

## NYC CLEAN SOIL BANK

### WAIVER AND RELEASE OF LIABILITY AND INDEMNIFICATION

#### **THE GENERATOR OR RECIPIENT LISTED BELOW AGREES AS A CONDITION TO ITS PARTICIPATION IN THE NYC CLEAN SOIL BANK PROGRAM, THAT:**

**1. NYC Clean Soil Bank.** The NYC Clean Soil Bank is a program administered by the Office of Environmental Remediation (“OER”) of the City of New York (“City”) to facilitate the exchange of clean soil between parties that generate such soil (“Generators”) and parties that require such soil (“Recipients”). Generators and Recipients, or third parties acting on their behalf, may submit to OER information relating to, in the case of Generators, the availability of clean soil generated by them and, in the case of Recipients, their requirements for clean soil. If a Generator and/or Recipient is found by OER to qualify for the Clean Soil Bank program, their information will be made available to the public, including Generators and Recipients, and OER will provide assistance, at its sole discretion, in matching Generators with Recipients to facilitate the transfer of clean soil.

#### **2. Generator and Recipient Information.**

(a) Information provided by a Generator, or a third party acting on its behalf, in connection with the Clean Soil Bank program (“Generator Information”) includes but is not limited to: (i) all information relating to soil generated by the Generator, such as the analytical data, characteristics, condition, quality, source, suitability, use, and/or quantity of soil generated, including all information in any forms completed by the Generator and submitted to OER; (ii) all information relating to a Generator’s intended or actual transfer of soil to a Recipient, and any other information or advice offered or exchanged in connection with the Clean Soil Bank program; and (iii) any written or oral representations by a Generator, or a third party acting on its behalf, relating to the information described in (a)(i) or (a)(ii) above, or relating to the conduct of the Generator’s business and/or its compliance with applicable law.

(b) Information provided by a Recipient, or a third party acting on its behalf, in connection with the Clean Soil Bank program (“Recipient Information”) includes but is not limited to: (i) all information relating to soil required by the Recipient, such as the analytical data, characteristics, condition, quality, source, suitability, use, and/or quantity of soil required and the intended uses of such soil, including all information in any forms completed by the Recipient and submitted to OER; (ii) all information relating to a Recipient’s intended or actual acquisition of soil from a Generator, and any other information or advice offered or exchanged in connection with the Clean Soil Bank program; and (iii) any written or oral representations by a Recipient, or a third party acting on its behalf, relating to the information described in (b)(i) and (b)(ii) above, or relating to the conduct of the Recipient’s business and/or its compliance with applicable law.

**3. Assumption of the Risk.** Your access to, use of, and/or reliance on any Generator Information or Recipient Information, the Clean Soil Bank program, and any written or oral representations, action or inaction, on the part of the City is entirely at your own risk. You will not rely in any way on the City but only on yourself including your own due diligence concerning all relevant matters. In addition, if you are a Recipient, due diligence includes taking all reasonable steps to satisfy yourself that the soil from a particular Generator is clean, including but not limited to, obtaining any publicly available information relating to the relevant site(s), inspecting, screening and/or testing the soil, and contacting the Generator directly to obtain relevant information.

**4. City Disclaimer.** The City makes no representations and warranties, express or implied, as to the following:

- (a) the accuracy or completeness of any Generator Information and Recipient Information, and any written or oral representations of the City;
- (b) the soil generated by a Generator and/or the soil required by a Recipient, such as the analytical data, characteristics, condition, quality, source, suitability, use, and/or quantity of soil, and the intended uses of such soil, including but not limited to, implied warranties of merchantability and fitness for a particular purpose; and
- (c) the Generator's and/or Recipient's compliance with any law applicable to the conduct of its business, including but not limited to, any federal, state, or local law and permit requirement governing the disposal, handling, or reuse of clean or contaminated soil.

**5. Obligation to Comply with All Applicable Laws.** Participation in the Clean Soil Bank program does not relieve Generators and Recipients from complying with the requirements of any and all applicable federal, state, and local laws and permit requirements, including but not limited to, any law and permit requirement governing the disposal, handling, or reuse of clean or contaminated soil. Prior to participating in the Clean Soil Bank program, Generators and Recipients are strongly encouraged to consult with their legal counsel to fully understand the requirements of all federal, state, and local laws and permit requirements applicable to this activity.

**6. Waiver and Release.** You release and discharge the City and its officials and employees from any liability for any and all claims, damages, losses, costs and expenses (including reasonable attorneys' fees) arising out of or in connection with: (a) your access to, use of, and/or reliance on any Generator Information and Recipient Information, the Clean Soil Bank program, and any written or oral representations, action or inaction, on the part of the City; (b) Generator's intended or actual transfer of soil to a Recipient; (c) Recipient's intended or actual acquisition of the soil from a Generator; and (d) the Generator's and/or Recipient's failure to comply with any law applicable to the conduct of its business, including but not limited to, any federal, state, and local laws and permit requirements governing the disposal, handling, or reuse of clean or contaminated soil. This paragraph 6. shall apply to the fullest extent permitted by law.

**7. Indemnification by Generator.** Generator agrees to defend, indemnify and hold harmless the City, its officials and employees, from any and all claims (even if the allegations of the lawsuit are without merit), damages, losses, costs and expenses (including reasonable attorneys' fees) to which the City, its officials and employees may be subject or which they may suffer or incur allegedly arising out of or in connection with: (a) any Generator Information provided by it; (b) the Generator's access to, use of, and/or reliance on any Recipient Information and the Clean Soil Bank program; (c) Generator's intended or actual transfer of soil to a Recipient; (d) Recipient's intended or actual acquisition of the soil from Generator; and (e) the Generator's failure to comply with any law applicable to the conduct of its business, including but not limited to, any federal, state, and local laws and permit requirements governing the disposal, handling, or reuse of clean or contaminated soil.

**8. Indemnification by Recipient.** Recipient agrees to defend, indemnify and hold harmless the City, its officials and employees, from any and all claims (even if the allegations of the lawsuit are without merit), damages, losses, costs and expenses (including reasonable attorneys' fees) to which the City, its officials and employees may be subject or which they may suffer or incur allegedly arising out of or in connection with: (a) any Recipient Information provided by it; (b) the Recipient's access to, use of, and/or reliance on any Generator Information and the Clean Soil Bank program; (c) Recipient's intended or actual acquisition of soil from a Generator; (d) Generator's intended or actual transfer of the soil to Recipient; and (e) the Recipient's failure to comply with any law applicable to the conduct of its business, including but not limited to, any federal, state, and local laws and permit requirements governing the disposal, handling, or reuse of clean or contaminated soil.

**UNDERSTOOD AND AGREED TO:**

**GENERATOR (as applicable)**

**Name of Generator:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**UNDERSTOOD AND AGREED TO:**

**RECIPIENT (as applicable)**

**Name of Recipient:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_