

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Office of the Director

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P: (518) 402-9706 | F: (518) 402-9020

www.dec.ny.gov

Reina Diaz & Belio Urena
152 Graham Avenue
Brooklyn, NY 11206

APR 30 2020

Elvis Cadiz (Applicant's Representative)
86-52 Woodhaven Boulevard
Woodhaven, NY 11421


RE: Site Name: Top Hat Cleaners
Site No.: C224208
Location of Site: 152 Graham Avenue, Kings County, Brooklyn, NY 11206

Dear Applicants:

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the Top Hat Cleaners Site.

If you have any further questions relating to this matter, please contact the project attorney for this site, James Simpson, Esq., NYS Department of Environmental Conservation, Office of General Counsel, 1 Hunter's Point Plaza, 47-40 21st Street, Long Island City, NY 11101-5401 or by email at james.simpson@dec.ny.gov.

Sincerely,


Michael J. Ryan, P.E.
Director
Division of Environmental Remediation

Enclosure

ec: Wendi Zheng, Project Manager
cc: James Simpson, Esq.
Jennifer Andaloro, Esq./Dale Thiel



Department of
Environmental
Conservation



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
BROWNFIELD CLEANUP PROGRAM
ECL §27-1401 *et seq.*

In the Matter of a Remedial Program for

**BROWNFIELD SITE
CLEANUP AGREEMENT
Index No. C224208-03-20**

Top Hat Cleaners

DEC Site No: C224208

Located at: 152 Graham Avenue
Kings County
Brooklyn, NY 11206

Hereinafter referred to as "Site"

by:

Reina Diaz & Belio Urena
152 Graham Avenue, Brooklyn, NY 11206

Hereinafter referred to as "Applicant"

WHEREAS, the Department of Environmental Conservation ("Department") is authorized to administer the Brownfield Cleanup Program ("BCP") set forth in Article 27, Title 14 of the Environmental Conservation Law ("ECL"); and

WHEREAS, the Applicant submitted an application received by the Department on August 13, 2019; and

WHEREAS, the Department has determined that the Site and Applicant are eligible to participate in the BCP.

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

I. Applicant Status

The Applicant, Reina Diaz & Belio Urena, is participating in the BCP as a Participant as defined in ECL 27-1405(1)(a).

In addition to the requirement to pay future state costs as set forth in Appendix "A", within forty-five (45) days after the effective date of this Agreement, Applicant shall pay to the Department the sum set forth on Exhibit "B", which shall represent reimbursement for past State Costs incurred prior to the effective date of this Agreement. See Appendix A, Paragraph V.C for payment instructions. Applicant acknowledges that all State Costs incurred prior to the effective date of this Agreement are not included on the cost summary and that additional charges may be billed at a later date.

Invoices shall be sent to Applicant at the following address:

Reina Diaz & Belio Urena
152 Graham Avenue, Brooklyn, NY 11206
aubree0114@gmail.com

Elvis Cadiz (Applicant's Representative)
86-52 Woodhaven Boulevard
Woodhaven, NY 11421
aubree0114@gmail.com

II. Tangible Property Tax Credit Status

The Site is located in a City having a population of one million or more and the Applicant has not requested a determination that the Site is eligible for tangible property tax credits. It is therefore presumed that the Site is not eligible for tangible property tax credits. In accordance with ECL § 27-1407(1-a), the Applicant may request an eligibility determination for tangible property tax credits at any time from application until the site receives a certificate of completion except for sites seeking eligibility under the underutilized category.

III. Real Property

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 0.057 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 2-3062-2
Street Number: 152 Graham Avenue, Brooklyn
Owner: Reina Diaz & Belio Urena

IV. 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 Applicant shall be sent to:

Wendi Zheng
New York State Department of Environmental Conservation
Division of Environmental Remediation
One Hunters Point Plaza
47-40 21st Street
Long Island City, NY 11101
wendi.zheng@dec.ny.gov

Note: one hard copy (unbound) of work plans and reports is required, as well as one electronic copy.

Christine Vooris (electronic copy only)
New York State Department of Health
Bureau of Environmental Exposure Investigation
Empire State Plaza
Corning Tower Room 1787
Albany, NY 12237
christine.vooris@health.ny.gov

James Simpson, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
One Hunters Point Plaza
47-40 21st Street
Long Island City, NY 11101
james.simpson@dec.ny.gov

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

Reina Diaz & Belio Urena
152 Graham Avenue
Brooklyn, NY 11206
aubree0114@gmail.com

Elvis Cadiz (Applicant's Representative)
86-52 Woodhaven Boulevard
Woodhaven, NY 11421
aubree0114@gmail.com

B. The Department and Applicant reserve the right to designate additional or different addressees for communication on written notice to the other. Additionally, the Department reserves the right to request that the Applicant provide more than one paper copy of any work plan or report.

C. Each party shall notify the other within ninety (90) days after any change in the addresses listed in this paragraph or in Paragraph III.

V. Miscellaneous

A. Applicant acknowledges that it has read, understands, and agrees to abide by all the terms set forth in Appendix A - "Standard Clauses for All New York State Brownfield Site Cleanup Agreements" which is attached to and hereby made a part of this Agreement as if set forth fully herein.

B. In the event of a conflict between the terms of this BCA (including any and all attachments thereto and amendments thereof) and the terms of Appendix A, the terms of this BCA shall control.


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

DATED:

APR 30 2020

THIS BROWNFIELD CLEANUP AGREEMENT IS
HEREBY APPROVED, Acting by and Through the
Department of Environmental Conservation as Designee
of the Commissioner,

By:



Michael J. Ryan, P.E., Director
Division of Environmental Remediation

CONSENT BY APPLICANT

Applicant hereby consents to the issuing and entering of this Agreement, and agrees to be bound by this Agreement.

Reina Diaz

By: Reina Diaz

Title: OWNER

Date: 3-11-2020

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the 11 day of MARCH in the year 2020, before me, the undersigned, personally appeared REINA DIAZ, 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.

Francisca Rodriguez
Signature and Office of individual
taking acknowledgment

FRANCISCA RODRIGUEZ
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01RO6070136
Qualified in Queens County
Commission Expires February 19, 2022

CONSENT BY APPLICANT

Applicant hereby consents to the issuing and entering of this Agreement, and agrees to be bound by this Agreement.

Belio Urena

By: Belio Urena

Title: Owner

Date: 3-11-2020

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the 11 day of MARCH in the year 2020, before me, the undersigned, personally appeared BELIO A URENA, 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.

Francisca Rodriguez
Signature and Office of individual
taking acknowledgment

FRANCISCA RODRIGUEZ
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01RO6070136
Qualified in Queens County
Commission Expires February 19, 2022

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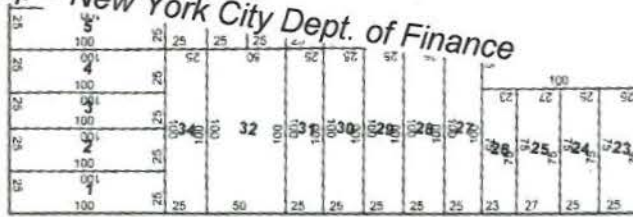
FRANCISCA RODRIGUEZ
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01RO6070136
Qualified in Queens County
Commission Expires February 19, 2022

EXHIBIT A SITE MAP

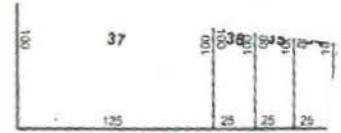
Digital Tax Map - New York City Dept. of Finance



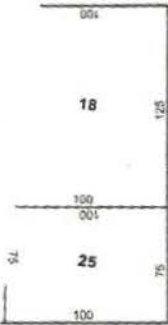
GRAHAM AV



MONTROSE AV



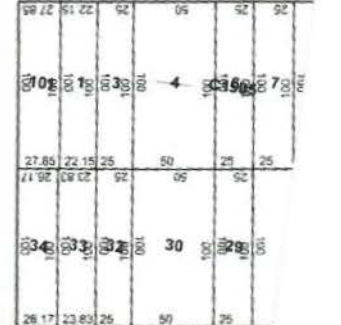
MONTROSE AV



GRAHAM AV



JOHNSON AV



JOHN

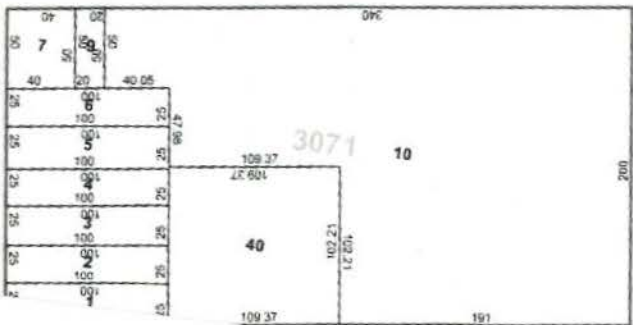
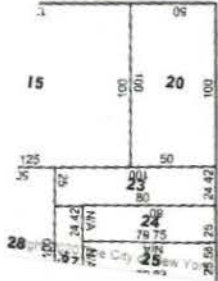


EXHIBIT B PAST COSTS

Pursuant to Paragraph I, within forty-five (45) days after the effective date of this Agreement, Applicant shall pay to the Department the sum set forth in this Exhibit. The Exhibit includes a summary of past State Costs incurred prior to the effective date of the Agreement. The payment shall be made payable to "Commissioner of NYSDEC" and shall be sent to:

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

EXHIBIT I

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

COST SUMMARY

SITE NAME: Top Hat Cleaners
SITE NO.: C224208
RELATED SITE NO.: 224208
TIME FRAME: DEC Life - 12/11/2019
TIME FRAME: DOH Life - 09/18/2019

COST CATEGORY	224208 [DEC: Life - 08/22/18] [DOH: Life - 08/22/18] <i>Prior to Consent Order Date</i>	224208 [DEC: 08/23/18 - 12/11/19] [DOH: 08/23/18 - 9/18/19] <i>From Consent Order Date</i>	C224208 [DEC: Life - 12/11/19] [DOH: Life - 09/18/19]	TOTAL AMOUNTS	EXHIBIT NO.
DIRECT PERSONAL SERVICES	\$8,970.11	\$1,039.82	\$0.00	\$10,009.93	
FRINGE	\$5,169.66	\$664.27	\$0.00	\$5,833.93	
INDIRECT	\$3,538.26	\$625.16	\$0.00	\$4,163.42	
PERSONAL SERVICES SUBTOTAL	\$17,678.03	\$2,329.25	\$0.00	\$20,007.28	II.A & II.B
CONTRACTUAL	\$96,347.61	\$0.00	\$0.00	\$96,347.61	III
TRAVEL	\$0.00	\$0.00	\$0.00	\$0.00	
OTHER NPS	\$0.00	\$0.00	\$0.00	\$0.00	
NON-PERSONAL SERVICES SUBTOTAL	\$96,347.61	\$0.00	\$0.00	\$96,347.61	
DEC TOTAL	\$114,025.64	\$2,329.25	\$0.00	\$116,354.89	
DOH TOTAL	\$1,360.71	\$854.47	\$0.00	\$2,215.18	IV.A & IV.B
MINUS PREVIOUSLY REIMBURSED					
* AMOUNT (IF APPLICABLE)	N/A	-\$2,604.43	N/A	-\$2,604.43	
DEC & DOH TOTAL	\$115,386.35	\$579.29	\$0.00	\$115,965.64	
COST CAP (IF APPLICABLE)	N/A	N/A	N/A	N/A	
GRAND TOTAL	\$115,386.35	\$579.29	\$0.00	\$115,965.64	

* This amount represents costs billed and recovered under the authority of Consent Order (CO) Index No. R2-20180226-42 (Invoice DER17101). Though the CO effective date is 8/20/18, the closest billing time frame begins 8/23/18. Please note that the CO remains active and costs associated with Site 224208 remain recoverable under the CO. Please also note that costs incurred prior to the effective date of the CO were not included in Invoice DER17107 and remain unreimbursed.

EXHIBIT II.A

WELCOME TO LATS[®] 11.0.0.321 - LEAVE & ACCRUAL TRACKING SYSTEM

Cost Query - Ad Hoc

Criteria: Timecard Begin Date 1/29/2015 And Timecard End Date 6/22/2018 And Task Code 69735

Leave Charges: Included

Cost Indicator: Direct

Rate Type: Non-Federal

[Download Excel Report](#)[Print](#)Jump To Employee: [All](#)

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 Address	Hours	Cost
Task: 69735 - 224208 TOP HAT CLEANERS														
2017/14	10/09/2017 10/16/2017	11/01/2017	430221	LB	2017	Harrington, David	PROFESSIONAL ENGINEER 2 (ENVIRONMENTAL)	615127	Central Office - 625 Broadway	63.44	140.81	114.83	3.50	229.04
2017/15	10/16/2017 11/02/2017	11/15/2017	430221	LB	2017	Harrington, David	PROFESSIONAL ENGINEER 2 (ENVIRONMENTAL)	615127	Central Office - 625 Broadway	66.45	138.82	114.86	4.00	225.80
2018/14	10/09/2018 10/16/2018	11/02/2018	430328	LB	2018	O'Connell, Jane	ENGINEER GEOLOGIST 3	43730	R2 - New York City Regional HQ	69.32	40.70	27.38	1.00	69.32
2017/20	12/28/2017 01/04/2018	01/24/2018	430328	LB	2017	O'Connell, Jane	Engineering Geologist 3	43730	R2 - New York City Regional HQ	71.93	22.11	18.30	0.50	35.97
2017/24	02/22/2018 03/07/2018	03/21/2018	430328	LB	2017	O'Connell, Jane	Engineering Geologist 3	43730	R2 - New York City Regional HQ	71.48	21.97	18.18	0.50	35.73
2018/1	04/09/2018 04/16/2018	05/01/2018	430328	LB	2018	O'Connell, Jane	Engineering Geologist 3	43730	R2 - New York City Regional HQ	71.08	22.71	21.93	0.50	35.54
2018/27	03/24/2018 04/08/2018	04/20/2018	430221	LB	2018	Futag, Bartholomew	ENVIRONL ENGINEER 3	615127	Central Office - 625 Broadway	63.49	38.80	23.22	1.00	65.49
2018/1	04/07/2018 04/20/2018	05/04/2018	430221	LB	2018	Futag, Bartholomew	ENVIRONL ENGINEER 3	615127	Central Office - 625 Broadway	67.74	79.84	53.52	2.00	135.48
2018/3	05/08/2018 05/15/2018	06/05/2018	430221	LB	2018	Futag, Bartholomew	ENVIRONL ENGINEER 3	615127	Central Office - 625 Broadway	62.93	55.42	37.23	1.50	94.40
2018/4	05/15/2018 06/02/2018	06/15/2018	430221	LB	2018	Futag, Bartholomew	ENVIRONL ENGINEER 3	615127	Central Office - 625 Broadway	67.96	10.96	13.42	0.50	33.98
2018/6	06/18/2018 06/26/2018	07/13/2018	430221	LB	2018	Futag, Bartholomew	ENVIRONL ENGINEER 3	615127	Central Office - 625 Broadway	67.96	10.96	13.42	0.50	33.98
2018/8	07/16/2018 07/23/2018	08/10/2018	430221	LB	2018	Futag, Bartholomew	ENVIRONL ENGINEER 3	615127	Central Office - 625 Broadway	67.96	10.96	13.42	0.50	33.98
2018/13	08/27/2018 10/08/2018	10/19/2018	430221	LB	2018	Futag, Bartholomew	ENVIRONL ENGINEER 3	615127	Central Office - 625 Broadway	69.32	30.52	20.54	0.75	51.90

2018/14	10/08/2018 10/15/2018	11/02/2018	430221	LB	2018	Futag, Bartholomew	ENVIRONL ENGINEER 3	615127	Central Office - 625 Broadway	67.96	40.87	33.56	1.25	84.95
2018/3	04/23/2015 05/06/2015	05/20/2015	430221	LB	2012	Rung, Benjamin	ENVIRONL ENGINEER 2	615127	Central Office - 625 Broadway	52.83	450.20	285.58	15.25	805.86
2018/4	05/07/2015 05/20/2015	06/03/2015	430221	LB	2012	Rung, Benjamin	ENVIRONL ENGINEER 2	615127	Central Office - 625 Broadway	52.83	29.52	18.73	1.00	82.83
2018/5	05/21/2015 06/03/2015	06/17/2015	430221	LB	2015	Rung, Benjamin	ENVIRONL ENGINEER 2	615127	Central Office - 625 Broadway	52.83	199.27	126.40	6.75	286.80
2018/6	06/04/2015 06/17/2015	07/01/2015	430221	LB	2015	Rung, Benjamin	ENVIRONL ENGINEER 2	615127	Central Office - 625 Broadway	52.83	428.08	271.54	14.50	786.94
2018/7	06/18/2015 07/01/2015	07/15/2015	430221	LB	2015	Rung, Benjamin	ENVIRONL ENGINEER 2	615127	Central Office - 625 Broadway	52.83	51.86	32.77	1.75	92.48
2018/8	07/02/2015 07/15/2015	07/29/2015	430221	LB	2015	Rung, Benjamin	ENVIRONL ENGINEER 2	615127	Central Office - 625 Broadway	51.79	7.24	4.59	0.25	12.05
2018/9	07/16/2015 07/29/2015	08/12/2015	430221	LB	2015	Rung, Benjamin	ENVIRONL ENGINEER 2	615127	Central Office - 625 Broadway	52.83	66.42	42.13	2.25	118.67
2018/10	07/30/2015 08/12/2015	08/26/2015	430221	LB	2015	Rung, Benjamin	ENVIRONL ENGINEER 2	615127	Central Office - 625 Broadway	52.83	95.95	60.86	3.25	171.70
2018/11	08/13/2015 08/26/2015	09/09/2015	430221	LB	2015	Rung, Benjamin	ENVIRONL ENGINEER 2	615127	Central Office - 625 Broadway	52.83	44.28	28.09	1.50	79.28
2018/12	08/27/2015 09/09/2015	09/23/2015	430221	LB	2015	Rung, Benjamin	ENVIRONL ENGINEER 2	615127	Central Office - 625 Broadway	52.83	81.18	51.50	2.75	145.28
2018/13	09/16/2015 09/29/2015	10/07/2015	430221	LB	2015	Rung, Benjamin	ENVIRONL ENGINEER 2	615127	Central Office - 625 Broadway	52.83	125.47	79.89	4.25	224.53
2018/14	09/24/2015 10/07/2015	10/21/2015	430221	LB	2015	Rung, Benjamin	ENVIRONL ENGINEER 2	615127	Central Office - 625 Broadway	54.31	136.57	86.63	4.50	244.40
2018/15	10/08/2015 10/21/2015	11/04/2015	430221	LB	2015	Rung, Benjamin	ENVIRONL ENGINEER 2	615127	Central Office - 625 Broadway	54.31	30.35	19.25	1.00	54.31
2018/16	10/22/2015 11/04/2015	11/18/2015	430221	LB	2015	Rung, Benjamin	ENVIRONL ENGINEER 2	615127	Central Office - 625 Broadway	54.31	15.18	9.53	0.50	27.18
2018/17	11/09/2015 11/18/2015	12/02/2015	430221	LB	2015	Rung, Benjamin	ENVIRONL ENGINEER 2	615127	Central Office - 625 Broadway	54.31	136.57	86.63	4.50	244.40
2018/18	11/16/2015 12/02/2015	12/16/2015	430221	LB	2015	Rung, Benjamin	ENVIRONL ENGINEER 2	615127	Central Office - 625 Broadway	54.31	45.53	28.88	1.50	81.47
2018/20	12/17/2015 12/30/2015	01/13/2016	430221	LB	2015	Rung, Benjamin	ENVIRONL ENGINEER 2	615127	Central Office - 625 Broadway	54.31	7.59	4.81	0.25	13.58
2018/22	01/14/2016 02/07/2016	02/10/2016	430221	LB	2016	Rung, Benjamin	ENVIRONL ENGINEER 2	615127	Central Office - 625 Broadway	50.76	49.84	31.49	1.75	88.83
2018/23	01/28/2016 02/10/2016	02/24/2016	430221	LB	2016	Rung, Benjamin	ENVIRONL ENGINEER 2	615127	Central Office - 625 Broadway	54.31	37.94	24.07	1.25	67.89
2018/24	02/11/2016 02/24/2016	03/09/2016	430221	LB	2016	Rung, Benjamin	ENVIRONL ENGINEER 2	615127	Central Office - 625 Broadway	48.07	20.14	12.78	0.75	36.35
2018/25	02/29/2016 03/06/2016	03/23/2016	430221	LB	2016	Rung, Benjamin	ENVIRONL ENGINEER 2	615127	Central Office - 625 Broadway	54.31	60.70	38.50	2.00	108.50
2018/26	03/16/2016 03/28/2016	04/06/2016	430221	LB	2016	Rung, Benjamin	ENVIRONL ENGINEER 2	615127	Central Office - 625 Broadway	54.31	108.22	67.38	3.50	190.09
2018/27	03/24/2016 04/06/2016	04/20/2016	430221	LB	2016	Rung, Benjamin	ENVIRONL ENGINEER 2	615127	Central Office - 625 Broadway	54.31	470.40	298.40	15.50	841.81
2018/31	04/07/2016 04/20/2016	05/04/2016	430221	LB	2016	Rung, Benjamin	ENVIRONL ENGINEER 2	615127	Central Office - 625 Broadway	55.26	340.85	229.21	10.50	580.23
2018/2	04/21/2016 05/04/2016	05/18/2016	430221	LB	2016	Rung, Benjamin	ENVIRONL ENGINEER 2	615127	Central Office - 625 Broadway	52.96	23.32	15.89	0.75	39.72

2016/3	05/05/2016 05/16/2016	06/01/2016	430221	LB	2016	Rung, Benjamin	ENVIRONMENTAL ENGINEER 2	615127	Central Office - 625 Broadway	55.26	11.66	76.40	1.50	193.41
2016/4	05/19/2016 06/01/2016	06/15/2016	430221	LB	2016	Rung, Benjamin	ENVIRONMENTAL ENGINEER 2	615127	Central Office - 625 Broadway	55.26	81.11	54.57	2.50	138.15
2016/5	06/02/2016 06/15/2016	06/29/2016	430221	LB	2016	Rung, Benjamin	ENVIRONMENTAL ENGINEER 2	615127	Central Office - 625 Broadway	52.30	46.06	30.99	1.50	78.45
2016/6	06/16/2016 06/29/2016	07/13/2016	430221	LB	2016	Rung, Benjamin	ENVIRONMENTAL ENGINEER 2	615127	Central Office - 625 Broadway	55.26	56.78	36.20	1.75	96.71
2016/7	06/30/2016 07/13/2016	07/27/2016	430221	LB	2016	Rung, Benjamin	ENVIRONMENTAL ENGINEER 2	615127	Central Office - 625 Broadway	55.26	16.22	10.91	0.50	27.63
2016/8	07/14/2016 07/27/2016	08/10/2016	430221	LB	2016	Rung, Benjamin	ENVIRONMENTAL ENGINEER 2	615127	Central Office - 625 Broadway	55.26	16.22	10.91	0.50	27.63
2016/9	07/28/2016 08/10/2016	08/24/2016	430221	LB	2016	Rung, Benjamin	ENVIRONMENTAL ENGINEER 2	615127	Central Office - 625 Broadway	56.36	8.27	5.57	0.25	14.09
2016/11	08/25/2016 09/07/2016	09/21/2016	430221	LB	2016	Rung, Benjamin	ENVIRONMENTAL ENGINEER 2	615127	Central Office - 625 Broadway	56.36	8.27	5.57	0.25	14.09
2016/12	09/08/2016 09/21/2016	10/05/2016	430221	LB	2016	Rung, Benjamin	ENVIRONMENTAL ENGINEER 2	615127	Central Office - 625 Broadway	56.36	8.27	5.57	0.25	14.09
2016/13	09/22/2016 10/05/2016	10/19/2016	430221	LB	2016	Rung, Benjamin	ENVIRONMENTAL ENGINEER 2	615127	Central Office - 625 Broadway	56.36	8.27	5.57	0.25	14.09
2016/14	10/06/2016 10/19/2016	11/02/2016	430221	LB	2016	Rung, Benjamin	ENVIRONMENTAL ENGINEER 2	615127	Central Office - 625 Broadway	57.91	76.50	51.47	2.25	130.30
2016/15	10/20/2016 11/02/2016	11/16/2016	430221	LB	2016	Rung, Benjamin	ENVIRONMENTAL ENGINEER 2	615127	Central Office - 625 Broadway	53.13	31.19	20.99	1.00	53.13
2016/16	11/03/2016 11/16/2016	11/30/2016	430221	LB	2016	Rung, Benjamin	ENVIRONMENTAL ENGINEER 2	615127	Central Office - 625 Broadway	57.91	8.50	5.72	0.25	14.48
2016/17	11/17/2016 11/30/2016	12/14/2016	430221	LB	2016	Rung, Benjamin	ENVIRONMENTAL ENGINEER 2	615127	Central Office - 625 Broadway	57.91	34.00	22.86	1.00	57.91
2016/18	12/05/2016 12/14/2016	12/28/2016	430221	LB	2016	Rung, Benjamin	ENVIRONMENTAL ENGINEER 2	615127	Central Office - 625 Broadway	57.91	34.00	22.86	1.00	57.91
2016/21	01/12/2017 01/28/2017	02/06/2017	430221	LB	2016	Rung, Benjamin	ENVIRONMENTAL ENGINEER 2	615127	Central Office - 625 Broadway	57.91	42.60	26.60	1.25	72.89
2016/22	01/28/2017 02/06/2017	02/22/2017	430221	LB	2016	Rung, Benjamin	PROFESSIONAL ENGINEER 1 (ENVIRONMENTAL)	615127	Central Office - 625 Broadway	57.91	17.00	11.44	0.50	28.96
2016/25	03/09/2017 03/22/2017	04/06/2017	430221	LB	2016	Rung, Benjamin	PROFESSIONAL ENGINEER 1 (ENVIRONMENTAL)	615127	Central Office - 625 Broadway	59.07	17.34	11.87	0.50	29.64
2017/1	04/06/2017 04/19/2017	05/03/2017	430221	LB	2016	Rung, Benjamin	PROFESSIONAL ENGINEER 1 (ENVIRONMENTAL)	615127	Central Office - 625 Broadway	60.09	16.47	15.28	0.50	30.05
2017/6	06/13/2017 06/26/2017	07/12/2017	430221	LB	2017	Rung, Benjamin	PROFESSIONAL ENGINEER 1 (ENVIRONMENTAL)	615127	Central Office - 625 Broadway	60.09	9.23	7.64	0.25	15.02
2017/7	06/29/2017 07/12/2017	07/26/2017	430221	LB	2017	Rung, Benjamin	PROFESSIONAL ENGINEER 1 (ENVIRONMENTAL)	615127	Central Office - 625 Broadway	60.09	9.23	7.64	0.25	15.02
2017/9	07/27/2017 08/09/2017	08/23/2017	430221	LB	2017	Rung, Benjamin	PROFESSIONAL ENGINEER 1 (ENVIRONMENTAL)	615127	Central Office - 625 Broadway	60.09	16.47	15.28	0.50	30.05
2017/10	08/10/2017 08/23/2017	09/06/2017	430221	LB	2017	Rung, Benjamin	PROFESSIONAL ENGINEER 1 (ENVIRONMENTAL)	615127	Central Office - 625 Broadway	60.09	9.23	7.64	0.25	15.02
2017/11	08/24/2017 09/06/2017	09/20/2017	430221	LB	2017	Rung, Benjamin	PROFESSIONAL ENGINEER 1 (ENVIRONMENTAL)	615127	Central Office - 625 Broadway	60.09	55.42	45.85	1.50	90.14
2017/13	09/21/2017 10/04/2017	10/16/2017	430221	LB	2017	Rung, Benjamin	PROFESSIONAL ENGINEER 1 (ENVIRONMENTAL)	615127	Central Office - 625 Broadway	58.91	9.06	7.49	0.25	14.73
2017/14	10/05/2017 10/16/2017	11/01/2017	430221	LB	2017	Rung, Benjamin	PROFESSIONAL ENGINEER 1 (ENVIRONMENTAL)	615127	Central Office - 625 Broadway	62.97	20.04	24.03	0.75	47.23
2017/15	10/19/2017 11/01/2017	11/15/2017	430221	LB	2017	Rung, Benjamin	PROFESSIONAL ENGINEER 1 (ENVIRONMENTAL)	615127	Central Office - 625 Broadway	62.97	96.79	60.08	2.50	157.43
2017/17	11/16/2017 12/29/2017	12/13/2017	430221	LB	2017	Rung, Benjamin	PROFESSIONAL ENGINEER 1 (ENVIRONMENTAL)	615127	Central Office - 625 Broadway	57.59	17.71	14.65	0.50	29.80
2017/20	12/28/2017 01/10/2018	01/24/2018	430221	LB	2017	Rung, Benjamin	PROFESSIONAL ENGINEER 1 (ENVIRONMENTAL)	615127	Central Office - 625 Broadway	62.97	19.36	16.02	0.50	31.49
2018/6	06/04/2018 06/17/2018	07/01/2018	430221	LB	2018	Russo, Zachary	ENVIRONMENTAL ENGINEER 1	615127	Central Office - 625 Broadway	36.43	147.59	93.62	7.25	264.12
2017/20	12/28/2017 01/10/2018	01/24/2018	223014	H1	2017	ZHENG, WENDI	ENGINEER TRAINEE	43730	R2 - New York City Regional HQ	36.58	134.94	111.64	6.00	219.48
2017/23	02/06/2018 02/21/2018	03/07/2018	223014	H1	2017	ZHENG, WENDI	ENGINEER TRAINEE	43730	R2 - New York City Regional HQ	36.58	11.24	9.30	0.50	18.29
2017/24	02/22/2018 03/07/2018	03/21/2018	223014	H1	2017	ZHENG, WENDI	ENGINEER TRAINEE	43730	R2 - New York City Regional HQ	36.58	33.73	27.31	1.50	64.87
2017/26	03/22/2018 04/04/2018	04/16/2018	223014	H1	2018	ZHENG, WENDI	ENGINEER TRAINEE	43730	R2 - New York City Regional HQ	36.58	56.22	46.52	2.50	91.45
2018/1	04/09/2018 04/16/2018	05/02/2018	223014	H1	2018	ZHENG, WENDI	ENGINEER TRAINEE	43730	R2 - New York City Regional HQ	37.23	39.47	57.42	2.50	99.06
2018/6	06/14/2018 06/27/2018	07/11/2018	223014	H1	2018	ZHENG, WENDI	ENGINEER TRAINEE	43730	R2 - New York City Regional HQ	37.23	11.90	11.49	0.50	18.62
2018/8	07/12/2018 07/25/2018	08/06/2018	223014	H1	2018	ZHENG, WENDI	ASSISTANT ENGINEER (ENVIRONMENTAL)	43730	R2 - New York City Regional HQ	41.26	30.54	36.18	1.50	61.89
Task 99735 Sub Total:										5,169.66	3,536.26	168.75	6,970.11	
Report Total:										5,169.66	3,536.26	168.75	6,970.11	

EXHIBIT II.B

WELCOME TO LATS^{net} 11.0.0.321 - LEAVE & ACCRUAL TRACKING SYSTEM

Cost Query - Ad Hoc

Criteria: Timecard Begin Date 8/23/2018 And Timecard End Date 12/11/2019 And Task Code 89735

Leave Charges: Included

Cost Indicator: Direct

Rate Type: Non-Federal

[Download Excel Report](#)[Print](#)Jump To Employee: [All](#)

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: 89735 - 224208 TOP HAT CLEANERS														
2018/22	01/24/2019 02/06/2019	02/07/2019	430328	18	2018	O'Connell, Jane	Professional Geologist 2	43730	R2 - New York City Regional HQ	73.22	23.39	22.58	0.50	38.61
2019/6	08/13/2019 08/26/2019	07/10/2019	430328	18	2019	O'Connell, Jane	Professional Geologist 2	43730	R2 - New York City Regional HQ	72.62	23.19	20.16	0.50	38.31
2019/8	07/11/2019 07/24/2019	08/07/2019	430328	18	2019	O'Connell, Jane	Professional Geologist 2	43730	R2 - New York City Regional HQ	72.62	48.38	40.33	1.00	72.62
2019/17	11/14/2019 11/27/2019	12/11/2019	430328	18	2019	O'Connell, Jane	Professional Geologist 2	43730	R2 - New York City Regional HQ	72.62	23.19	20.16	0.50	38.31
2018/12	09/04/2018 09/16/2018	10/03/2018	223014	41	2018	ZHENG, WENDI	ASSISTANT ENGINEER (ENVIRONMENTAL)	43730	R2 - New York City Regional HQ	41.26	131.81	127.26	5.00	208.30
2018/13	09/20/2018 10/03/2018	10/17/2018	223014	41	2018	ZHENG, WENDI	ASSISTANT ENGINEER (ENVIRONMENTAL)	43730	R2 - New York City Regional HQ	41.26	52.72	50.90	2.00	82.52
2018/14	10/04/2018 10/17/2018	10/31/2018	223014	41	2018	ZHENG, WENDI	ASSISTANT ENGINEER (ENVIRONMENTAL)	43730	R2 - New York City Regional HQ	38.02	37.30	36.01	1.50	88.38
2018/15	10/18/2018 10/31/2018	11/14/2018	223014	41	2018	ZHENG, WENDI	ASSISTANT ENGINEER (ENVIRONMENTAL)	43730	R2 - New York City Regional HQ	41.26	65.90	63.63	2.50	103.18
2018/17	11/15/2018 11/28/2018	12/12/2018	223014	41	2018	ZHENG, WENDI	ASSISTANT ENGINEER (ENVIRONMENTAL)	43730	R2 - New York City Regional HQ	41.26	19.18	12.73	0.50	20.63
2018/21	01/10/2019 01/23/2019	02/06/2019	223014	41	2018	ZHENG, WENDI	ASSISTANT ENGINEER (ENVIRONMENTAL)	43730	R2 - New York City Regional HQ	41.26	52.72	50.90	2.00	82.52
2018/22	01/24/2019 02/06/2019	02/20/2019	223014	41	2018	ZHENG, WENDI	ASSISTANT ENGINEER (ENVIRONMENTAL)	43730	R2 - New York City Regional HQ	41.26	92.26	89.06	3.50	144.41
2018/26	03/21/2019 04/03/2019	04/17/2019	223014	41	2019	ZHENG, WENDI	ASSISTANT ENGINEER (ENVIRONMENTAL)	43730	R2 - New York City Regional HQ	41.26	26.36	25.45	1.00	41.26
2019/8	07/11/2019 07/24/2019	08/07/2019	223014	41	2019	ZHENG, WENDI	ASSISTANT ENGINEER (ENVIRONMENTAL)	43730	R2 - New York City Regional HQ	39.80	25.29	21.93	1.00	39.60
2019/10	08/08/2019 08/21/2019	09/04/2019	223014	41	2019	ZHENG, WENDI	ASSISTANT ENGINEER (ENVIRONMENTAL)	43730	R2 - New York City Regional HQ	39.80	50.58	45.98	2.00	79.20
										Task 89735 Sub Total:				
										664.27	625.16	23.50	1,039.82	
										Report Total:				
										664.27	625.16	23.50	1,039.82	

EXHIBIT III

New York State Department of Environmental Conservation
Division of Environmental Remediation
Payments/Encumbered Amounts - Summary
(Based on Sites)

Date: 1/16/2020

Page No.: 1

Site ID: 124208 - Top Hat Cleaners

Project Type	Fund Source	Contract No.	WA No.	Contractor Name	Encumbered Amount	Payment Amount
Site Characterization	HWCA	D007623	21	PARSONS ENGINEERING OF NY, INC	\$93,018.87	\$93,018.87
Subtotal on Project Type:					\$93,018.87	\$93,018.87
Lab	HWCA	C008010	125137	TEST AMERICA LABORATORIES, INC (LAB	\$5,000.00	\$3,328.74
Subtotal on Project Type:					\$5,000.00	\$3,328.74
Total Amounts:					\$98,018.87	\$96,347.61

EXHIBIT IV.A
New York State Department of Health
Cost Recovery
224208
Top Hat Cleaners
For the period January 29, 2015 thru August 22, 2018

<u>Fiscal Year</u>	<u>Personal Service</u>	<u>State Fringe</u>	<u>Indirect*</u>
FY 19/20	\$0.00	\$0.00	\$0.00
FY 18/19	\$0.00	\$0.00	\$0.00
FY 17/18	\$388.94	\$239.12	\$106.46
FY 16/17	\$0.00	\$0.00	\$0.00
FY 15/16	\$365.19	\$204.07	\$56.93

Personal Service, Fringe, and Indirect Costs: \$1,360.71
Travel Costs: \$0.00
Laboratory Costs: \$0.00

TOTAL COSTS: \$1,360.71

Fringe and Indirect Rates are as follows:

<u>Fiscal Year</u>	<u>State Fringe rate</u>	<u>Indirect rate</u>
FY 19/20	63.86%	16.00%
FY 18/19	63.89%	13.00%
FY 17/18	61.48%	16.96%
FY 16/17	58.71%	15.80%
FY 15/16	55.88%	10.00%

* Indirect amount is calculated per DOH policy as follows: (Personal Services + (Personal Services x Fringe rate)) x Indirect rate

New York State Department of Health Cost Recovery Report
TOP HAT CLEANERS - 224208

Fiscal Year	Pay Period End Date	Staff Name	Staff Title	Hourly Rate	Hours	Cost
2015	2/24/2016	Anthony Perretta	Public Health Specialist 2 Envir	\$34.78	4.5	\$156.51
2015	3/9/2016	Anthony Perretta	Public Health Specialist 2 Envir	\$34.78	5	\$173.90
2015	3/23/2016	Anthony Perretta	Public Health Specialist 2 Envir	\$34.78	1	\$34.78
					Fiscal Year Total:	10.5 \$365.19
2017	3/7/2018	Justin Deming	Public Health Specialist 4 Envir	\$49.71	2	\$99.42
2017	3/7/2018	Anthony Perretta	Public Health Specialist 2 Envir	\$36.19	6	\$217.14
2017	3/21/2018	Anthony Perretta	Public Health Specialist 2 Envir	\$36.19	2	\$72.38
					Fiscal Year Total:	10 \$388.94

EXHIBIT IV.B
New York State Department of Health
Cost Recovery
224208
Top Hat Cleaners
For the period August 23, 2018 to September 18, 2019

<u>Fiscal Year</u>	<u>Personal Service</u>	<u>State Fringe</u>	<u>Indirect*</u>
FY 19/20	\$0.00	\$0.00	\$0.00
FY 18/19	\$461.39	\$294.78	\$98.30
FY 17/18	\$0.00	\$0.00	\$0.00
FY 16/17	\$0.00	\$0.00	\$0.00
FY 15/16	\$0.00	\$0.00	\$0.00

Personal Service, Fringe, and Indirect Costs:	\$854.47
Travel Costs:	\$0.00
Laboratory Costs:	\$0.00

TOTAL COSTS: \$854.47

Fringe and Indirect Rates are as follows:

<u>Fiscal Year</u>	<u>State Fringe rate</u>	<u>Indirect rate</u>
FY 19/20	63.86%	15.00%
FY 18/19	63.89%	13.00%
FY 17/18	61.48%	15.95%
FY 16/17	58.71%	15.80%
FY 15/16	55.88%	10.00%

* Indirect amount is calculated per DOH policy as follows: (Personal Services ÷ Personal Services x Fringe rate) x Indirect rate

New York State Department of Health Cost Recovery Report
TOP HAT CLEANERS - 224208

<u>Fiscal Year</u>	<u>Pay Period End Date</u>	<u>Staff Name</u>	<u>Staff Title</u>	<u>Hourly Rate</u>	<u>Hours</u>	<u>Cost</u>
2018	10/17/2018	Anthony Perretta	Public Health Specialist 2 Envir	\$36.91	3.5	\$129.19
2018	2/6/2019	Anthony Perretta	Public Health Specialist 2 Envir	\$36.91	3.5	\$129.19
2018	2/20/2019	Anthony Perretta	Public Health Specialist 2 Envir	\$36.91	2	\$73.82
2018	4/3/2019	Anthony Perretta	Public Health Specialist 2 Envir	\$36.91	3.5	\$129.19
Fiscal Year Total:					12.5	\$461.39

APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

The parties to the Brownfield Site Cleanup Agreement (hereinafter "BCA" or "Agreement") agree to be bound by the following clauses which are hereby made a part of the BCA. The word "Applicant" herein refers to any party to the Agreement, other than the New York State Department of Environmental Conservation (herein after "Department").

I. Citizen Participation Plan

Within twenty (20) days after the effective date of this Agreement, Applicant shall submit for review and approval a written citizen participation plan prepared in accordance with the requirements of Environmental Conservation Law (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 shall be prepared and implemented in accordance with the requirements of ECL Article 27, Title 14, 6 NYCRR §§ 375-1.6(a) and 375-3.6, 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, if the Applicant is a "Participant", the extent of contamination emanating from such Site. If the Applicant is a "Volunteer" it shall perform a qualitative exposure assessment of the contamination emanating from the Site in accordance with ECL § 27-1415(2)(b) and Department guidance;

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, if the Applicant is a "Participant", the 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.

5. "Supplemental" if additional work plans other than those set forth in II.A.1-4 are required to be prepared and implemented.

B. Submission/Implementation of Work Plans

1. The first proposed Work Plan to be submitted under this Agreement shall be submitted no later than thirty (30) days after the effective date of this Agreement. Thereafter, the Applicant shall submit such other and additional work plans as determined in a schedule to be approved by the Department.

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 to be conducted in accordance with current guidance, 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. All work undertaken as part of a remedial program for a Site must be detailed in a department-approved Work Plan or a submittal approved in form and content by the Department.

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.

C. Submission of Final Reports

1. In accordance with the schedule contained in an approved Work Plan, Applicant 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, Applicant 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, Applicant 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. 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 375-3.9.

3. Within sixty (60) days of the Department's approval of a Final Report, Applicant shall submit such additional Work Plans as it proposes to implement. In addition, Applicant shall include with every report submitted to the Department a schedule for the submission of any subsequent work plan required to meet the requirements of ECL Article 27 Title 14. 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 Applicant, result in the termination of this Agreement pursuant to Paragraph XII.

D. Review of Submittals other than Work Plans

1. The Department shall timely notify Applicant in writing of its approval or disapproval of each submittal other than a Work Plan in accordance with 6 NYCRR § 375-1.6. 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 Applicant to modify or expand the submittal. Within fifteen (15) days after receiving written notice that Applicant's submittal has been disapproved, Applicant 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 XIII; or (iv) terminate this Agreement pursuant to Paragraph XII. If Applicant submits a revised submittal and it is disapproved, the Department and Applicant may pursue whatever remedies may be available under this Agreement or under law. All work undertaken as part of a remedial program, including work undertaken pursuant to submittals other than Work Plans, must be approved by the department prior to implementation by the Applicant.

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 Applicant 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, Applicant 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, Applicant may elect to submit for review and approval a proposed Remedial Work Plan (or modify an existing Work Plan for the Site) for a remedy selected upon due consideration of the factors set forth in ECL § 27-1415(3) and 6 NYCRR § 375-1.8(f). A proposed 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 modifications to the proposed Remedial Work Plan are needed, Applicant agrees to negotiate appropriate modifications to such Work Plan. If Applicant elects not to develop a Work Plan under this Subparagraph then this Agreement shall terminate in accordance with Paragraph XII. If the Applicant elects to develop a Work Plan, then it will be reviewed in accordance with Paragraph II.D above.

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, Applicant shall submit a written certification in accordance with 6 NYCRR §§ 375-1.8(h)(3) and 375-3.8(h)(2).

III. Enforcement

Except as provided in Paragraph V, this Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. Applicant shall not suffer any penalty except as provided in Paragraph V, 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 Applicant complies with the requirements set forth therein.

IV. Entry upon Site

A. Applicant hereby agrees 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. Applicant agrees to provide the Department upon request with proof of access if it is not the owner of the Site.

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. The Department will generally conduct such inspections during business hours, but retains the right to inspect at any time.

C. Failure to provide access as provided for under this Paragraph may result in termination of this Agreement pursuant to Paragraph XII.

V. Payment of State Costs (Applicable only to Applicants with Participant Status)

A. Within forty-five (45) days after receipt of an itemized invoice from the Department, Applicant 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).

B. 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.

C. Each such payment shall be made payable to the "Commissioner of NYSDEC" and shall be sent to:

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

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

E. If Applicant objects to any invoiced costs under this Agreement, the provisions of 6 NYCRR

§§ 375-1.5 (b)(3)(v) and (vi) shall apply. Objections shall be sent to the Department as provided under subparagraph V.C above.

F. In the event of non-payment of any invoice within the 45 days provided herein, the Department may seek enforcement of this provision pursuant to Paragraph III or the Department may commence an enforcement action for non-compliance with ECL § 27-1409(2) and ECL § 71-4003.

VI. Liability Limitation

Subsequent to the issuance of a Certificate of Completion pursuant to this Agreement, Applicant 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, Applicant reserves 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 Applicant, 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 Applicant's compliance with it shall not be construed as an admission of any liability, fault, wrongdoing, or violation of law by Applicant, 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, Applicant hereby waives any right it 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 Applicant may have as a result of Applicant's entering into or fulfilling the terms of this Agreement.

VIII. Indemnification

Applicant 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 Applicant 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. In the event that the Applicant is a Participant, this provision shall also include the Trustee of the State's Natural Resources. The Department shall provide Applicant with written notice no less than thirty (30) days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

IX. Change of Use

Applicant 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 Applicant 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 sixty (60) days after the Department's determination pursuant to Subparagraph II.E.2 that additional remediation is not needed based upon use restrictions, Applicant 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). Applicant 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. Applicant 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 Applicant advises 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. Applicant 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 public health and the environment without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer or Qualified Environmental Professional as defined at 6 NYCRR § 375-1.2(ak) approved by the Department. The Department will not unreasonably withhold its consent.

XI. Progress Reports

Applicant shall submit a written progress report of its actions under this Agreement to the parties identified in Subparagraph III.A.1 of the Agreement by the 10th day of each month commencing with the month subsequent to the approval of the first Work Plan 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 Applicant 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. Termination of Agreement

Applicant 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 Paragraph IV of the Agreement.

XIII. Dispute Resolution

A. In the event disputes arise under this Agreement, Applicant may, within fifteen (15) days after Applicant 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).

B. All cost incurred by the Department associated with dispute resolution are State costs subject to reimbursement pursuant to Paragraph V of Appendix A of this Agreement, if applicable.

C. Notwithstanding any other rights otherwise authorized in law or equity, any disputes pursuant to this Agreement shall be limited to Departmental decisions on remedial activities. In no event shall such dispute authorize a challenge to the applicable statute or regulation.

XIV. Miscellaneous

A. If the information provided and any certifications made by Applicant are not materially accurate and complete, this Agreement, except with respect to Applicant's obligations pursuant to Paragraphs V, if applicable, and 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 XIII, whichever is later, unless Applicant submits 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, Applicant agrees to comply with and be bound by the provisions of 6 NYCRR §§ 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 Applicant 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 Applicant's obligations under this Agreement, including all Department-approved Work Plans and the schedules contained therein. If, despite Applicant's 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 Applicant 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 Applicant to modify the Work Plan pursuant to 6 NYCRR § 375-1.6(d)(3) to reflect changes necessitated by Applicant's 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 Applicant 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 Applicant of its 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). Applicant consents to and agrees 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 Applicant desires that any provision of this Agreement be changed, Applicant shall make timely written application to the Commissioner with copies to the parties in Subparagraph IV.A.1 of the Agreement.

ii. If Applicant seeks 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 IV.A.1 of the Agreement.

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 Applicant promptly.

G. 1. If there are multiple parties signing this Agreement, the term "Applicant" 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 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 XIV.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 parties 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.

4. Any change to parties pursuant to this Agreement, including successors and assigns through acquisition of title, is subject to approval by the Department, after submittal of an application acceptable to the Department.

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

J. Applicant and Applicant's agents, grantees, lessees, sublessees, successors, and assigns shall be bound by this Agreement. Any change in ownership of 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. Applicant's obligations under this Agreement shall not be deemed to constitute any type of fine or penalty.

M. In accordance with 6 NYCRR § 375-1.6(a)(4), the Department shall be notified at least 7 days in advance of, and be allowed to attend, any field activities to be conducted under a Department approved work plan, as well as any pre-bid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting; provided, however that the Department may be excluded from portions of meetings where privileged matters are discussed.

N. In accordance with 6 NYCRR § 375-1.11(a), all work plans; reports, including all attachments and appendices, and certifications, submitted by a remedial party shall be submitted in print, as well as in an electronic format acceptable to the Department.

O. 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.