

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

**THIS INDENTURE** made this 18<sup>th</sup> day of May, 2018, between Owner(s) Rochester Gas and Electric Corporation, having an office at 89 East Avenue, Rochester, New York 14604, County of Monroe, State of New York (the "Grantor"), and The People of the State of New York (the "Grantee."), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

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

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

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

**WHEREAS**, Grantor, is the owner of real property located at the address of 755 Brooks Avenue in the City of Rochester, County of Monroe and State of New York, known and designated on the tax map of the County Clerk of Monroe as tax map parcel numbers: Section 135.39 Block 1 Lot 1, being the same as that property conveyed to Grantor by deed dated June 5, 1974 and recorded in the Monroe County Clerk's Office in Liber and Page 4676/15. The property subject to this Environmental Easement (the "Controlled Property"), which includes lands to the centerline of Brooks Avenue, comprises approximately 5.67 +/- acres, and is hereinafter more fully described in the Land Title Survey dated January 16, 2015 and last revised December 15, 2016 prepared by Lawrence W. Hoffinan, L.L.S. of Hoffinan Land Surveying and Geomatics, which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

**WHEREAS**, the Department accepts this Environmental Easement in order to ensure the protection of public health and the environment and to achieve the requirements for remediation

established for the Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

**NOW THEREFORE**, in consideration of the mutual covenants contained herein and the terms and conditions of Module II (Corrective Action Requirements) of the RCRA Permit for Grantor's facility (NYSDEC ID No. 828095/EPA ID No. NYD000818781), Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement").

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

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

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

**Commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and Industrial as described in 6 NYCRR Part 375-1.8(g)(2)(iv)**

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

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

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

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

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

(7) All future activities on the Controlled Property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

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

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

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

B. The Controlled Property shall not be used for Residential or Restricted Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i) and (ii), and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

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

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

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

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 7I, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

**This property is subject to an Environmental Easement held  
by the New York State Department of Environmental Conservation**

**pursuant to Title 36 of Article 71 of the Environmental Conservation Law.**

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

G. Grantor covenants and agrees that it shall, at such time as NYSDEC may require, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury, in such form and manner as the Department may require, that:

(1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).

(2) the institutional controls and/or engineering controls employed at such site:

(i) are in-place;

(ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and

(iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;

(3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;

(4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;

(5) the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;

(6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and

(7) the information presented is accurate and complete.

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

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Controlled Property, all rights as fee owner of the Property, including:

A. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

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



and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

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

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

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

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

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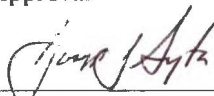


## RG&E Approval Form For Agreement Requiring Dual Authorization

Attached is an Environmental Easement granted by Rochester Gas and Electric Corporation ("RG&E") to The People of the State of New York, acting through their Commissioner of the Department of Environmental Conservation, (the "State" or "Department"). The Environmental Easement sets forth a process whereby RG&E conveys to the State real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of the real property located at the address of 755 Brooks Avenue in the City of Rochester, County of Monroe and State of New York, known and designated on the tax map of the County Clerk of Monroe as tax map parcel number: Section 135.39 Block 1 Lot 1 (#135.39-01-001) at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the restriction of future uses of the land that are inconsistent with the above-stated purpose

After your review and concurrence, please sign and date below.

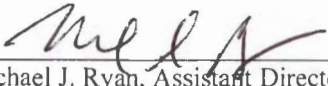
**Control Approval**

By:   
\_\_\_\_\_  
Joseph J. Syta

Date: 3/7/18



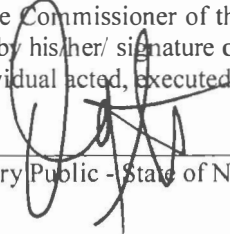
**THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK**, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,

By:   
Michael J. Ryan, Assistant Director  
Division of Environmental Remediation

**Grantee's Acknowledgment**

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

On the 18<sup>th</sup> day of May, in the year 2018 before me, the undersigned, personally appeared Michael J. Ryan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/ executed the same in his/her/ capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public - State of New York

**David J. Chiusano**  
**Notary Public, State of New York**  
**No. 01CH5032146**  
**Qualified in Schenectady County**  
**Commission Expires August 22, 2018**

**SCHEDULE "A" PROPERTY DESCRIPTION**

All that tract or parcel of land, being a part of Lots 45 and 46, 4000 Acre Tract, Township 1, Short Range, in the City of Rochester, County of Monroe, State of New York, more particularly bounded and described as follows:

Beginning at a point in the center line of Brooks Avenue at its intersection with the easterly line of property of the State of New York (State Barge Canal) said point being 119.16 feet east of the westerly line of the City of Rochester; thence

(2) N 88° 38' 21" E along said centerline a distance of 411.31 feet to a point of intersection with the westerly line of lands now or formerly New York Central Lines, LLC, said point being approximately 567 feet westerly from the westerly line of Genesee Park Boulevard measured along the centerline of Brooks Avenue; thence

(3) S 28°-13'-39" E and along said westerly line of said New York Central Lines, LLC a distance of 182.20 feet to a point; thence along said New York Central Lines, LLC property line along a curve to the right having a radius of 1399.69 feet and a length of 370.24 feet to a point of tangent; thence

(4) S 13°-04'-19" E and along said westerly line of said New York Central Lines, LLC a distance of 424.33 to a point on the easterly property line of lands of said State of New York (Barge Canal); thence

(5) N 42°-05'-39" W and along said easterly line of said lands of the State of New York (Barge Canal) a distance of 785.78 feet to a point; thence

(6) N 31°-01'-39" W along said lands of the State of New York (Barge Canal) a distance of 343.00 feet to a point on the southerly Right of Way of said Brooks Avenue; thence

(7) N 31°-33'-09" W a distance of 38.18 feet to the point or place of beginning,

containing 5.670 acres more or less to the centerline of Brooks Avenue and containing 5.359 acres more or less to the south Right of Way of Brooks Avenue.

The above new description of the surveyed property at 755 Brooks Avenue was prepared to show the horizontal bearings referenced to NAD 27, New York State Plane Coordinate System, West Zone, Traverse Mercator Projection, and the surveyed measured distances along the property lines and the centerline of Brooks Avenue. Being the same premises conveyed to Rochester Gas and Electric Corporation by Gulf Refining Company on June 5th, 1974 by deed recorded in Monroe County Clerk's Office in Liber 4676 of deeds at page 15.

Subject to easements, covenants, restrictions, right of way & reservations; if any, that may affect the above described parcel