

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

In the Matter of a Remedial Program for

**AMENDMENT TO BROWNFIELD SITE
CLEANUP AGREEMENT
Index No. C224163-03-13**

Red Hook Smith Street

DEC Site Nos: C224163

Located at: 627 Smith St., Brooklyn, Kings County, NY 11231

Hereinafter referred to as "Site"

by:

Red Hook Developers Holdings, LLC

1400 Broadway, 15th Floor, New York, NY 10018

Hereinafter referred to as "Applicant"

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

WHEREAS, the Department and the Applicant seek to amend the existing BCP Agreement for the Site, based on the 2015 changes to the BCP.

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

I. Tax Credit Status & Deadline for receipt of Certificate of Completion (COC)

Based on the fact that the Site did not receive a COC by December 31, 2019, it is hereby subject to the terms of the BCP in effect as of July 1, 2015, including, but not limited to, the tax credit structure and the deadline of March 31, 2026.

With respect to eligible costs incurred under the BCP, this Amendment shall not change the effective date of the Agreement, and otherwise eligible costs incurred from the original effective date of the agreement will still be eligible costs for tax credit purposes.

The Site is located in a City having a population of one million or more and the Applicant has not submitted documentation sufficient to demonstrate that at least one of the following conditions exists: at least half of the site area is located in an environmental zone as defined in section twenty-one of the tax law, the property is upside down, the

property is underutilized, or the project is an affordable housing project. In accordance with ECL § 27-1407(1-a), the Applicant may request an eligibility determination for tangible property tax credits at any time from application until the site receives a certificate of completion except for sites seeking eligibility under the underutilized category. For sites seeking eligibility for tangible property tax credits under the underutilized category, the Applicant will apply for an additional amendment to the Agreement within sixty (60) days of the effective date of this Amendment. Should the Applicant fail to submit an amendment application for a determination that the site is eligible for tangible property tax credits under the underutilized category within sixty (60) days, the Applicant will not be able to receive tangible property tax credits under this category.

II. Miscellaneous

A. Except for the modifications set forth herein, the original Agreement shall remain in full force and effect and the terms thereof and the obligations therein are incorporated herein and shall apply with the same force and effect to the provisions of this Amendment. The terms of the original Agreement, including all exhibits, appendices and subsequent modifications, are not otherwise modified or expanded in any way.

B. The terms herein shall constitute this complete and entire Amendment of the Agreement. No term, condition, understanding or agreement purporting to modify the terms of the Agreement shall be binding unless subscribed to by both parties in accordance with the terms of the Agreement.

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

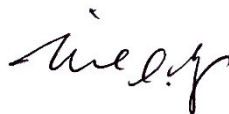
D. This Amendment may be signed in counterparts.

DATED:

June 16, 2020

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

By:



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

Hathaway, Jennifer L (DEC)

From: Andaloro, Jennifer A (DEC)
Sent: Thursday, June 04, 2020 2:03 PM
To: Hathaway, Jennifer L (DEC)
Subject: Fw: BCP Gen 2 to Gen 3 - C224163 - Red Hook Smith Street

We can accept this with the further clarification below.

Thanks,

Jennifer Andaloro
Senior Attorney
Office of General Counsel
625 Broadway, 14th Floor
Albany, NY 12233-1507
Tel: (518) 402-9507
Fax: (518) 402-9018

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From: Michael Bogin <mbogin@sprlaw.com>
Sent: Thursday, June 4, 2020 1:59 PM
To: Andaloro, Jennifer A (DEC) <jennifer.andaloro@dec.ny.gov>
Cc: Hathaway, Jennifer L (DEC) <Jennifer.Hathaway@dec.ny.gov>
Subject: RE: BCP Gen 2 to Gen 3 - C224163 - Red Hook Smith Street

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Jenn—

I have confirmed with my client that the document was, in fact, signed on June 1 and that the date should be read as such.

Michael Bogin
SIVE | PAGET | RIESEL
Direct: (646) 378-7210
Cell: (917) 626-1656
mbogin@sprlaw.com

From: Andaloro, Jennifer A (DEC) <jennifer.andaloro@dec.ny.gov>
Sent: Thursday, June 4, 2020 12:12 PM

To: Michael Bogin <mbogin@sprlaw.com>
Cc: Hathaway, Jennifer L (DEC) <Jennifer.Hathaway@dec.ny.gov>
Subject: Fw: BCP Gen 2 to Gen 3 - C224163 - Red Hook Smith Street

Michael,

The Department cannot accept this execution page since the date the document was executed (6/2/2020) does not match the date it was notarized (6/1/2020).

Please advise and many thanks.

Jennifer Andaloro
Senior Attorney
Office of General Counsel
625 Broadway, 14th Floor
Albany, NY 12233-1507
Tel: (518) 402-9507
Fax: (518) 402-9018

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From: Michael Bogin <mbogin@sprlaw.com>
Sent: Wednesday, June 03, 2020 3:54 PM
To: Andaloro, Jennifer A (DEC) <jennifer.andaloro@dec.ny.gov>
Cc: Hathaway, Jennifer L (DEC) <Jennifer.Hathaway@dec.ny.gov>; David Yudelson <dyudelson@sprlaw.com>
Subject: RE: BCP Gen 2 to Gen 3 - C224163 - Red Hook Smith Street

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Jenn—

Attached is a replacement signature page for the transition amendment. As you'll see, the signatory is the same as on the original Agreement. Please confirm whether this is sufficient for the Department's purposes. Thank you.

Michael Bogin
SIVE | PAGET | RIESEL
Direct: (646) 378-7210
Cell: (917) 626-1656
mbogin@sprlaw.com

From: Andaloro, Jennifer A (DEC) <jennifer.andaloro@dec.ny.gov>
Sent: Thursday, May 28, 2020 10:06 AM
To: Michael Bogin <mbogin@sprlaw.com>

Cc: Hathaway, Jennifer L (DEC) <Jennifer.Hathaway@dec.ny.gov>
Subject: Fw: BCP Gen 2 to Gen 3 - C224163 - Red Hook Smith Street

Michael,

Attached please find the executed transition amendment received by the Department on the referenced site. The Department cannot accept the attached as the notary incorrectly completed the notary block and the signature on the executed transition amendment does not match the signature for the authorized representative the Department has on file.

I have also attached a blank agreement for your client to re-execute. Please note that if the signatory for the transition amendment is different from the signature on the original BCA and subsequent amendments, if any, the Department will require supporting documentation that indicates authority to bind.

Let me know if you have any questions. My direct line is 518 402 9199. Hope that you and your family are healthy and safe.

Many thanks,

Jennifer Andaloro
Senior Attorney
Office of General Counsel
625 Broadway, 14th Floor
Albany, NY 12233-1507
Tel: (518) 402-9507
Fax: (518) 402-9018

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