

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

Division of Environmental Remediation

625 Broadway, 12th Floor, Albany, New York 12233-7011

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

[www.dec.ny.gov](http://www.dec.ny.gov)

JUN 01 2015

FOUBU Environmental Services, LLC  
John F. Sutphen, Esq.  
c/o O'Brien & Gere  
333 West Washington Street  
Syracuse, NY 13204

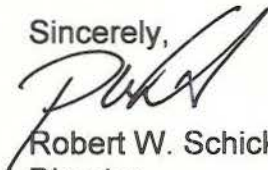
**RE: Site Name: Former Accurate Die Casting Site**  
**Site No.: C734052**  
**Location of Site: 547 East Genesee Street, Onondaga County, Fayetteville, NY**

Dear Mr. Sutphen:

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the Former Accurate Die Casting Site.

If you have any further questions relating to this matter, please contact the project attorney for this site, Margaret Sheen, Esq., NYS Department of Environmental Conservation, Office of General Counsel, 615 Erie Boulevard West, Syracuse, New York 13204, or by email at [margaret.sheen@dec.ny.gov](mailto:margaret.sheen@dec.ny.gov).

Sincerely,



Robert W. Schick, P.E.  
Director

Division of Environmental Remediation

Enclosure

ec: Tara Blum, Project Manager

cc: M. Sheen, Esq.  
A. Guglielmi, Esq. /M. Mastroianni



NEW YORK  
STATE OF  
OPPORTUNITY

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.: C734052-03-15**

**Former Accurate Die Casting Site**

DEC Site No.: C734052

Located at: 547 East Genesee Street  
Onondaga County  
Fayetteville, NY 13066

Hereinafter referred to as "Site"

by:

FOUBU Environmental Services, LLC  
c/o O'Brien & Gere, Syracuse, NY 13204

Hereinafter referred to as "Applicant"

**WHEREAS**, the Department of Environmental Conservation (the "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 January 15, 2015; 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, FOUBU Environmental Services, LLC, is participating in the BCP as a Volunteer as defined in ECL 27-1405(1)(b).

**II. Real Property**

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 30.310 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 9-4-19.1  
Street Number: 547 East Genesee Street, Fayetteville  
Owner: 547 East Genesee Street, LLC

### III. Payment of State Costs

Invoices shall be sent to Applicant at the following address:

FOUBU Environmental Services, LLC  
Attn: John F. Sutphen, Esq.  
c/o O'Brien & Gere  
333 West Washington Street  
Syracuse, NY 13204  
[john.sutphen@obg.com](mailto:john.sutphen@obg.com)

### 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:

Tara Blum  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
615 Erie Boulevard West  
Syracuse, NY 13204  
[tara.blum@dec.ny.gov](mailto:tara.blum@dec.ny.gov)

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

Krista Anders (electronic copy only)  
New York State Department of Health  
Bureau of Environmental Exposure Investigation  
Empire State Plaza  
Corning Tower Room 1787  
Albany, NY 12237  
[krista.anders@health.ny.gov](mailto:krista.anders@health.ny.gov)

Margaret Sheen, Esq. (correspondence only)  
New York State Department of Environmental Conservation  
Office of General Counsel  
615 Erie Boulevard West  
Syracuse, NY 13204  
[margaret.sheen@dec.ny.gov](mailto:margaret.sheen@dec.ny.gov)

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

FOUBU Environmental Services, LLC  
Attn: John F. Sutphen, Esq.  
c/o O'Brien & Gere  
333 West Washington Street  
Syracuse, NY 13204  
[john.sutphen@obg.com](mailto:john.sutphen@obg.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. The Applicant shall be responsible for current on-site Site management including any on-site obligations per the Site Management Plan and/or in accordance with any Department approved Operations and Maintenance and Monitoring Plans for the Site.

C. 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.


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

DATED:

JUN 01 2015

JOSEPH J. MARTENS  
COMMISSIONER  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By:

  
Robert W. Schick, P.E., 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.

FOUBU Environmental Services, LLC

By: John F. Sutphen

Title: MANAGING EXECUTIVE

Date: MAY 27, 2015

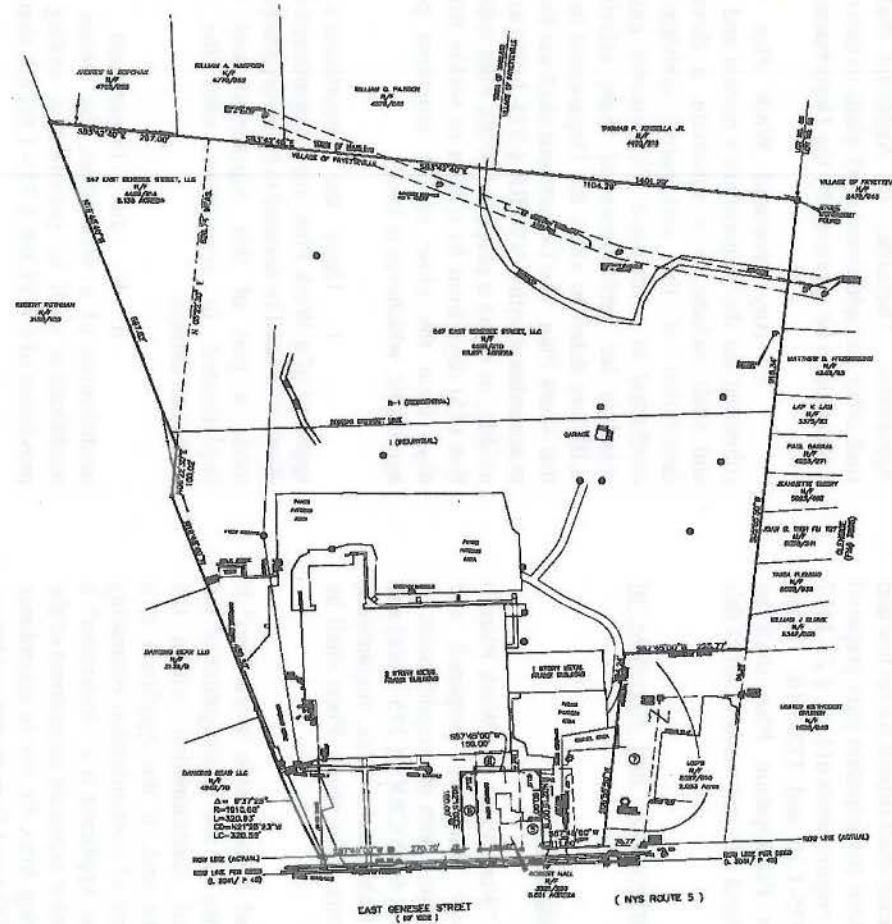
STATE OF NEW YORK     )  
  ) ss:  
COUNTY OF Onondaga     )

On the 27<sup>th</sup> day of May in the year 2015, before me, the undersigned, personally appeared John F. Sutphen, 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.

Mary Kae Brentlinger  
Signature and Office of individual  
taking acknowledgment

MARY KAE BRENTLINGER  
Notary Public in the State of New York  
Qualified in Cayuga Co. No. 4952912  
My Commission Expires July 3, 2015

# EXHIBIT A SITE MAP



- LEGEND**
- BORN ROD
  - POWER POLE
  - ELEVATION MARKER
  - OVERHEAD WIRE
  - SAND WIRE FENCELINE
  - CHAIN LINK FENCELINE
  - SLOPED FENCELINE
  - WOOD FENCELINE
  - MOUNTAIN WELL

## NOTES:

1. SURVEY WAS MADE FROM THE SURVEY OF AN ADJACENT OF THE PROPERTY BY JOHN W. BROWN, JR., 1/2 SECTION 10-10-10A, DATED JANUARY 19, 1974.
2. THE LOCATION OF UNDEVELOPED LOTS WAS DETERMINED BY AERIAL PHOTOGRAPHY. THESE LOTS ARE NOT THE PROPERTY OF THE STATE AND ARE NOT SURVEYED.
3. PART OF LOT 65 WAS ALREADY PLANNED TO BE USED FOR THE VILLAGE OF FAYETTEVILLE, NEW YORK. THIS PART OF LOT 65 WAS ALREADY PLANNED TO BE USED FOR THE VILLAGE OF FAYETTEVILLE, NEW YORK. THIS PART OF LOT 65 WAS ALREADY PLANNED TO BE USED FOR THE VILLAGE OF FAYETTEVILLE, NEW YORK.
4. AT THE TIME OF SURVEY THIS SURVEY WAS NOT A PART OF THE SURVEY OF THE VILLAGE OF FAYETTEVILLE, NEW YORK. THIS PART OF LOT 65 WAS ALREADY PLANNED TO BE USED FOR THE VILLAGE OF FAYETTEVILLE, NEW YORK.
5. PROPERTY TRANSFERRED FROM JOHN R. TROTT JR. TRUST TO JOHN R. TROTT JR. TRUST. THIS PART OF LOT 65 WAS ALREADY PLANNED TO BE USED FOR THE VILLAGE OF FAYETTEVILLE, NEW YORK.
6. PROPERTY TRANSFERRED FROM JOHN R. TROTT JR. TRUST TO JOHN R. TROTT JR. TRUST. THIS PART OF LOT 65 WAS ALREADY PLANNED TO BE USED FOR THE VILLAGE OF FAYETTEVILLE, NEW YORK.
7. PROPERTY TRANSFERRED FROM JOHN R. TROTT JR. TRUST TO JOHN R. TROTT JR. TRUST. THIS PART OF LOT 65 WAS ALREADY PLANNED TO BE USED FOR THE VILLAGE OF FAYETTEVILLE, NEW YORK.

Drawn by: M.A. 10/10/10

Checked by: G.A. 10/10/10

NO REPRESENTATION OR WARRANTY IS MADE BY THE SURVEYOR AS TO THE ACCURACY OF THE SURVEY OR THE RESULTS THEREOF. THE SURVEYOR IS NOT RESPONSIBLE FOR ANY LOSS OR DAMAGE TO ANY PERSON OR PROPERTY CAUSED BY THE SURVEY OR THE RESULTS THEREOF.



THE UNDERSIGNED SURVEYOR CERTAINS THAT THIS MAP IS A TRUE AND CORRECT COPY OF THE ORIGINAL SURVEY MAP.

*Signature*

ROBERT A. BROWN  
REGISTERED LAND SURVEYOR



**CNY LAND SURVEYING**  
2076 CHURCH ROAD  
BALDWINVILLE, NEW YORK 13027  
(315) 656-4614

TAX PARCEL ID # 9-04-19.1  
PART OF LOT 65  
VILLAGE OF FAYETTEVILLE  
TOWN OF MANLIUS  
COUNTY OF ONONDAGA  
STATE OF NEW YORK

**DRAWING TITLE**  
BOUNDARY SURVEY

Date: 2/14/15  
Project:

Revised:

Sheet No.  
15,007

Scale: 1" = 100'

Drawing No.  
1 OF 2

## APPENDIX A

### STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

The parties to the Brownfield Site Cleanup Agreement (hereinafter "the BCA" or "the Agreement" or "this 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 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.

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. 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.

#### 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

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 New York State Department of Environmental Conservation 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. The Department shall provide written notification to the Applicant 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 § 27-1423 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 this Agreement.

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, 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 represent payment for or reimbursement of State costs, and 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.

VIRGINIA C. ROBBINS  
[vrobbs@bsk.com](mailto:vrobbs@bsk.com)  
P: 315-218-8182

May 28, 2015

**VIA UPS OVERNIGHT DELIVERY**

Robert W. Schick, P.E.  
Director  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
625 Broadway  
Albany, NY 12233-7011

Re: *Brownfield Site Cleanup Agreement*  
*Index No. C734052-03-15*  
*Site No. C734052*  
*Tax Map ID No. 9-4-19.1*  
*Fayetteville, Onondaga County*



Dear Mr. Schick:

On behalf of our client, FOUBU Environmental Services, LLC ("FOUBU"), as requested in the Department's March 31, 2015 letter, enclosed please find the following documents in connection with the acceptance of the referenced site and FOUBU, as a Volunteer, in the Brownfield Cleanup Program and entry into a Brownfield Site Cleanup Agreement ("BCA") with the Department:

- (1) Three (3) duplicate original BCAs executed by John F. Sutphen, an authorized representative of FOUBU; and
- (2) A copy of FOUBU's Operating Agreement, which states in Sections 7.1(b) and 7.11 that John Sutphen is appointed Managing Executive of FOUBU and in that capacity he has authority to sign the BCA.

Sincerely,

BOND, SCHOENECK & KING, PLLC

  
Virginia C. Robbins

Enclosures

cc: John F. Sutphen, Esq. (without enclosures) (by electronic mail only)  
Margaret Sheen, Esq. (with enclosures) (by electronic mail only)

**OPERATING AGREEMENT**  
**OF**  
**FOUBU Environmental Services, LLC**  
**Dated as of May 27, 2015**



**OPERATING AGREEMENT**  
**FOUBU ENVIRONMENT SERVICES, LLC**

This Operating Agreement of FOUBU Environmental Services, LLC (this "Agreement") is made effective as of May 27, 2015, by and between **WMZ. Tersus, LLC**, a New York limited liability company with offices located at 110 Stage Road, Monroe, New York 10950 ("Tersus") and **O'Brien & Gere Limited**, a New York corporation with its principal offices located at 333 W. Washington Street, Syracuse, New York 13202 ("OBG"), with respect to the New York limited liability company known as **FOUBU Environmental Service, LLC** (the "Company"), and provides as follows:

**RECITALS**

**WHEREAS**, the Tersus and OBG as members of the Company desire to enter into this Operating Agreement so as to conduct business as a limited liability company pursuant to the terms and conditions set forth below;

**NOW, THEREFORE**, in exchange for the mutual covenants and agreement contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, intending to be legally bound, the parties mutually agree as follows:

**ARTICLE 1.**  
**DEFINITIONS**

The defined terms used in this Agreement (as indicated by the first letter of each word in the term being capitalized) shall, unless the context clearly requires otherwise, have the meanings specified in **Exhibit A**, or as may be specified elsewhere throughout this Agreement. The singular shall include the plural and the neuter gender shall include the feminine and masculine, as the context requires.

**ARTICLE 2.**  
**FORMATION, TERM AND PURPOSES**

Section 2.1    Formation. On October 29, 2014, the Company was organized by the filing of the filing of Articles of Organization with the New York Secretary of State pursuant to the provisions of the New York Limited Liability Law.

Section 2.2    Name of the Company. The name under which the Company shall conduct its business shall be "FOUBU Environmental Services, LLC" or such other name as the Executive Committee may determine.

Section 2.3    Principal Place of Business. The principal place of business of the Company shall be 333 West Washington Street, Syracuse, New York 13202, or such other address as the Executive Committee may determine.

Section 2.4 Term. The term of the Company commenced upon the filing of the Articles of Organization and shall continue until it is dissolved pursuant to Section 12.1 of this Agreement.

Section 2.5 Purpose. The purpose of the Company shall be to provide the expertise and services required to satisfy the requirements of a certain Brownfield Cleanup Agreement executed between the Company and the New York State Department of Environmental Conservation ("DEC") regarding a certain parcel of real estate located at 547 East Genesee Street, Fayetteville, New York 13066. A copy of the Brownfield Cleanup Agreement is attached hereto as **Exhibit B**.

### ARTICLE 3. CAPITAL CONTRIBUTIONS; CAPITAL ACCOUNTS

Section 3.1 Initial Capital Contribution. The initial Capital Contribution of each Member shall be as listed on **Exhibit C** under the heading of "Initial Capital Contributions" across from such Member's name. Unless otherwise agreed to by the Executive Committee, the Capital Accounts shall not increase as a result of a Member contributing services to the Company.

Section 3.2 Additional Capital Contribution by Tersus Upon Real Property Title Transfer. At a time mandated by the Executive Committee, Tersus shall cause the transfer to the Company of the title to a 30 acre (plus or minus) parcel of real estate located at 547 East Genesee Street, Fayetteville, New York 13066.

Section 3.3 Additional Contributions by OBG and Tersus During Site Preparation (Demolition/Remediation) Phase of Brownfield Cleanup Agreement. After title to the 547 East Genesee Street real property has been transferred to the Company, OBG shall contribute \$[REDACTED] in cash to pay for the first \$[REDACTED] of costs related to demolishing the existing building located on the site and to remediate the site as required by the Brownfield Cleanup Agreement. After the \$[REDACTED] cash contribution has been exhausted, Tersus shall contribute \$[REDACTED] in cash to pay for the next \$[REDACTED] of costs related to remediating the site as required by the Brownfield Cleanup Agreement. Thereafter OBG and Tersus shall contribute cash in on a [REDACTED] basis until the DEC issues a certificate of compliance regarding the remediation activities.

Section 3.4 Additional Capital Contributions. Upon the prior written request by any Member, if the Company requires additional capital to fund its operations pursuant to a budget proposed by the Member making the request, the Company shall make a capital call to obtain additional Capital Contributions ("Additional Capital Contributions") from the Members. Any Additional Capital Contributions to the Company shall be recorded on an amendment to **Exhibit C** as Additional Capital Contributions.

(a) *Notices.* To make a capital call for Additional Capital Contributions, the Company shall give Notice to each Member at least thirty (30) days before the due date of such Additional Capital Contribution. Within ten (10) days after the receipt of the foregoing Notice,

each Member shall provide the Company with a Notice stating whether it will make an Additional Capital Contribution and the amount of such Capital Contribution it is willing to make.

(b) *Obligation to Make Additional Capital Contribution.* Other than the Additional Capital Contributions described in Sections 3.2 and 3.3 herein, the Members shall make Additional Capital Contributions pro rata in proportion to their Membership Percentages. Additional Capital Contributions shall be made on the date such contributions were due as provided in the Notice from the Company described in Section 3.4(a) above. In the event a Member does not make the Additional Capital Contribution in the amount as required of the Member by the preceding sentence, the other Member(s) may make such Additional Capital Contribution to the Company. Upon such an event, the non-contributing Member's Membership Interest shall be diluted and decreased by the amount by which the ratio of the non-contributing Member's Capital Account to total capital, decreases. Upon such an event, the contributing Member's Membership Interest shall be increased by the amount by which the ratio of the contributing Member's Capital Account to the total capital, increases.

Section 3.5 Return of Capital. Except as provided in this Agreement, no Member shall have the right to (1) withdraw any part of its Capital Account, (2) a return of its Capital Contributions, or (3) receive property other than cash as a return of capital.

Section 3.6 Capital Accounts. The Company shall maintain for each Member a separate Capital Account in accordance with the principles of Regulation Section 1.704-1(b)(2)(iv), this Agreement and the rules set forth under the definition of "Capital Account" contained in **Exhibit A**. The Members' Capital Accounts as of the date of this Operating Agreement are as follows:

<u>Member</u>	<u>Capital Account</u>
Tersus	\$ [REDACTED]
OBG	\$ [REDACTED]

Section 3.7 Transfer of Capital Accounts. In the event of the Transfer (excluding mortgaging or pledging a Membership Interest) of all or a portion of a Member's Membership Interest, the transferee thereof shall succeed to the Capital Account and the Membership Percentage of the transferor Member as relates to the Transferred Membership Interest.

Section 3.8 Membership Percentages. The Members shall have the Membership Percentages in the Company as set forth on **Exhibit C**.

Section 3.9 Loans. A Member, by agreement with the Company, may make secured or unsecured loans on reasonable commercial terms to the Company to the extent the Company needs additional capital to fulfill its Purpose. A loan from a Member to the Company shall not be considered to be a Capital Contribution and shall not increase the lending Member's Membership Percentage in the Company.

## ARTICLE 4 ALLOCATIONS

Section 4.1 Profit and Loss Allocations. Profits and Losses of the Company for each Fiscal Year shall be allocated among the Members in accordance with their Membership Percentages.

Section 4.2 Transfer of a Membership Interest. If a part or all of a Membership Interest is Transferred (excluding mortgaging or pledging a Membership Interest) during a Fiscal Year, that part of each item allocated pursuant to Sections 4.1 and 4.2 with respect to such Membership Interest shall, in the discretion of the Executive Committee, either (1) be based on segmentation of the Fiscal Year between the transferor and the transferee (i.e., the interim closing of the books method as described in Regulation Section 1.706-1(c)(2)(ii)), or (2) be allocated between the transferor and the transferee in proportion to the number of days in such Fiscal Year during which each owned such Membership Interest, as disclosed on the Company's books and records.

## ARTICLE 5. DISTRIBUTIONS OF CASH

Section 5.1 Distributions. The Company shall make distributions to the Members of so much of the Net Cash of the Company as shall be determined by the Executive Committee. Distributions to the Members under this Section shall be made as follows:

(a) The net cash proceeds which the Company receives from the sale of the 30 plus or minus acres of real property located at 547 East Genesee Street to a developer, shall be distributed [REDACTED] percent ([REDACTED]%) to OBG and [REDACTED] percent ([REDACTED]%) to Tersus.

(b) The net cash proceeds which the Company receives from refundable tax credits under the New York State Brownfield Cleanup Program for costs related to site preparation activities, shall be distributed [REDACTED] percent ([REDACTED]%) to OBG and [REDACTED] percent ([REDACTED]%) to Tersus.

(c) The net cash proceeds which the Company receives from the tangible personal property credit component of the Brownfield Cleanup Program, shall be distributed [REDACTED] percent ([REDACTED]%) to OBG and [REDACTED] percent ([REDACTED]%) to Tersus.

(d) Any other distributions shall be made pro rata in proportion to the Members' Membership Interests.

## **ARTICLE 6. MEMBERS**

Section 6.1 Decisions by Members. Except as otherwise specifically provided elsewhere in this Agreement, all decisions to be made by the Members shall be made by a vote of a majority of the Members' Membership Percentages.

Section 6.2 Company Losses and Debts. Other than (i) a Member's liability to make its initial Capital Contribution as set forth in Section 3.1, (ii) Tersus' obligation to make the Capital Contribution required by Section 3.2, and (iii) OBG's and Tersus' obligations to make the Capital Contributions required by Section 3.3, a Member shall not be required to make any other Capital Contributions to the Company and a Member shall not be liable to any Person for any debts or liabilities of the Company.

## **ARTICLE 7. MANAGEMENT OF THE COMPANY**

Section 7.1 Executive Committee. Subject to Section 7.1(b), the Company shall be managed by an executive committee (the "Executive Committee") which shall initially be comprised of two (2) individuals. Tersus shall select and appoint one (1) individual to the Executive Committee and OBG shall select and appoint one (1) individual to the Executive Committee. Each individual appointed to the Executive Committee shall serve on the Executive Committee until the earlier of his death, removal or resignation. Except where the consent of the Members is expressly required by this Agreement, the Executive Committee and/or the Managing Executive shall take all actions which may be necessary or appropriate for the continuation of the Company's valid existence as a limited liability company and for the maintenance and operation of the business of the Company in fulfilling its Purpose in accordance with the provisions of this Agreement and applicable laws and regulations.

*(a) Decisions by Executive Committee.*

(i) Except as otherwise specifically provided elsewhere in this Agreement, all decisions to be made by the Executive Committee shall be made by Percentage Consent.

(ii) As an exception to Section 7.1(a)(i) above and as provided in Section 3.2 above, any Member shall be permitted to request Additional Capital Contributions without Executive Committee action.

*(b) Managing Executive.* John Sutphen is hereby appointed the Managing Executive of the Company, and shall serve in such capacity until the earlier of (i) his death, resignation or retirement or (ii) the date that OBG's Membership Percentage is less than fifty percent (50%). The Managing Executive shall have complete authority to manage the Company at all times that the Executive Committee is not meeting. If John Sutphen no longer serves as Managing Executive, his successor shall be appointed by a vote of the Members.

Section 7.2 Removal. The Member that appointed an individual to the Executive Committee, or the Members and the Executive Committee, may at any time, with or without cause, remove an individual serving on the Executive Committee. The Executive Committee may remove an officer of the Company at any time and for any reason.

Section 7.3 Resignation. An individual serving on the Executive Committee may resign from such position after giving the Executive Committee and the Members at least thirty (30) days prior Notice thereof. The Managing Executive may resign at any time by providing the Company and the Executive Committee at least thirty (30) days prior Notice thereof.

Section 7.4 Appointment of Successors. If an individual serving on the Executive Committee dies, is removed in accordance with Section 7.2, or resigns in accordance with Section 7.3, the Member that appointed such individual may appoint a successor to serve on the Executive Committee, or in the case of the third individual elected by the Members, the Members shall elect his/her successor.

Section 7.5 Compensation. Each individual serving on the Executive Committee and each officer of the Company shall be entitled to the compensation determined by the Executive Committee. In no event shall the compensation of any Executive Committee member exceed the compensation of the Managing Executive.

Section 7.6 Devotion of Time. Each individual serving on the Executive Committee shall devote to the affairs of the Company such time as is reasonably necessary to fulfill the Company's Purpose.

Section 7.7 Standard of Care. Each individual serving on the Executive Committee shall perform his duties hereunder in good faith, with the degree of care that an ordinary prudent person in a like position would under similar circumstances, and in the best interests of the Members and the Company.

Section 7.8 Liability of Individuals Serving on the Executive Committee and the Managing Executive. Neither individual serving on the Executive Committee nor the Managing Executive shall be liable, responsible or accountable in damages or otherwise to any of the Members or the Company for any act or omission performed in good faith, with the degree of care that an ordinary prudent person in a like position would under similar circumstances, and in the best interests of the Members and the Company.

Section 7.9 Indemnification. The Company shall indemnify and hold harmless each individual serving on the Executive Committee and the Managing Executive (each an "Indemnitee") for all costs, losses, liabilities and damages paid or accrued by such Indemnitee in connection with the business of the Company or such Indemnitee's acts or omissions with respect to the Company, provided it is not determined by a court or an arbitration panel that such Indemnitee's acts or omissions were in bad faith, or as a result of active and deliberate dishonesty and were material to such cause of action; or such Indemnitee personal gained a financial profit or other advantage to which he was not legally entitled. In addition, the Company shall advance costs to the Indemnitee for the defense of any proceeding relating to the foregoing provided such Indemnitee executes an agreement to repay the same should it be

determined that such Indemnitee is not entitled to indemnification hereunder. The foregoing rights of indemnification shall not be exclusive of any other rights to which the Indemnitee may be entitled under applicable law. The Company may purchase directors and officers insurance to provide for the indemnification provided in this Section.

Section 7.10 Confirmation of Authority. Each Member agrees that, upon Notice from the Executive Committee or the Managing Executive at any time and from time to time, such Member shall at no cost or expense to the Company promptly furnish written confirmation of the legal authority of the Executive Committee or the Managing Executive to act on the Company's behalf with respect to any matter, transaction, document or other act relating to or affecting the Company.

Section 7.11 Signatures. The signature of an individual serving on the Executive Committee or the Managing Executive, for any transaction authorized by the Company pursuant to the terms of this Agreement, on any document or instrument, shall be sufficient and binding upon the Company as to third parties dealing with the Company, and any third party shall be entitled to rely on such signature as being the action of and binding on the Company.

## **ARTICLE 8.**

### **MEETINGS, PROXIES, MINUTES, WRITTEN CONSENTS, ETC.**

#### **Section 8.1 Meetings.**

(a) *Annual Meetings.* The Executive Committee and the Members shall each have an annual meeting held during the first calendar quarter of each Fiscal Year. Each annual meeting shall be called by the Managing Executive by providing the individuals serving on the Executive Committee and the Members, as the case may be, at least twenty (20) days prior Notice of the date, time and place of the annual meeting.

(b) *Monthly Meetings.* In addition to an annual meeting, the Executive Committee shall meet each month in order to review the Company's business plan, and to question the Managing Executive regarding the Company's performance, outlook, prospects, personnel and all other matters relating to the Company's business. Each monthly meeting shall be called by the Managing Executive by providing the individuals serving on the Executive Committee at least twenty (20) days prior Notice of the date, time and place of the monthly meeting. In the alternative, the Executive Committee may set a date and time for each monthly meeting and if such schedule is communicated to all members of the Executive Committee, no notice of such monthly meeting shall be required.

(c) *Special Meetings.* Any individual serving on the Executive Committee or any Member may call a special meeting of the Executive Committee or Members, respectively. The special meeting shall be called by providing the Executive Committee or the Members, as the case may be, with at least five (5) days prior Notice of the date, time, place and purpose (which shall be limited to any business pertinent to the Company) of such meeting.

(d) *Attendance, Time and Place of Meetings.* The individuals serving on the Executive Committee or the Members may attend an annual, monthly or special meeting of the

Executive Committee or Members, respectively, in person or by conference telephone call or by any other means that allows the attendees to participate and simultaneously hear each other. All meetings of the Executive Committee or the Members shall be held at the principal office of the Company, unless otherwise agreed to by a majority of the people entitled to attend such meeting. All meetings of the Executive Committee and the Members shall be conducted in accordance with Robert's Rules of Order unless otherwise agreed to by the Executive Committee and Members, respectively. An individual serving on the Executive Committee and a Member may waive Notice of a meeting of the Executive Committee or Members, respectively, and does waive such Notice by attending such meeting without protesting prior to its commencement the lack of Notice. Only individuals serving on the Executive Committee and invitees of the Executive Committee may attend a meeting of the Executive Committee. Only Members and invitees of the Members consented to by the Executive Committee may attend a meeting of the Members.

Section 8.2 Proxies. Members of the Executive Committee may not vote by Proxy. Any Member may authorize any other Member to vote by Proxy at a meeting of the Members on behalf of the authorizing Member. The Proxy shall (1) be duly signed by the authorizing Member and such Member's signature shall be notarized, and (2) contain such restrictions and instructions regarding the authority to vote and the period of time for which such authority shall be valid, which if not stated, shall be one (1) year after the date of such Proxy. If any Proxy is so given, the authorizing Member shall be deemed to be present at any meeting of the Members if the Member so authorized to vote is present at such meeting.

Section 8.3 Minutes of Meetings. Minutes shall be maintained for meetings of the Executive Committee by an individual serving on the Executive Committee. Minutes shall be maintained for all meetings of the Members by the individual (who must be a member) selected by the Executive Committee. The minutes shall set forth the date and time of the meeting; the attendees; whether and when the prior minutes were ratified; the issues discussed, the decisions which were made; and any other matters which are of significance. Copies of the minutes of each Executive Committee meeting shall be distributed to the individuals serving on the Executive Committee within five (5) days after such meeting. Copies of the minutes of each Members' meeting shall be distributed to all of the Members and the Executive Committee within five (5) days after such meeting. The minutes of all meetings of the Executive Committee and the Members, respectively, shall subsequently (no later than the next Executive Committee or Members meeting, respectively) be reviewed, corrected if necessary and ratified by all of the members of the Executive Committee and all of the Members, respectively. Each of the aforesaid minutes, when approved, shall be binding upon the Members, the Executive Committee and the Company.

Section 8.4 Decisions without a Meeting. When affirmatively signed and dated by the number of individuals serving on the Executive Committee or Members, respectively, required to consent to an action under this Agreement, a written consent setting forth the action to be taken shall be deemed to state the decision of the Executive Committee or Members, respectively, with respect to such action without a meeting. Each written consent of the Members shall be sent to the Company and the Executive Committee after its execution and will be binding upon the Members, the Executive Committee and the Company. Each written consent of the Executive

Committee shall be sent to the individuals serving on the Executive Committee and will be binding upon the Members, the Executive Committee and the Company.

Section 8.5 Formalities. The failure of the Company, the Executive Committee or the Members to observe any formalities or requirements relating to the exercise of its or their powers or the management of its or their business or affairs under this Agreement or the LLC Law shall not be grounds for disregarding the existence of the Company as a limited liability company.

Section 8.6 Interested Party Transactions. No individual serving on the Executive Committee or an Affiliate thereof (each an "Interested Party") can enter into a contract where the Company will be obligated to pay consideration to such Interested Party without the consent of the other member of the Executive Committee, which consent may be withheld in such other individual's sole and absolute discretion.

## **ARTICLE 9. ACCOUNTING MATTERS; BANK ACCOUNTS; PROPERTY**

### Section 9.1 Accounting Matters.

(a) *Books and Records.* OBG shall maintain full and accurate books of account of the Company's business which shall be kept at the Company's principal office. The Managing Executive shall maintain at the Company's principal office this Agreement and all amendments, including any updated Exhibits, a copy of the Certificate of Formation, and a copy of all minutes of the meetings and written declarations of the Executive Committee and the Members. Each Member (and his designated representative) shall have access to and the right to inspect and copy the books and all other Company records; provided such inspection does not unreasonably disrupt the day-to-day operations of the Company. The foregoing inspection shall occur during normal business hours after the Member gives the Managing Executive at least one (1) day prior Notice thereof. All costs incurred by the Company associated with a Member's inspection of the Company's books and records shall be borne by the Company. The Company shall use such Accounting Method as OBG shall determine.

(b) *Financial Reports.* The Company shall furnish each Member, within sixty (60) days after the close of each Fiscal Year, with financial statements and the information required annually for each Member to report its share of Company items affecting such Member's federal income tax return.

(c) *Basis Adjustments.* In the event of a Transfer of part or all of a Member's Membership Interest (excluding mortgaging or pledging a Membership Interest) or in the event of the death of a Member, after consultation with the Company's attorneys and financial consultants, the Managing Executive may elect pursuant to Section 754 of the Code to adjust the basis of the Company's assets. Each Member agrees to furnish the Company with all information necessary to give effect to this election.

(d) *Other Elections.* All other elections other than the election provided for in Section 9.1(c) required or permitted to be made or not made by the Company under the Code

shall be made by the Managing Executive. Each Member agrees to furnish the Company with all information necessary to give effect to the elections the Executive Committee decide to make under this Subsection.

Section 9.2 Bank Accounts. One or more accounts in the name of the Company or its nominee shall be maintained in such banks as shall from time to time be determined by the Executive Committee. All monies of the Company shall be deposited in such accounts of the Company. Checks may be drawn thereon only by persons authorized by the Executive Committee.

Section 9.3 Entity Ownership Interests. The Managing Executive shall exercise authority and control over the Company's interests in any corporation, partnership, association, limited liability company and other type entity and shall vote those interests as a block, as may be permitted by the governing documents of the entity.

Section 9.4 Tax Matters Member. OBG is hereby appointed Tax Matters Member, and in such capacity OBG shall have the authority to take all actions on behalf of the Company or any Member to the extent required or permitted by the Code and the Regulations for a "tax matters partner". OBG shall be reimbursed by the Company for all expenses incurred in connection with serving as Tax Matters Member.

## **ARTICLE 10. TRANSFER OF MEMBERSHIP INTERESTS**

Section 10.1 Prohibition on Transfers. Except as expressly provided in Section 10.2 and Article 11, a Member shall not Transfer any of its Membership Interest. Any Transfer of any Membership Interest contrary to the provisions of this Article shall be null and void at the time it was made. Additionally, each transferor of any Membership Interest in contravention of this Agreement hereby agrees to indemnify the Company and the remaining Members against any and all losses, liabilities, damages and expenses, including, without limitation, tax liabilities or loss of tax benefits and reasonable attorneys' fees, arising directly or indirectly out of any Transfer in violation of this Agreement.

Section 10.2 Permitted Transfers. Each Member may Transfer part or all of its Membership Interest if such Transfer is consented to by all of the other Members (other than the transferor Member). Additionally, without the foregoing consent, a Member may Transfer part or all of its Membership Interest to (1) a Member, (2) a Person that Controls, is Controlled by or is under common Control of a Member, and/or (3) a Transfer by OBG to any other Person, provided that the transferee agrees to execute a counterpart of this Agreement and be bound by its terms.

Section 10.3 Rights of Transferees of a Membership Interest. Each Permitted Transferee shall be a Member and have the right to share in the Profits, Losses and distributions of the Company and the voting rights related to such Permitted Transferee's respective Membership Interest, upon providing the Company with a Notice that contains the items described in Section 10.1 and is accompanied by all relevant documents as legal counsel for the Company may request.

Section 10.4 Liability Upon Assignment. The transferor of a Membership Interest is not released from any liability or obligation under this Agreement or under the LLC Law, except for liabilities or obligations arising after the Transfer and upon the granting of a specific or general release by the Company and all of the Members.

## **ARTICLE 11. ADDITIONAL MEMBERS AND WITHDRAWAL OF MEMBERS**

Section 11.1 Additional Members. The Company may sell a Membership Interest to a Person only with the prior consent of all of the Members; and the purchaser of such Membership Interest shall be admitted as an additional Member upon making a Capital Contribution of the purchase price and executing and delivering a Notice to the Company, which Notice (1) contains the acceptance by such purchaser of all of the terms and provisions of this Agreement, and (2) is accompanied by all relevant documents as legal counsel for the Company may reasonably request.

Section 11.2 No Withdrawal of Members. No Member may withdraw from the Company without the consent of the other Member, which consent may be withheld in the non-withdrawing Member's sole and absolute discretion.

## **ARTICLE 12. DISSOLUTION**

Section 12.1 Dissolution of the Company. The Company shall dissolve upon the first to happen of the following:

- (1) a determination by all of the Members to dissolve the Company; or
- (2) the sale of all or substantially all of the Company's assets, unless the Company is continued with the unanimous Consent of the Members.

### Section 12.2 Effect of Dissolution.

(a) *Winding Up.* Upon dissolution, the Company shall cease carrying on its business and shall wind up its affairs as provided in the LLC Law. Upon dissolution of the Company, the Managing Executive (or if appointed by the Managing Executive, a liquidator) shall cause a Certificate of Cancellation to be filed with the New York Secretary of State pursuant to the LLC Law.

(b) *Allocations of Profits and Losses.* The Profits and Losses shall continue to be allocated among the Members during the period of liquidation in accordance with Article 4.

### Section 12.3 Distribution of Proceeds.

(a) *Order and Priority.* The proceeds of liquidation shall be distributed as realized in the following order of priority:

- (1) first, to the payment and discharge of all of the Company's debts and liabilities and the expenses of the liquidation and dissolution;
- (2) second, to the creation of any reserve that the Executive Committee (or liquidator) reasonably deems necessary for any contingent or unforeseen liabilities or obligations of the Company; and
- (3) third, to the Members pro rata in proportion to their Membership Percentages.

(b) *No Deficit Capital Account Balance Make Up.* A Member with a deficit balance in its Capital Account at the time of the liquidation or dissolution of the Company or the liquidation of its Membership Interest shall have no obligation to restore such deficit balance and shall not be liable to the Company and to any Member therefor.

Section 12.4 Deferral of Liquidation Distributions In-kind. Notwithstanding the provisions of Section 12.2, but subject to Section 12.3, if the Managing Executive (or liquidator) determines that an immediate sale of part or all of the Company's assets would cause undue loss to the Members, the Company may either (1) defer liquidation of and withhold from distribution for a reasonable time, any assets of the Company, except those necessary to satisfy the Company's debts and obligations, or (2) distribute one or more of the Company's assets to one or more of the Members in-kind. In the event the Executive Committee (or liquidator) distributes one or more Company assets to the Member(s) in-kind, the Capital Account of the Member who receives a distribution in-kind shall be reduced by the fair market value (as determined by all of the Members) of the asset(s) distributed.

## **ARTICLE 13. MISCELLANEOUS**

Section 13.1 Other Ventures. The Members may, directly or indirectly, independently or with others, invest or engage in any business or venture including any such business that directly or indirectly competes with the Company. To the extent a Member invests or engages in a business or venture (other than that of the Company) to the extent permitted by this Section, neither the other Members nor the Company shall have any rights or obligations in and to such independent ventures or the income or profits derived therefrom.

Section 13.2 Successors, Assigns, Agents, Employees, Owners, etc.. The covenants and agreements contained in this Agreement shall be binding upon and inure to the benefit of the Members and their successors and assigns. Additionally, the parties shall require all of their agents, employees, owners and representatives to abide by the terms and conditions of this Agreement.

Section 13.3 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of New York, notwithstanding any of its conflict of laws rules.

Section 13.4 Amendments. Amendments to this Agreement may only be made with the unanimous written consent of the Members.

Section 13.5 Arbitration. Any disagreement as to the interpretation or implementation of this Agreement which cannot be resolved by the parties shall be submitted to binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association or similar organization then in being. The costs of the arbitration shall be shared equally by the parties to the arbitration; however, each Member shall bear the expense for their own costs and disbursements, including attorneys' fees. Such arbitration shall be held in New York, New York and the arbitration decision shall be final and binding on the parties.

Section 13.6 Counterparts and Facsimile. This Agreement may be executed in any number of counterparts, each of which shall be an original and when taken together such counterparts shall constitute one original Agreement. Delivery by facsimile of an executed signature page to this Agreement, or of a consent or written declaration of the Members or Executive Committee shall be effective as delivery of a manually signed original or counterpart.

Section 13.7 Severability. If any provision contained in this Agreement is determined to be invalid and contrary to law, the invalidity shall not impair the operation of or affect those portions of this Agreement which are valid.

Section 13.8 Section Headings Not Controlling. Section headings found herein are for convenience of reference only and shall not control or alter the meaning of this Agreement.

Section 13.9 No Partnership. By formation of the Company, the Members expressly do not intend to form a partnership under the New York Partnership Law or under any theory of common law as established by judicial decisions of courts at law or equity. The Members do not intend to be partners to one another, or partners as to any third party. However, the Members intend for the Company to be taxed in accordance with federal and state laws governing the taxation of partnerships.

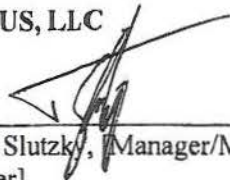
Section 13.10 Rights of Creditors. This Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person who is not a Member. None of the provisions of this Agreement shall be enforceable by any creditor of the Company or by any other Person.

Section 13.11 Entire Agreement. This Agreement comprise the entire agreement among the parties with respect to the Company. This Agreement supersede any prior agreements or understandings with respect to the Company. No representation, statement or condition not contained in this Agreement has any force or effect.

IN WITNESS WHEREOF, the undersigned, have executed this Operating Agreement of FOUBU Environmental Services, LLC to be effective as of the date first set forth above.

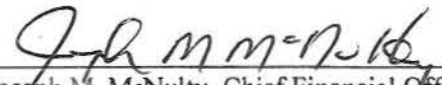
WMZ. TERSUS, LLC

By:

  
\_\_\_\_\_  
Tomer Slutzky, [Manager/Managing  
Member]

O'BRIEN & GERE LIMITED

By:

  
\_\_\_\_\_  
Joseph M. McNulty, Chief Financial Officer

## EXHIBIT A

### DEFINITIONS

Accounting Method means the general or specific accounting assumptions used to record transactions of the Company. The accounting records of the Company shall prima facie be deemed to properly reflect the proper accounting method, absent a showing of gross error or fraud.

Additional Capital Contributions has the meaning ascribed to that term in Sections 3.2, 3.3 and 3.4.

Affiliate when used with reference to a specified Person, means (a) any other Person that, directly or indirectly, controls, is controlled by or is under common control with the specified Person, (b) any other Person that is an officer, director, partner or trustee of, or serves in a similar capacity with respect to, the specified Person, (c) any other Person of which the specified Person is an officer, director, partner or trustee, (d) any other Person that, directly or indirectly, is the beneficial owner of ten percent (10%) or more of the outstanding voting equity securities or other similar interests of the specified Person, (e) any other Person of which the specified Person is, directly or indirectly, the owner of ten percent (10%) or more of the outstanding voting equity securities or other similar interests, and (f) any ancestor, descendant, brother, sister or spouse of the specified Person.

Agreement (or Operating Agreement) means this document, this Operating Agreement of FOUBU Environmental Services, LLC, as it may be amended from time to time, including the Exhibits and any amendments thereto.

Articles of Organization means the Articles of Organization of the Company which was filed with the New York Secretary of State on October 29, 2014.

Assignee means the transferee of part or all of a Membership Interest, including a Member's Personal Representative, who is not expressly designated a Member under this Agreement and has not been admitted as a Member, but who is bound by all of the restrictions and obligations imposed on a Member by this Agreement or by the LLC Law. An Assignee shall have no voting rights with respect to any Membership Interest, and no right to participate in the management of the business and affairs of the Company, but shall have the right to share in the Profits, Losses and distributions of the Company.

Capital Account means with respect to any Member, the Capital Account maintained for the Member in accordance with the following provisions:

(a) To each Member's Capital Account there shall be credited the Member's Capital Contributions, the Member's share of Profits, adjustments for increases in Gross Asset Value, and any specially allocated items in the nature of income or gain allocated to the Member pursuant to this Agreement, and the amount of any Company liabilities assumed by the Member or which are secured by any property distributed to the Member.

(b) To each Member's Capital Account there shall be debited the amount of cash and the Gross Asset Value of any property distributed to the Member pursuant to any provision of this Agreement, the Member's share of Losses, adjustments for decreases in Gross Asset Value, and any specially allocated items in the nature of expenses or losses allocated to the Member pursuant to this Agreement, and the amount of any liabilities of the Member assumed by the Company or which are secured by any property contributed by the Member to the Company.

(c) In determining the amount of any liability for purposes of subsections (a) and (b) of this definition, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations.

Capital Contributions means the total amount of money or other property contributed to the Company by all the Members or any one Member, as the context requires.

Code means the Internal Revenue Code of 1986, as amended, including any related judicial and administrative rulings and interpretations.

Company means FOUBU Environmental Services, LLC, a limited liability company.

Control or any variation thereof means direct or indirect ownership of more than fifty percent (50%) of the voting ownership interest in a Person.

Executive Committee has the meaning ascribed to that term in Section 7.1.

Fiscal Year means the calendar year unless otherwise established or changed by the Executive Committee, including any period of less than a calendar year in the year of formation or dissolution of the Company.

Indemnitee has the meaning ascribed to that term in Section 7.9.

Interested Party has the meaning ascribed to that term in Section 8.6.

Interested Party Contract has the meaning ascribed to that term in Section 8.6.

LLC Law means the New York Limited Liability Company Law as may be amended from time to time.

Member means one of the parties designated on Exhibit D as may be amended from time to time.

Membership Interest means the entire ownership interest (which may be expressed as a percentage) of a Member in the Company at any particular time, including its

Membership Percentage and its right to any and all benefits to which a Member may be entitled as provided in this Agreement and in the LLC Law, together with its obligations to comply with all the terms and provisions of this Agreement and of the LLC Law.

Membership Percentages means the Membership Percentages of the owners of the Membership Interest as may be recalculated from time to time, such Membership Percentages being recorded on Exhibit D, as may be amended from time to time.

Net Cash means with respect to any Fiscal Year, the excess of cash receipts (other than Capital Contributions) during such period over cash payments for Operating Expenses, principal payments on indebtedness and capital expenditures (other than from Capital Contributions) paid during such period and any reasonable cash reserves the Executive Committee determine are in the best interests of the Members and are necessary to conduct the Company's business. The determination by the Executive Committee of the amount of Net Cash shall be binding upon all Members.

Notice means a dated writing, containing the information required by this Agreement to be communicated to any Person, which Notice shall be deemed given on the sooner of (a) the date of personal delivery to the Person, (b) the date of transmittal by telecopy (Fax) to the Person, (c) three (3) days following the date of certified or registered mailing to the Person's address return receipt requested and postage prepaid, (d) one (1) business day following delivery to a nationally recognized United States overnight courier service directed to the Person's address fee prepaid and returned receipt or other confirmation of delivery requested, and (e) the next business day following a transmission (on a business day during normal business hours) by e-mail to a Person's e-mail address. The Members' addresses, telephone numbers, facsimile numbers and e-mail addresses are set forth on Exhibit E, as may be amended from time to time.

Percentage Consent means the majority vote of the Executive Committee, with each individual member of the Executive Committee voting in accordance with the Membership Percentages of the Member that appointed such individual.

Person means any individual, partnership, corporation, trust, limited liability company, or other entity.

Personal Representative means the legal representative of a Member, including a duly designated employee or agent, a trustee in bankruptcy, conservator or guardian, and an executor, administrator or the like.

Profits and Losses means with respect to any Fiscal Year, an amount equal to the Company's federal taxable income or loss for such Fiscal Year, determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses shall be added to such taxable income or loss.

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulation Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses, shall be subtracted from such taxable income or loss.

(c) Gain or loss resulting from any disposition of property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the fair market value of the property disposed of (as determined unanimously by the Members), notwithstanding that the adjusted tax basis of the property differs from such fair market value.

Proxy means the written authority given by a Member to vote at any Company meeting as provided in Section 8.2.

Regulations means the Income Tax Regulations promulgated under the Code, as they may be amended from time to time.

Tax Matters Partner means O'Brien & Gere Limited, unless such designation is revoke and a successor is appointed by the Executive Committee, the Person designated to represent the Company in connection with income tax matters pursuant to Section 6231(a)(7) of the Code, or such other individual as may be selected by the Executive Committee.

Transfer means a transfer, whether by sale, purchase, mortgage, gift, bequest, intestate succession, assignment, or pledge.

Transferred means sold, purchased, mortgaged, transferred by gift, bequest or intestate succession, assigned or pledged.

Transfer and Transferred as the context requires, shall also mean a Change In Control of a Member.

**EXHIBIT B**  
**BROWNFIELD CLEANUP AGREEMENT**

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.: C734052-03-15**

**Former Accurate Die Casting Site**

DEC Site No.: C734052

Located at: 547 East Genesee Street  
Onondaga County  
Fayetteville, NY 13066

Hereinafter referred to as "Site"

by:

FOUBU Environmental Services, LLC  
c/o O'Brien & Gere, Syracuse, NY 13204

Hereinafter referred to as "Applicant"

**WHEREAS**, the Department of Environmental Conservation (the "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 January 15, 2015; 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, FOUBU Environmental Services, LLC, is participating in the BCP as a Volunteer as defined in ECL 27-1405(1)(b).

**II. Real Property**

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 30.310 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 9-4-19.1  
Street Number: 547 East Genesee Street, Fayetteville  
Owner: 547 East Genesee Street, LLC

### III. Payment of State Costs

Invoices shall be sent to Applicant at the following address:

FOUBU Environmental Services, LLC  
Attn: John F. Sutphen, Esq.  
c/o O'Brien & Gere  
333 West Washington Street  
Syracuse, NY 13204  
[john.sutphen@obg.com](mailto:john.sutphen@obg.com)

### 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:

Tara Blum  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
615 Erie Boulevard West  
Syracuse, NY 13204  
[tara.blum@dec.ny.gov](mailto:tara.blum@dec.ny.gov)

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

Krista Anders (electronic copy only)  
New York State Department of Health  
Bureau of Environmental Exposure Investigation  
Empire State Plaza  
Corning Tower Room 1787  
Albany, NY 12237  
[krista.anders@health.ny.gov](mailto:krista.anders@health.ny.gov)

Margaret Sheen, Esq. (correspondence only)  
New York State Department of Environmental Conservation  
Office of General Counsel  
615 Erie Boulevard West  
Syracuse, NY 13204  
[margaret.sheen@dec.ny.gov](mailto:margaret.sheen@dec.ny.gov)

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

FOUBU Environmental Services, LLC  
Attn: John F. Sutphen, Esq.  
c/o O'Brien & Gere  
333 West Washington Street  
Syracuse, NY 13204  
[john.sutphen@obg.com](mailto:john.sutphen@obg.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. The Applicant shall be responsible for current on-site Site management including any on-site obligations per the Site Management Plan and/or in accordance with any Department approved Operations and Maintenance and Monitoring Plans for the Site.

C. 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.

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

DATED:

JOSEPH J. MARTENS  
COMMISSIONER  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By:

\_\_\_\_\_  
Robert W. Schick, P.E., 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.

FOUBU Environmental Services, LLC

By:

John F. Sutphen

Title:

MANAGING EXECUTIVE

Date:

MAY 27, 2015

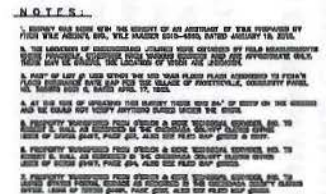
STATE OF NEW YORK )

COUNTY OF Onondaga ) ss:




On the 27<sup>th</sup> day of May in the year 2015, before me, the undersigned, personally appeared John F. Sutphen, 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.

Mary Kae Brentlinger  
Signature and Office of individual  
taking acknowledgment

MARY KAE BRENTLINGER  
Notary Public in the State of New York  
Qualified in Cayuga Co. No. 4952912  
My Commission Expires July 3, 2015



	THIN ROD
	POWER POLE
	BEVERLY SAUCE
	SHOGUN SAUCE
	BAIT WITH FUMOLE
	CRAB LEG FUMOLE
	BAKLAVA FUMOLE
	WINE GLAZE
	BRAISED VEAL

Drawn by <u>M.A. HARTEN</u> Checked by <u>D.A. HARTEN</u>		FOR INFORMATION: COUNTY ENGINEERS HELP THEIR HELP TO BEAR FRUIT AS A RESULT OF THE PERMANENT BOUNDARY SURVEY.		TAX PARCEL ID # 0-04-10.1 PART OF LOT 65 VILLAGE OF FAYETTEVILLE TOWN OF MANLIUS COUNTY OF ONONDAGA STATE OF NEW YORK	<u>DRAWING TITLE</u> <b>BOUNDARY SURVEY</b>	<u>FILED IN</u> <u>13.007</u>
AN ADDRESSING PERMITTING SERVICE EMPLOYED AS PROVIDED UNDER ARTICLE 17, SECTION 1 OF THE NEW YORK STATE CONSTITUTION.		<u>Signature of David A. Harten</u>	CNV LAND SURVEYING 2075 CHURCH ROAD BALDWINVILLE, NEW YORK 13027 (315) 635-4614		Scale 1" = 100'	
CITY ENGINEER OF THE COUNTY OF THE SURVEY AND THE TOWN OF THE SURVEY, SAID ENGINEER'S SEAL SHALL BE AFFIXED TO THIS PLAN AND SHALL BE VALID.		REGISTERED MAP ENGINEER REGISTERED LAND SURVEYOR			Date 3/14/19	Drawing No. 1 OF 2

## APPENDIX A

### STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

The parties to the Brownfield Site Cleanup Agreement (hereinafter "the BCA" or "the Agreement" or "this 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 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.

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. 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.

#### 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

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 New York State Department of Environmental Conservation 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. The Department shall provide written notification to the Applicant 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 § 27-1423 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 this Agreement.

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, 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 represent payment for or reimbursement of State costs, and 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.

**EXHIBIT C**  
**CAPITAL CONTRIBUTIONS**

I. Upon Execution of Agreement

<u>Member</u>	<u>Initial Capital Contributions</u>	<u>Members Percentage of Capital</u>
WMZ. Tersus, LLC	\$ [REDACTED] cash	[REDACTED]%
O'Brien & Gere Limited	\$ [REDACTED]	[REDACTED]%
Total Capital:	\$ [REDACTED]	100%

II. After Transfer of Title to Real Property Located at 547 East Genesee Street, Fayetteville, New York

<u>Member</u>	<u>Capital Contributions</u>	<u>Members Percentage of Capital</u>
WMZ. Tersus, LLC	\$ [REDACTED]	[REDACTED]%
O'Brien & Gere Limited	\$ [REDACTED] previously contributed	[REDACTED]%
Total Capital:	\$ [REDACTED]	100%

## EXHIBIT D

### MEMBERSHIP INTEREST PERCENTAGES

#### I. Upon Execution of Agreement

<u>Member</u>	<u>Membership Interest Percentages</u>
WMZ. Tersus, LLC	 %
O'Brien & Gere Limited	 %
Total:	100%

#### II. After Transfer of Title to Real Property Located at 547 East Genesee Street, Fayetteville, New York

<u>Member</u>	<u>Membership Interest Percentages</u>
WMZ. Tersus, LLC	 %
O'Brien & Gere Limited	 %
Total:	100%

## **EXHIBIT E**

### **ADDRESSES, TELEPHONE AND FAX NUMBERS AND E-MAIL ADDRESSES**

Tomer Slutzky  
WMZ. Tersus, LLC  
110 Stage Road  
Monroe, New York 10950  
Phone (845) 783-4833  
Cell Phone (845) 222-7414  
E-Mail tomer@terrintl.net

O'Brien & Gere Limited  
333 W. Washington Street  
Syracuse, NY 13202  
Attn: Joseph M. McNulty, Chief Financial Officer  
Phone (315) 956-6388  
Fax (315) 463-7554  
E-Mail joseph.mcnulty@obg.com