not represent a lease to or create in any interest in the **Premises** or any other property owned by **City** or create a partnership, joint venture or any association or relationship between **City** and **DEC**.

Dated: July 2, 2024



**CITY OF ROCHESTER**

*Andrew Guglielmi*  
**NYS DEC**  
Director, Division of Environmental Remediation