

## NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of a Remedial Program for a Portion of  
the Carroll Gardens/Public Place Former MGP Site  
under Article 27, Title 14  
of the Environmental Conservation Law

### BROWNFIELD SITE CLEANUP AGREEMENT

Index # A2-0610-0808  
Site # C224012

by Brooklyn Union Gas Company

[aka KeySpan Corporation/National Grid USA],  
The City of New York,  
Vichar, Inc.,  
Harvic International Ltd.,

Participant  
Volunteer  
Volunteer  
Volunteer

**WHEREAS**, the Brownfield Cleanup Program ("BCP") was enacted to encourage the voluntary remediation of brownfield sites for reuse and redevelopment so as to advance the policy of the State of New York to conserve, improve, and protect its natural resources and environment, and control water, land, and air pollution; and

**WHEREAS**, the Department of Environmental Conservation (the "Department") is authorized to administer the BCP contained in Article 27, Title 14 of the Environmental Conservation Law ("ECL"); and

**WHEREAS**, by a certified joint application received March 26, 2008, and deemed complete on April 15, 2008, Brooklyn Union Gas Company (aka KeySpan Corporation/National Grid USA) ("National Grid") with a principal place of business at 1 MetroTech Center, Brooklyn, NY 11201, the City of New York, with a principal place of business at 253 Broadway, 14<sup>th</sup> Floor, New York, NY 10007, Vichar Inc., with a principal place of business at 10 West 33<sup>rd</sup> Street New York, NY 10001, and Harvic International Ltd. with a principal place of business at 10 West 33<sup>rd</sup> Street New York, NY 10001 (collectively the "Applicants"), submitted a request to participate in the BCP relative to three of the four parcels that comprise the Carroll Gardens/Public Place Former MGP Site aka Citizens Gas Works MGP Site ("Former MGP Site") bounded on the north by Fourth, Fifth and Hoyt Streets, to the south by Huntington Street and to the west by Smith Street and on the south by the Gowanus Canal located in the City of New York, County of Kings, New York; and

**WHEREAS**, the Department has accepted the application for real property described as: Parcel I at Smith Street and Fifth Street, owned by the New York City Department of Citywide Administrative Services, and recorded as Block No. 471 Lot 1; Parcel II at 68 5<sup>th</sup> Street owned by the New York City Department of Citywide Administrative Services, and recorded as Block 471 Lot 100; and, Parcel III at 459 Smith Street owned by Vichar, Inc. and recorded as Block No. 471 Lot 200, all in the Kings County Registry of Deeds (collectively the "Site"). A map of the Site showing its general location is attached as Exhibit "A". Off-site areas are designated as Operable Unit 2; and

**WHEREAS**, National Grid entered into a Voluntary Cleanup Agreement Index # A2-0460-0502, effective August 31, 2002 ("VCA") for the investigation and remediation of Parcels I and II of the Former MGP Site, designated as VCA Site # V00360; and

**WHEREAS**, pursuant to the VCA, National Grid conducted a Remedial Investigation ("RI") of all four parcels, designated as Operable Unit No. 1 ("OU-1"), within the Former MGP Site, and the Department approved the RI Report on December 1, 2005; and

**WHEREAS**, pursuant to the VCA, National Grid conducted a Remedial Alternatives Analysis ("RAA") for OU-1 and the RAA Report was approved by the Department on April 19, 2007; and

**WHEREAS**, on April 23, 2007, pursuant to the VCA the Department issued a Decision Document selecting the remedy for the remediation of OU-1; and

**WHEREAS**, on August 28, 2007, the Department approved National Grid's Remedial Design ("RD") Plan for OU-1; and

**WHEREAS**, on November 2, 2007, National Grid informed the Department that it was terminating the VCA, pursuant to Article XII of the VCA, as National Grid had been working with the City of New York and Vichar, Inc. to develop a BCP Application, and in order for National Grid to participate in the Application the parcels could not continue to be subject to the VCA; and

**WHEREAS**, on November 9, 2007, the Department informed National Grid that the VCA would terminate effective November 11, 2007 in accordance with Paragraph XII.A.2 of the VCA, however, as a responsible party, National Grid remained obligated to remediate the Former MGP Site and any portion thereof not covered by a BCP agreement; and

**WHEREAS**, contemporaneously with this BCP Agreement ("Agreement"), National Grid has executed a modification to Order on Consent Index No. A2-0552-0606 to include *inter alia* Parcel IV; and

**WHEREAS**, the current use of the Site is commercial and manufacturing/industrial purposes or is vacant; and Parcels I, II and III are zoned for industrial and manufacturing uses and Parcels I and II are also designated in the New York City Zoning Resolution as "Public Place", a classification that these parcels are to be used for a public purpose; and

**WHEREAS**, the future use of the Site is mixed-use residential and commercial development and community facilities as described in the BCP Application; and

**WHEREAS**, an opportunity for public comment on Applicant's request to participate in the Brownfield Cleanup Program was provided and the Department duly considered all comments received; and

**WHEREAS**, upon consideration of the factors enumerated in ECL 27-1407(8) and (9), the Department made a determination, based upon the information contained in the application and the certifications made by the Applicants, as well as any public comment received, that National Grid is eligible to participate in the Brownfield Cleanup Program as a Participant as defined in ECL 27-1405(1)(a); and the City of New York, Vichar Inc., and Harvic International Ltd. are each eligible to participate in the Brownfield Cleanup Program as a Volunteer as defined in ECL 27-1405(1)(b);

**NOW, THEREFORE**, IN CONSIDERATION OF AND IN EXCHANGE FOR THE MUTUAL COVENANTS AND PROMISES, THE PARTIES AGREE TO THE FOLLOWING:

I. Citizen Participation Plan

Within twenty (20) Days after the effective date of this Agreement, Applicants shall submit for review and approval a written citizen participation plan prepared in accordance with the requirements of ECL 27-1417 and 6 NYCRR 375-1.10 and 375-3.10. Upon approval, the Citizen Participation Plan shall be deemed to be incorporated into and made a part of this Agreement.

II. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

The work plans ("Work Plan" or "Work Plans") under this Agreement have been, or shall be, prepared and implemented in accordance with the requirements of ECL Article 27, Title 14, 6 NYCRR 375-1.6(a), 375-3.6, and 375-6, and all applicable laws, rules, regulations, and guidance documents.

The Work Plans shall be captioned as follows:

1. "Remedial Investigation Work Plan" if the Work Plan provides for the investigation of the nature and extent of contamination within the boundaries of the Site and emanating from such Site;
2. "Remedial Work Plan" if the Work Plan provides for the development and implementation of a Remedial Program for contamination within the boundaries of the Site and contamination that has emanated from such Site;
3. "IRM Work Plan" if the Work Plan provides for an interim remedial measure; or
4. "Site Management Plan" if the Work Plan provides for the identification and implementation of institutional and/or engineering controls as well as any necessary monitoring and/or operation and maintenance of the remedy.

B. Submission/Implementation of Work Plans

1. The first Work Plan to be implemented by the Applicants under this Agreement is the RD Work Plan for OU-1 approved by the Department on August 28, 2007. The Applicants can submit such other and additional work plans as they deem appropriate.

2. Any proposed Work Plan shall be submitted for the Department's review and approval and shall include, at a minimum, a chronological description of the anticipated activities, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan. The Department shall use best efforts in accordance with 6 NYCRR 375-3.6(b) to approve, modify, or reject a proposed Work Plan within forty-five (45) Days from its receipt or within fifteen (15) Days from the close of the comment period, if applicable, whichever is later.

i) Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be deemed to be incorporated into and made a part of this Agreement and shall be implemented in accordance with the schedule contained therein.

ii) If the Department requires modification of a Work Plan, the reason for such modification shall be provided in writing and the provisions of 6 NYCRR 375-1.6(d)(3) shall apply.

iii) If the Department disapproves a Work Plan, the reason for such disapproval shall be provided in writing and the provisions of 6 NYCRR 375-1.6(d)(4) shall apply.

3. A Site Management Plan, if necessary, shall be submitted in accordance with the schedule set forth in the IRM Work Plan or Remedial Work Plan.

4. During all field activities conducted under a Department-approved Work Plan, Applicants shall have on-Site a representative who is qualified to supervise the activities undertaken in accordance with the provisions of 6 NYCRR 375-1.6(a)(3).

#### C. Submission of Final Reports

1. In accordance with the schedule contained in an approved Work Plan, Applicants shall submit a Final Report for an Investigation Work Plan prepared in accordance with ECL 27-1411(1) and 6 NYCRR 375-1.6. If such Final Report concludes that no remediation is necessary, and the Site does not meet the requirements for Track 1, Applicants shall submit an Alternatives Analysis prepared in accordance with ECL 27-1413 and 6 NYCRR 375-3.8(f) that supports such determination.

2. In accordance with the schedule contained in an approved Work Plan, Applicants shall submit a Final Engineering Report certifying that remediation of the Site has been performed in accordance with the requirements of ECL 27-1419(1) and (2) and 6 NYCRR 375-1.6(b) and (c). The Department shall review such Report, the submittals made pursuant to this Agreement, and any other relevant information regarding the Site and make a determination as to whether the goals of the remedial program have been or will be achieved in accordance with established timeframes; if so, a written Certificate of Completion will be issued in accordance with ECL 27-1419, 6 NYCRR 375-1.9 and 6 NYCRR 375-3.9.

3. Within sixty (60) Days of the Department's approval of a Final Report, Applicants shall submit such additional Work Plans as it proposes to implement. Failure to submit any additional Work Plans within such period shall, unless other Work Plans are under review by the Department or being implemented by Applicants, result in the termination of this Agreement pursuant to Paragraph XIII.

#### D. Review of Submittals other than Work Plans

1. The Department shall timely notify Applicants in writing of its approval or disapproval of each submittal other than a Work Plan. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

2. If the Department disapproves a submittal covered by this Subparagraph, it shall specify the reason for its disapproval and may request Applicants to modify or expand the submittal. Within fifteen (15) Days after receiving written notice that Applicants' submittal has been disapproved, Applicants shall elect in writing to either (i) modify or expand it within thirty (30) Days of receipt of the written notice of disapproval; (ii) complete any other Department-approved Work Plan(s); (iii) invoke dispute resolution pursuant to Paragraph XIV; or (iv) terminate this Agreement pursuant to Paragraph XIII. If Applicants submit a revised submittal

and it is disapproved, the Department and Applicants may pursue whatever remedies may be available under this Agreement or under law.

E. Department's Determination of Need for Remediation

The Department shall determine upon its approval of each Final Report dealing with the investigation of the Site whether remediation, or additional remediation as the case may be, is needed for protection of public health and the environment.

1. If the Department makes a preliminary determination that remediation, or additional remediation, is not needed for protection of public health and the environment, the Department shall notify the public of such determination and seek public comment in accordance with ECL 27-1417(3)(f). The Department shall provide timely notification to the Applicants of its final determination following the close of the public comment period.

2. If the Department determines that additional remediation is not needed and such determination is based upon use restrictions, Applicants shall cause to be recorded an Environmental Easement in accordance with 6 NYCRR 375-1.8(h).

3. If the Department determines that remediation or additional remediation is needed for OU-1, Applicants may elect to modify the approved Remedial Work Plan upon due consideration of the factors set forth in ECL 27-1415(3) and 6 NYCRR 375-1.8(f). A proposed modified Remedial Work Plan addressing the Site's remediation will be noticed for public comment in accordance with ECL 27-1417(3)(f) and the Citizen Participation Plan developed pursuant to this Agreement. If the Department determines following the close of the public comment period that the proposed modifications to the approved Remedial Work Plan are needed, Applicants agree to negotiate appropriate modifications to the approved Remedial Work Plan. If Applicants elect not to develop a modified Work Plan under this Subparagraph or if either party concludes that a mutually acceptable Work Plan under this Subparagraph cannot be negotiated, then this Agreement shall terminate in accordance with Subparagraph XIII.

F. Institutional/Engineering Control Certification

In the event that the remedy for the Site, if any, or any Work Plan for the Site, requires institutional or engineering controls, Applicants shall submit a written certification in accordance with 6 NYCRR 375-1.8(h)(3) and 375-3.8(h)(2).

III. Enforcement

This Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. Applicants shall not suffer any penalty or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement as a result of a Force Majeure Event as described at 6 NYCRR 375-1.5(b)(4) provided Applicants comply with the requirements set forth therein.

IV. Entry upon Site

A. Applicants hereby agree to provide access to the Site and to all relevant information regarding activities at the Site in accordance with the provisions of ECL 27-1431.

B. The Department shall have the right to periodically inspect the Site to ensure that the use of the property complies with the terms and conditions of this Agreement.

V. Payment of State Costs

A. Within forty-five (45) Days after the effective date of this Agreement, Applicants shall pay to the Department the sum of \$8,247.67, which shall represent reimbursement for past State Costs incurred prior to the effective date of this Agreement, as shown on Exhibit "B". Applicants acknowledge that all past State Costs are not itemized on the cost summary and that additional charges may be billed at a later date for State Costs incurred prior to the effective date of this Agreement.

B. Within forty-five (45) Days after receipt of an itemized invoice from the Department, Applicants shall pay to the Department a sum of money which shall represent reimbursement for State Costs as provided by 6 NYCRR 375-1.5 (b)(3)(i).

C. Personal service costs shall be documented as provided by 6 NYCRR 375-1.5(b)(3)(ii). The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law

D. Invoices shall be sent to Applicants at the following address:

David C. Lodmore  
Vice President Environmental Services  
National Grid USA  
25 Research Drive  
Westborough, MA 01582

E. Each such payment shall be made payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, New York 12233-7012

F. Each party shall provide written notification to the other within ninety (90) Days of any change in the foregoing addresses.

G. If Applicants object to any invoiced costs under this Agreement, the provisions of 6 NYCRR 375-1.5 (b)(3)(v) and (vi) shall apply.

VI. Liability Limitation

Subsequent to the issuance of a Certificate of Completion pursuant to this Agreement, Applicants shall be entitled to the Liability Limitation set forth at ECL § 27-1421, subject to the terms and conditions stated therein and to the provisions of 6 NYCRR 375-1.9 and 375-3.9.

VII. Reservation of Rights

A. Except as provided in Subparagraph VII.B, Applicants reserve all rights and defenses under applicable law to contest, defend against, dispute, or disprove any action, proceeding, allegation, assertion, determination, or order of the Department, including any

assertion of remedial liability by the Department against Applicants, and further reserves all rights including the rights to notice, to be heard, to appeal, and to any other due process respecting any action or proceeding by the Department, including the enforcement of this Agreement. The existence of this Agreement or Applicants' compliance with it shall not be construed as an admission of any liability, fault, wrongdoing, or violation of law by Applicants, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

B. Notwithstanding the foregoing, Applicants hereby waive any right they may have to make a claim pursuant to Article 12 of the Navigation Law with respect to the Site and releases the State and the New York Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever with respect to the Site that Applicants may have as a result of Applicants' entering into or fulfilling the terms of this Agreement.

#### VIII. Indemnification

Applicants shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless from any claim, suit, action, and cost of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Applicants prior to the Termination Date except for those claims, suits, actions, and costs arising from the State's gross negligence or willful or intentional misconduct by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Agreement. The Department shall provide Applicants with written notice no less than thirty (30) Days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

#### IX. Change of Use

Applicants shall notify the Department at least sixty (60) Days in advance of any change of use, as defined in ECL § 27-1425, which is proposed for the Site, in accordance with the provisions of 6 NYCRR 375-1.11(d). In the event the Department determines that the proposed change of use is prohibited, the Department shall notify Applicants of such determination within forty-five (45) Days of receipt of such notice.

#### X. Environmental Easement

A. Within thirty (30) Days after the Department's approval of a Remedial Work Plan which relies upon one or more institutional and/or engineering controls, or within thirty (30) Days after the Department's determination pursuant to Subparagraph II.E.2 that additional remediation is not needed based upon use restrictions, Applicants shall submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36 and 6 NYCRR 375-1.8(h)(2). Applicants shall cause such instrument to be recorded with the recording officer for the county in which the Site is located within thirty (30) Days after the Department's approval of such instrument. Applicants shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy within thirty (30) Days of such recording (or such longer period of time as may be required to obtain a certified copy provided Applicants advise the Department of the status of its efforts to obtain same within such thirty (30) Day period), which shall be deemed to be incorporated into this Agreement.

B. Applicants or the owner of the Site may petition the Department to modify or extinguish the Environmental Easement filed pursuant to this Agreement at such time as it can certify that the Site is protective of human health and the environment without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer or other expert approved by the Department. The Department will not unreasonably withhold its consent.

#### XI. Progress Reports

Applicants shall submit a written progress report of its actions under this Agreement to the parties identified in Subparagraph XII.A.1 by the 10<sup>th</sup> day of each month commencing with the month subsequent to the effective date of this Agreement and ending with the Termination Date, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions relative to the Site during the previous reporting period and those anticipated for the next reporting period; all approved activity modifications (changes of work scope and/or schedule); all results of sampling and tests and all other data received or generated by or on behalf of Applicants in connection with this Site, whether under this Agreement or otherwise, in the previous reporting period, including quality assurance/quality control information; information regarding percentage of completion; unresolved delays encountered or anticipated that may affect the future schedule and efforts made to mitigate such delays; and information regarding activities undertaken in support of the Citizen Participation Plan during the previous reporting period and those anticipated for the next reporting period.

#### XII. Communications

A. All written communications required by this Agreement shall be transmitted by United States Postal Service, by private courier service, by hand delivery, or by electronic mail.

1. Communication from Applicants shall be sent to:

Robert Schick  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, New York 12233

Note: three hard copies (one unbound) of work plans are required, as well as one electronic copy.

Gary Litwin  
Bureau of Environmental Exposure Investigation  
New York State Department of Health  
Flanigan Square  
547 River Street  
Troy, New York 12180-2216

Note: two copies of work plans are required.



Larry S. Eckhaus, Senior Attorney  
Office of General counsel  
625 Broadway, 14<sup>th</sup> Floor  
Albany, N.Y. 12233-1500  
(Correspondence only.)

2. Communication from the Department to Applicants shall be sent to:

David C. Lodemore  
Vice President Environmental Services  
National Grid USA  
25 Research Drive  
Westborough, MA 01582

Robert Kulikowski  
253 Broadway, 14<sup>th</sup> Floor  
New York, NY 10007

Henry Abadi  
Vichar, Inc./Harvic International, Ltd.  
10 West 33<sup>rd</sup> Street  
New York, NY 10003

B. The Department and Applicants reserve the right to designate additional or different addressees for communication on written notice to the other.

C. Each party shall notify the other within ninety (90) Days after any change in the addresses listed in this Paragraph XII or in Paragraph V.

XIII. Termination of Agreement

Applicants or the Department may terminate this Agreement consistent with the provisions of 6 NYCRR 375-3.5(b), (c), and (d) by providing written notification to the parties listed in Subparagraph XII.A.

XIV. Dispute Resolution

In the event disputes arise under this Agreement, Applicants may, within fifteen (15) Days after Applicants knew or should have known of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR 375-1.5(b)(2).

XV. Miscellaneous

A. If the information provided and any certifications made by Applicants are not materially accurate and complete, this Agreement, except with respect to Applicants' obligations pursuant to Paragraphs V, VII.B, and VIII, shall be null and void *ab initio* fifteen (15) Days after the Department's notification of such inaccuracy or incompleteness or fifteen (15) Days after issuance of a final decision resolving a dispute pursuant to Paragraph XIV, whichever is later, unless Applicants submit information within that fifteen (15) Day time period indicating that the information provided and the certifications made were materially accurate and complete. In the

event this Agreement is rendered null and void, any Certificate of Completion and/or Liability Limitation that may have been issued or may have arisen under this Agreement shall also be null and void *ab initio*, and the Department shall reserve all rights that it may have under law.

B. By entering into this Agreement, Applicants agree to comply with and be bound by the provisions of 6 NYCRR Subparts 375-1, 375-3 and 375-6; the provisions of such Subparts that are referenced herein are referenced for clarity and convenience only and the failure of this Agreement to specifically reference any particular regulatory provision is not intended to imply that such provision is not applicable to activities performed under this Agreement.

C. The Department may exempt Applicants from the requirement to obtain any state or local permit or other authorization for any activity conducted pursuant to this Agreement in accordance with 6 NYCRR 375-1.12(b), (c), and (d).

D. 1. Applicant shall use "best efforts" to obtain all Site access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Applicants' obligations under this Agreement, including all Department-approved Work Plans and the schedules contained therein. If, despite Applicants' best efforts, any access, permits, easements, approvals, institutional controls, or authorizations cannot be obtained, Applicant shall promptly notify the Department and include a summary of the steps taken. The Department may, as it deems appropriate and within its authority, assist Applicants in obtaining same.

2. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Applicants to modify the Work Plan pursuant to 6 NYCRR 375-1.6(d)(3) to reflect changes necessitated by Applicants' inability to obtain such interest.

E. The paragraph headings set forth in this Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Agreement.

F. 1. The terms of this Agreement shall constitute the complete and entire agreement between the Department and Applicants concerning the implementation of the activities required by this Agreement. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Applicants of Applicants' obligation to obtain such formal approvals as may be required by this Agreement. In the event of a conflict between the terms of this Agreement and any Work Plan submitted pursuant to this Agreement, the terms of this Agreement shall control over the terms of the Work Plan(s). Applicants consent to and agree not to contest the authority and jurisdiction of the Department to enter into or enforce this Agreement.

2. i. Except as set forth herein, if Applicants desire that any provision of this Agreement be changed, Applicant shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph XII.A.1.

ii. If Applicants seek to modify an approved Work Plan, a written request shall be made to the Department's project manager, with copies to the parties listed in Subparagraph XII.A.1.

iii. Requests for a change to a time frame set forth in this Agreement shall be made in writing to the Department's project attorney and project manager; such requests shall not be unreasonably denied and a written response to such requests shall be sent to Applicants promptly.

G. 1. If there are multiple parties signing this Agreement, the term "Applicant" or "Applicants" shall be read in the plural, the obligations of each such party under this Agreement are joint and several, and the insolvency of or failure by any Applicant to implement any obligations under this Agreement shall not affect the obligations of the remaining Applicant(s) under this Agreement.

2. If any Applicant is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Agreement are joint and several and the insolvency or failure of any general partner to implement any obligations under this Agreement shall not affect the obligations of the remaining partner(s) under this Agreement.

3. Notwithstanding the foregoing Subparagraphs XV.G.1 and 2, if multiple parties sign this Agreement as Applicants but not all of the signing parties elect to implement a Work Plan, all Applicants are jointly and severally liable for each and every obligation under this Agreement through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Applicants electing to perform additional work shall be jointly and severally liable under this Agreement for the obligations and activities under such additional Work Plan(s). The Applicant(s) electing not to implement the additional Work Plan(s) shall have no obligations under this Agreement relative to the activities set forth in such Work Plan(s). Further, only those Applicants electing to implement such additional Work Plan(s) shall be eligible to receive the Liability Limitation referenced in Paragraph VI.

H. Applicants shall be entitled to receive contribution protection and/or to seek contribution to the extent authorized by ECL 27-1421(6) and 6 NYCRR 375-1.5(b)(5).

I. Applicants shall not be considered an operator of the Site solely by virtue of having executed and/or implemented this Agreement.

J. Applicants and Applicants' agents, grantees, lessees, sublessees, successors, and assigns shall be bound by this Agreement. Any change in ownership of any Applicant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Applicant's responsibilities under this Agreement.

K. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

L. Applicants' obligations under this Agreement represent payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty.

M. This Agreement may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to

have the status of an executed original and all of which shall together constitute one and the same.

N. The effective date of this Agreement is the date it is signed by the Commissioner or the Commissioner's designee.

DATED: FEB 18 2009

ALEXANDER B. GRANNIS  
COMMISSIONER  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By: 

Dale A. Desnoyers, Director  
Division of Environmental Remediation

## CONSENT BY APPLICANT

Applicant hereby consents to the issuing and entering of this Agreement, waives Applicant's right to a hearing herein as provided by law, and agrees to be bound by this Agreement.

BROOKLYN UNION GAS COMPANY  
(aka KeySpan Corporation/National Grid USA)

By: David C. Clark

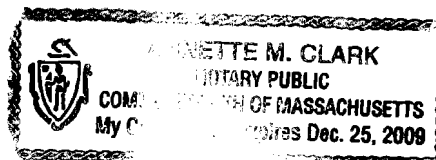
Title: VP ENVIRONMENTAL

Date: January 29, 2009

Mass  
STATE OF NEW YORK )  
                                  )ss:  
COUNTY OF Worcester

On the 29 day of Jan, in the year 2009, before me, the undersigned, personally appeared David C. Clark 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/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Annette Clark  
Signature and Office of individual  
taking acknowledgment



CONSENT BY APPLICANT

Applicant hereby consents to the issuing and entering of this Agreement, waives Applicant's right to a hearing herein as provided by law, and agrees to be bound by this Agreement.

THE CITY OF NEW YORK

APPROVED AS TO FORM

Steve Stein  
ACTING CORPORATION COUNSEL

FEB 11 2009

By: [Signature]

Title: ASSISTANT COMMISSIONER

Date: 2/12/09

STATE OF NEW YORK )  
COUNTY OF ) ss:

On the 12<sup>th</sup> day of February, in the year 2009, before me, the undersigned, personally appeared Shamir Chanda, 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/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]  
Signature and Office of individual  
taking acknowledgment

ELLIS M. BAUMEL  
NOTARY PUBLIC, State of New York  
No. 41-4773887  
Qualified in Queens County  
Commission Expires August 31, 2010

## CONSENT BY APPLICANT

Applicant hereby consents to the issuing and entering of this Agreement, waives Applicant's right to a hearing herein as provided by law, and agrees to be bound by this Agreement.

VICHAR, INC.


By: Henry A. Asadi

Title: PRESIDENT

Date: JANUARY 28 - 2009

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

On the 28 day of January, in the year 2009, before me, the undersigned, personally appeared Henry Asadi, 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/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Signature and Office of individual  
taking acknowledgment

ATHEA GORDON-BROWN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01GO6175829  
CERTIFIED IN NEW YORK COUNTY  
COMMISSION EXPIRES 10/15 2011

## CONSENT BY APPLICANT

Applicant hereby consents to the issuing and entering of this Agreement, waives Applicant's right to a hearing herein as provided by law, and agrees to be bound by this Agreement.

HARVIC INTERNATIONAL LTD.

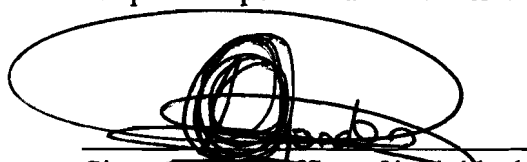
By: Henry A. Alade

Title: PRESIDENT

Date: JANUARY 28-2009

STATE OF NEW YORK     )  
  )ss:  
COUNTY OF new York

On the 28 day of January, in the year 2009, before me, the undersigned, personally appeared Henry Alade, 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/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

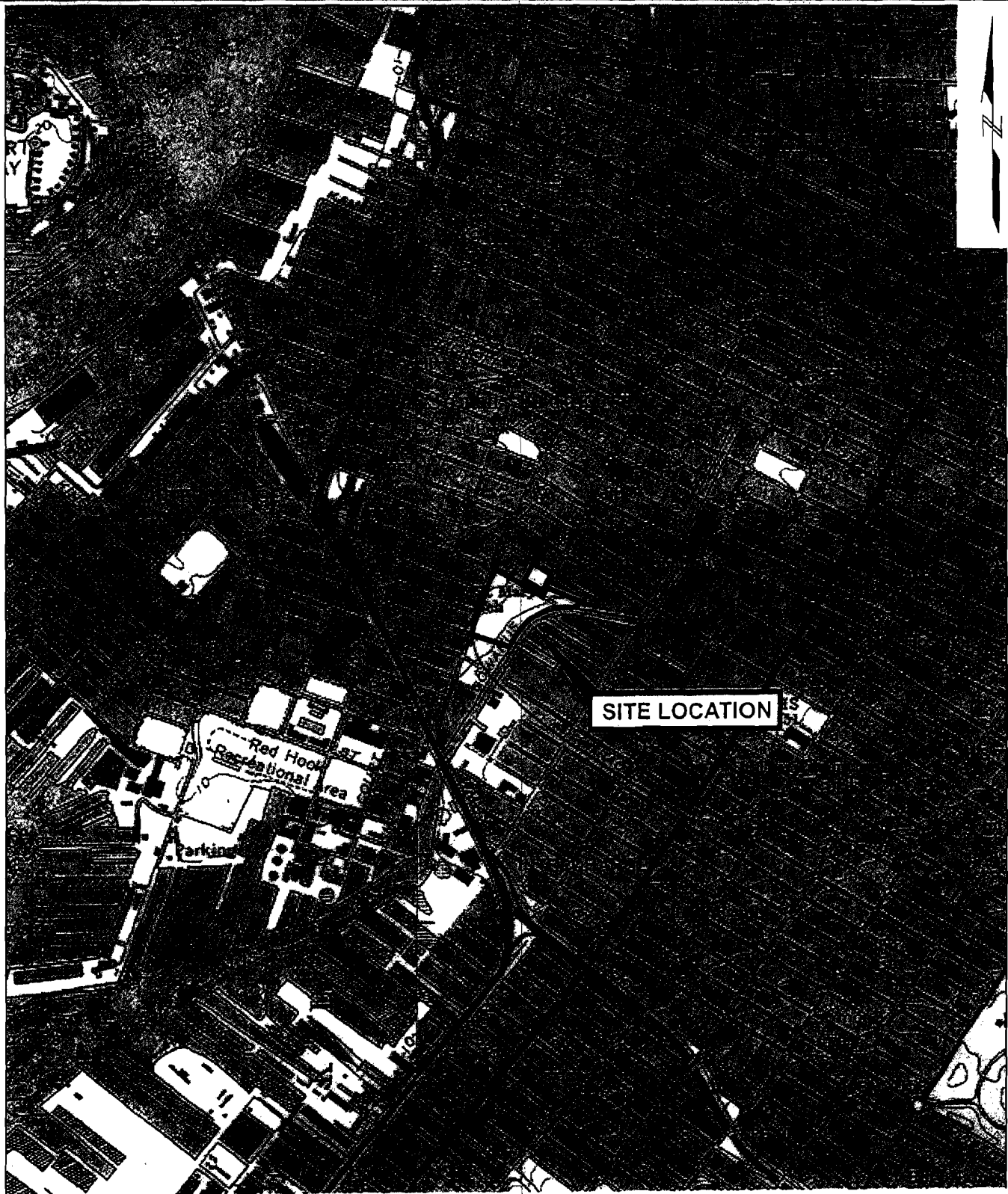
  
Signature and Office of individual  
taking acknowledgment

ATHEA GORDON-BROWN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01GO6175829  
CERTIFIED IN NEW YORK COUNTY  
COMMISSION EXPIRES 10/15 2011



**EXHIBIT "A"**

**Map**



SOURCE: Map created with TOPO! © 2001 National Geographic  
(www.nationalgeographic.com/topo)

0 2000 4000  
SCALE, FEET

REMEDIAL DESIGN WORK PLAN  
CARROLL GARDENS/PUBLIC PLACE  
BOROUGH OF BROOKLYN, NEW YORK

KEYSPAN CORPORATION

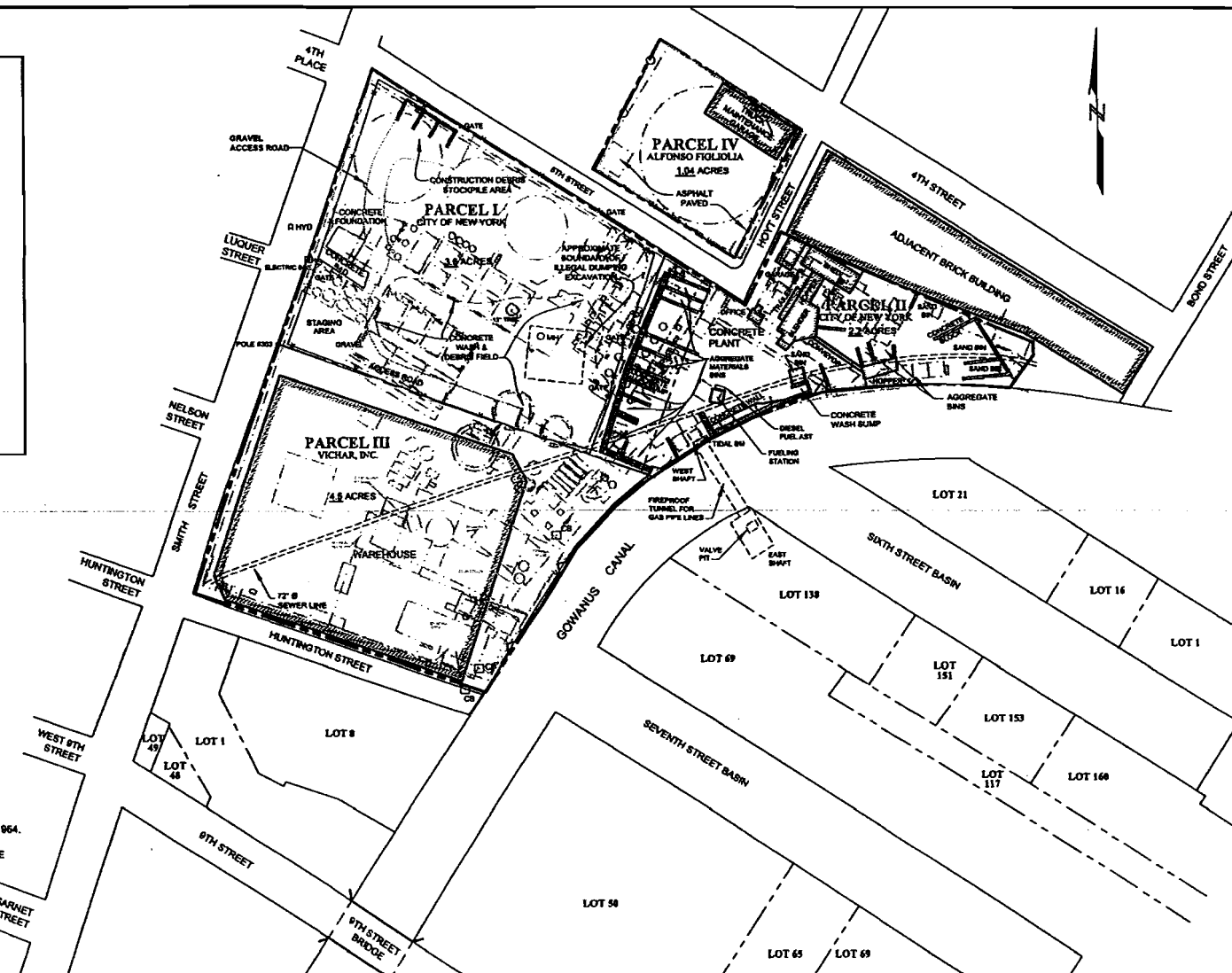
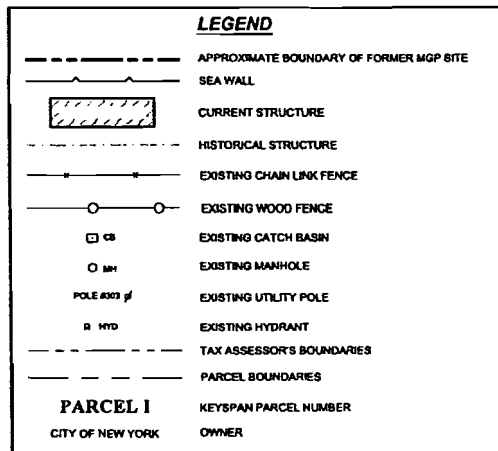


Project 061140-19-2801

SITE LOCATION MAP

September 2007

Figure 1

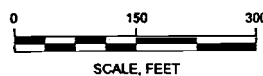


**SOURCES:**

1. CITIZENS WORKS SURVEY, JOHNSON AND HIGGINS, N.Y., FEBRUARY 4, 1928.
2. SANBORN MAPS (1898 THROUGH 1996)
3. TECHNICAL SCOPE OF WORK, DMRKA AND BARTILUCCI, 2000.
4. CITIZENS WORKS PROPERTY PLAN, OCTOBER 1837, CORRECTED TO MAY 16, 1964.
5. CARROLL GARDENS/PUBLIC PLACE, BOROUGH OF BROOKLYN, NEW YORK SITE PLAN, METCALF & EDDY, DECEMBER 2004.
6. SURVEY OF SITE BOUNDARIES, EXISTING CONDITIONS, AND SAMPLE LOCATIONS CONDUCTED BY GEI CONSULTANTS, INC. ON 12/3-4/02, 3/4/03, 6/4-8/03, 7/10/03, 2/08/05, AND 4/04/05. SURVEYED BY NEW YORK STATE LICENSED LAND SURVEYOR NO. 050148. HORIZONTAL DATUM: NEW YORK STATE PLANE COORDINATE SYSTEM (EAST ZONE, NORTH AMERICAN DATUM (NAD) 83). VERTICAL DATUM: NORTH AMERICAN VERTICAL DATUM (NAVD) 88.
7. NEW YORK CITY OPEN ACCESSIBLE SPACE INFORMATION SYSTEM <http://www.oas1nyc.net>, ACCESSED AUGUST 2004.

**NOTE:**

PARCELS I-IV OCCUPY APPROXIMATELY 11.5 ACRES.



CARROLL GARDENS/PUBLIC PLACE  
BOROUGH OF BROOKLYN, NEW YORK

KEYSPAN CORPORATION



Project 081140-2-1103

**SITE MAP AND PARCEL  
BOUNDARIES**

March 2007

Figure 1

**EXHIBIT "B"**

**Cost Summary**

## EXHIBIT I

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
 DIVISION OF ENVIRONMENTAL REMEDIATION  
 BUREAU OF PROGRAM MANAGEMENT

## COST SUMMARY

SITE NAME: CARROLL GARDENS  
 SITE NO.: C224012  
 RELATED SITE NO.: 224012, V00360-2

<u>COST CATEGORY</u>	<u>AMOUNTS</u>	<u>EXHIBIT NO.</u>
DIRECT PERSONAL SERVICES	\$4,239.25	
FRINGE	\$1,966.61	
INDIRECT	<u>\$2,041.81</u>	
<i>PERSONAL SERVICES SUBTOTAL</i>	<i>\$8,247.67</i>	II-A & II-B
CONTRACTUAL	\$0.00	
TRAVEL	\$0.00	
OTHER NPS	<u>\$0.00</u>	
<i>NON-PERSONAL SERVICES SUBTOTAL</i>	<i>\$0.00</i>	
DEC TOTAL	\$8,247.67	
DOH PS AND NPS SUBTOTAL	N/A	
MINUS DOH CREDIT FROM PREVIOUS BILL (IF APPLICABLE)	N/A	
DOH TOTAL	\$0.00	
MINUS PREVIOUSLY REIMBURSED AMOUNT (IF APPLICABLE)	<u>N/A</u>	
<i>DEC &amp; DOH TOTAL</i>	<i>\$8,247.67</i>	
COST CAP (IF APPLICABLE)	<u>N/A</u>	
<b>GRAND TOTAL</b>	<b>\$8,247.67</b>	

## EXHIBIT II-A

## Cost Query - Ad Hoc

Criteria: Timecard Begin Date &gt;= 3/24/2005 And Timecard End Date &lt;= 7/9/2008 And (Task Code = N592 Or Task Code = N593)

Leave Charges: Included

Cost Indicator: Direct

Rate Type: Non-Federal

[Print](#)

Pay Period	Pay Period Dates	Check Date	Cost Center	Variable	Budget Year	Employee	Title Description	Work Location Code	Work Location Description	Billable Hourly Rate	State Fringe	State Indirect	HOURS	COST
Task: N592 - C224012 CITIZENS MGP - CAROL GARDENS														
2008/1	04/03/2008 - 04/16/2008	04/30/2008	430140	L6	2008	Eckhaus, Larry	SENR ATTORNEY	615127	Central Office - 625 Broadway	41.54	33.11	33.74	1.75	72.70
2008/2	04/17/2008 - 04/30/2008	05/14/2008	430140	L6	2008	Eckhaus, Larry	SENR ATTORNEY	615127	Central Office - 625 Broadway	41.54	4.73	4.82	0.25	10.39
2008/3	05/01/2008 - 05/14/2008	05/28/2008	430140	L6	2008	Eckhaus, Larry	SENR ATTORNEY	615127	Central Office - 625 Broadway	41.54	4.73	4.82	0.25	10.39
2008/4	05/15/2008 - 05/28/2008	06/11/2008	430140	L6	2008	Eckhaus, Larry	SENR ATTORNEY	615127	Central Office - 625 Broadway	41.54	4.73	4.82	0.25	10.39
2008/1	04/03/2008 - 04/16/2008	04/30/2008	685135	L5	2008	Moloughney, Debra	ENVIRONMENTAL PROGRAM SPECIALIST 1	615127	Central Office - 625 Broadway	29.29	280.17	285.50	21.00	615.09
Task N592 Sub Total:											327.47	333.70	23.50	718.96
Report Total:											327.47	333.70	23.50	718.96

Jump to Employee: All | [A](#) | [B](#) | [C](#) | [D](#) | [E](#) | [F](#) | [G](#) | [H](#) | [I](#) | [J](#) | [K](#) | [L](#) | [M](#) | [N](#) | [O](#) | [P](#) | [Q](#) | [R](#) | [S](#) | [T](#) | [U](#) | [V](#) | [W](#) | [X](#) | [Y](#) | [Z](#)[Close](#)

**Cost Query - Ad Hoc**

Criteria: Timecard Begin Date &gt;= 11/15/2007 And Timecard End Date &lt;= 7/9/2008 And (Task Code = D386 Or Task Code = N021)

Leave Charges: Included

Cost Indicator: Direct

Rate Type: Non-Federal

[Print](#)

Pay Period	Pay Period Dates	Check Date	Cost Center	Variable	Budget Year	Employee	Title Description	Work Location Code	Work Location Description	Billable Hourly Rate	State Fringe	State Indirect	HOURS	COST
<b>Task: D386 - V00360-2 FORMER CITIZENS GAS WORLD MGP SITE</b>														
2007/24	02/21/2008 - 03/05/2008	03/19/2008	430221	L6	2007	Cross, Gardiner	ENGRG GEOLOGIST 3	615127	Central Office - 625 Broadway	50.39	35.50	37.30	1.50	75.59
2008/2	04/17/2008 - 04/30/2008	05/14/2008	430221	L6	2008	Cross, Gardiner	ENGRG GEOLOGIST 3	615127	Central Office - 625 Broadway	52.50	23.91	24.37	1.00	52.50
2008/6	06/12/2008 - 06/25/2008	07/09/2008	430221	L6	2008	Cross, Gardiner	ENGRG GEOLOGIST 3	615127	Central Office - 625 Broadway	56.05	25.53	26.02	1.00	56.05
2007/17	11/15/2007 - 11/28/2007	12/12/2007	430116	L6	2007	Eckhaus, Larry	SENR ATTORNEY	615127	Central Office - 625 Broadway	42.03	9.87	10.37	0.50	21.02
2007/19	12/13/2007 - 12/26/2007	01/09/2008	430116	L6	2007	Eckhaus, Larry	SENR ATTORNEY	615127	Central Office - 625 Broadway	39.81	4.67	4.91	0.25	9.95
2007/26	03/20/2008 - 04/02/2008	04/16/2008	430336	L6	2008	Sellinger, Stephen	SANITARY CONST INSP 2	318351	R3 - White Plains Sub-Office	26.13	79.76	83.82	6.50	169.85
2007/17	11/15/2007 - 11/28/2007	12/12/2007	430221	L6	2007	Willems, Henry	ENGRG GEOLOGIST 1	615127	Central Office - 625 Broadway	38.30	161.87	170.11	9.00	344.70
2007/18	11/29/2007 - 12/12/2007	12/26/2007	430221	L6	2007	Willems, Henry	ENGRG GEOLOGIST 1	615127	Central Office - 625 Broadway	39.58	111.52	117.19	6.00	237.48
<b>Task D386 Sub Total:</b>											452.63	474.09	25.75	967.14
<b>Task: N021 - 224012 CARROLL GARDENS</b>														
2007/17	11/15/2007 - 11/28/2007	12/12/2007	430221	L6	2007	Cross, Gardiner	ENGRG GEOLOGIST 3	615127	Central Office - 625 Broadway	51.82	24.33	25.57	1.00	51.82
2007/19	12/13/2007 - 12/26/2007	01/09/2008	430221	L6	2007	Cross, Gardiner	ENGRG GEOLOGIST 3	615127	Central Office - 625 Broadway	53.50	50.25	52.80	2.00	107.00
2007/21	01/10/2008 - 01/23/2008	02/06/2008	430221	L6	2007	Cross, Gardiner	ENGRG GEOLOGIST 3	615127	Central Office - 625 Broadway	54.93	77.39	81.32	3.00	164.79
2007/23	02/07/2008 - 02/20/2008	03/05/2008	430221	L6	2007	Cross, Gardiner	ENGRG GEOLOGIST 3	615127	Central Office - 625 Broadway	50.55	47.48	49.89	2.00	101.10
2007/24	02/21/2008 - 03/05/2008	03/19/2008	430221	L6	2007	Cross, Gardiner	ENGRG GEOLOGIST 3	615127	Central Office - 625 Broadway	50.39	47.33	49.74	2.00	100.78
2007/25	03/06/2008 - 03/19/2008	04/02/2008	430221	L6	2008	Cross, Gardiner	ENGRG GEOLOGIST 3	615127	Central Office - 625 Broadway	52.31	73.69	77.44	3.00	156.93
2007/26	03/20/2008 - 04/02/2008	04/16/2008	430221	L6	2008	Cross, Gardiner	ENGRG GEOLOGIST 3	615127	Central Office - 625 Broadway	54.74	430.58	452.48	16.75	916.90
2008/1	04/03/2008 - 04/16/2008	04/30/2008	430221	L6	2008	Cross, Gardiner	ENGRG GEOLOGIST 3	615127	Central Office - 625 Broadway	55.65	133.08	135.61	5.25	292.16
2008/3	05/01/2008 - 05/14/2008	05/28/2008	430221	L6	2008	Cross, Gardiner	ENGRG GEOLOGIST 3	615127	Central Office - 625 Broadway	49.84	113.51	115.67	5.00	249.20
2008/4	05/15/2008 - 05/28/2008	06/11/2008	430221	L6	2008	Cross, Gardiner	ENGRG GEOLOGIST 3	615127	Central Office - 625 Broadway	55.28	25.18	25.66	1.00	55.28
2008/5	05/29/2008 - 06/11/2008	06/25/2008	430221	L6	2008	Cross, Gardiner	ENGRG GEOLOGIST 3	615127	Central Office - 625 Broadway	49.69	45.27	46.13	2.00	99.38
2008/6	06/12/2008 - 06/25/2008	07/09/2008	430221	L6	2008	Cross, Gardiner	ENGRG GEOLOGIST 3	615127	Central Office - 625 Broadway	56.05	31.91	32.52	1.25	70.06
2008/7	06/26/2008 - 07/09/2008	07/23/2008	430221	L6	2008	Cross, Gardiner	ENGRG GEOLOGIST 3	615127	Central Office - 625 Broadway	59.04	53.79	54.81	2.00	118.08
2007/26	03/20/2008 - 04/02/2008	04/16/2008	430140	L6	2008	Eckhaus, Larry	SENR ATTORNEY	615127	Central Office - 625 Broadway	39.81	32.72	34.38	1.75	69.67
<b>Task N021 Sub Total:</b>											1,186.51	1,234.02	48.00	2,553.15
<b>Report Total:</b>											1,639.14	1,708.11	73.75	3,520.29

Jump to Employee: All | [A](#) | [B](#) | [C](#) | [D](#) | [E](#) | [F](#) | [G](#) | [H](#) | [I](#) | [J](#) | [K](#) | [L](#) | [M](#) | [N](#) | [O](#) | [P](#) | [Q](#) | [R](#) | [S](#) | [T](#) | [U](#) | [V](#) | [W](#) | [X](#) | [Y](#) | [Z](#)[Close](#)