



Strong Advocates, Effective Solutions, Integrated Implementation

September 19, 2017

Ms. Kelly Lewandowski
Chief, Site Control Section
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, New York 12233-7020

**Re: 229 Homer Street Site (Site No. C905044)
Amendment Application for Change in Party (Revised)**

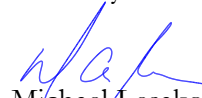
Dear Ms. Lewandowski:

We have attached a revised Amendment Application for Change in Party to the existing Brownfield Cleanup Agreement (BCA) between New York State Department of Environmental Conservation (NYSDEC) and Benson Construction and Development, LLC for the 229 Homer Street Brownfield Cleanup Program (BCP) Site (see Attachment 1). This Amendment Application was revised based on comments received on September 15, 2017 from Ms. Bernadette Anderson.

The 229 Homer Street parcel is currently owned by Benson Construction and Development, LLC (current Applicant). A 60-Day Notification of Change of Ownership identifying Homer Street Properties, LLC (new Applicant) as the future owner was recently sent to the Department. We have attached the New York State Department of State (NYSDOS) Entity Information sheet for Homer Street Properties, LLC at Attachment 2. Attachment 3 is the Joint Unanimous Written Consent for Homer Street Properties, LLC and Attachment 4 is a letter providing Homer Street Properties, LLC access to the property to carry out BCP activities. Attachment 5 is a statement describing why Homer Street Properties, LLC should be considered a volunteer in the BCP.

We respectfully request on behalf of Benson Construction and Development, LLC and Homer Street Properties, LLC that Homer Street Properties, LLC be added an additional Applicant to the existing BCA. Please contact me at (716) 856-0599 or Don Benson at (716) 244-0999 if you have any questions or require additional information regarding this matter.

Sincerely,
TurnKey Environmental Restoration, LLC


Michael Lesakowski
Sr. Project Manager

cc: Mr. Don Benson
Mr. Craig Slater, Esq., The Slater Law Firm
Ms. Jennifer Dougherty, NYSDEC
Mr. Anthony Lopes, NYSDEC

ATTACHMENT 1

AMENDMENT APPLICATION FOR CHANGE IN PARTY 229 HOMER STREET SITE



BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT

PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

Check the appropriate box below based on the nature of the amendment modification requested:

☒ Amendment to [check one or more boxes below]

- ☒ Add
- ☐ Substitute
- ☐ Remove
- ☐ Change in Name

applicant(s) to the existing Brownfield Cleanup Agreement [*Complete Section I-IV below and Part II*]

Does this proposed amendment involve a transfer of title to all or part of the brownfield site? ☐ Yes ☐ No

If yes, pursuant to 6 NYCRR Part 375-1.11(d), a Change of Use form should have been previously submitted. If not, please submit this form with this Amendment. See <http://www.dec.ny.gov/chemical/76250.html>

☐ Amendment to modify description of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Sections I and V below and Part II*]

☐ Amendment to Expand or Reduce property boundaries of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Section I and V below and Part II*]

☐ **Sites in Bronx, Kings, New York, Queens, or Richmond counties ONLY:** Amendment to request determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit. Please answer questions on the supplement at the end of the form.

☐ Other (explain in detail below)

Please provide a brief narrative on the nature of the amendment:

The existing Brownfield Cleanup Agreement (BCA) is with Benson Construction and Development, LLC. This amendment would add Homer Street Properties, LLC as an additional Applicant (Volunteer) to the existing BCA. A 60-Day Notice of Change of Use (Ownership) that the property is being transferred to Homer Street Properties, LLC was sent to NYSDEC under separate cover.

Please refer to the attached instructions for guidance on filling out this application

Section I. Existing Application Information		
BCP SITE NAME: 229 Homer Street		BCP SITE NUMBER: C905044
NAME OF CURRENT APPLICANT(S): Benson Construction and Development, LLC		
INDEX NUMBER OF EXISTING AGREEMENT: C905044-09		DATE OF EXISTING AGREEMENT: 10/13/15
Section II. New Requestor Information (if no change to Current Applicant, skip to Section V)		
NAME Homer Street Properties, LLC		
ADDRESS 221 Homer Street		
CITY/TOWN Olean, New York		ZIP CODE 14760
PHONE (716) 244-0999	FAX NA	E-MAIL dbenson@benson-construction.com
Is the requestor authorized to conduct business in New York State (NYS)? ☒ Yes ☐ No • If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's (DOS) Corporation & Business Entity Database. A print-out of entity information from the DOS database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.		
NAME OF NEW REQUESTOR'S REPRESENTATIVE Mr. Donald Benson		
ADDRESS 221 Homer Street		
CITY/TOWN Olean, New York		ZIP CODE 14760
PHONE (716) 244-0999	FAX NA	E-MAIL dbenson@benson-construction.com
NAME OF NEW REQUESTOR'S CONSULTANT (if applicable) TurnKey Environmental Restoration		
ADDRESS 2558 Hamburg Turnpike		
CITY/TOWN Buffalo, New York		ZIP CODE 14218
PHONE (716) 856-0599	FAX (716) 856-0583	E-MAIL mlesakowski@benchmarkturnkey.com
NAME OF NEW REQUESTOR'S ATTORNEY (if applicable) Craig A. Slater		
ADDRESS 500 Seneca Street – Suite 504		
CITY/TOWN Buffalo, New York		ZIP CODE 14204
PHONE (716) 845-6760	FAX (716) 845-6764	E-MAIL CSlater@CSlaterLaw.com
Requestor must submit proof that the party signing this Application and Amendment has the authority to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. Is this proof attached? ☒ Yes ☐ No		
Describe Requestor's Relationship to Existing Applicant: The Requestor (Homer Street Properties, LLC) is not a related company to the existing Applicant (Benson Construction and Development, LLC), but both companies have common ownership (R. Donald Benson).		

Section III. Current Property Owner/Operator Information (only include if new owner/operator or new existing owner/operator information is provided, and highlight new information)

OWNER'S NAME (if different from requestor) Benson Construction and Development, LLC

ADDRESS 221 Homer Street

CITY/TOWN Olean

ZIP CODE 14760

PHONE (716)244-0999

FAX NA

E-MAIL dbenson@benson-construction.com

OPERATOR'S NAME (if different from requestor or owner) [same as owner]

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

Section IV. Eligibility Information for New Requestor (Please refer to ECL § 27-1407 for more detail)

If answering "yes" to any of the following questions, please provide an explanation as an attachment.

1. Are any enforcement actions pending against the requestor regarding this site? ☐ Yes ☒ No
2. Is the requestor presently subject to an existing order for the investigation, removal or remediation relating to contamination at the site? ☐ Yes ☒ No
3. Is the requestor subject to an outstanding claim by the Spill Fund for this site? ☐ Yes ☒ No
Any questions regarding whether a party is subject to a spill claim should be discussed with the Spill Fund Administrator.
4. Has the requestor been determined in an administrative, civil or criminal proceeding to be in violation of i) any provision of the subject law; ii) any order or determination; iii) any regulation implementing ECL Article 27 Title 14; or iv) any similar statute, regulation of the state or federal government? If so, provide an explanation on a separate attachment. ☐ Yes ☒ No
5. Has the requestor previously been denied entry to the BCP? If so, include information relative to the application, such as name, address, Department assigned site number, the reason for denial, and other relevant information. ☐ Yes ☒ No
6. Has the requestor been found in a civil proceeding to have committed a negligent or intentionally tortious act involving the handling, storing, treating, disposing or transporting of contaminants? ☐ Yes ☒ No
7. Has the requestor been convicted of a criminal offense i) involving the handling, storing, treating, disposing or transporting of contaminants; or ii) that involves a violent felony, fraud, bribery, perjury, theft, or offense against public administration (as that term is used in Article 195 of the Penal Law) under federal law or the laws of any state? ☐ Yes ☒ No
8. Has the requestor knowingly falsified statements or concealed material facts in any matter within the jurisdiction of the Department, or submitted a false statement or made use of or made a false statement in connection with any document or application submitted to the Department? ☐ Yes ☒ No
9. Is the requestor an individual or entity of the type set forth in ECL 27-1407.9(f) that committed an act or failed to act, and such act or failure to act could be the basis for denial of a BCP application? ☐ Yes ☒ No
10. Was the requestor's participation in any remedial program under DEC's oversight terminated by DEC or by a court for failure to substantially comply with an agreement or order? ☐ Yes ☒ No
11. Are there any unregistered bulk storage tanks on-site which require registration? ☐ Yes ☒ No

THE NEW REQUESTOR MUST CERTIFY THAT IT IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL §27-1405 (1) BY CHECKING ONE OF THE BOXES BELOW:

☐ PARTICIPANT

A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.

☒ VOLUNTEER

A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

NOTE: By checking this box, a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site certifies that he/she has exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.

If a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site, submit a statement describing why you should be considered a volunteer – be specific as to the appropriate care taken.

Requestor's Relationship to Property (check one):

☐ Prior Owner ☐ Current Owner ☒ Potential /Future Purchaser ☐ Other _____

If requestor is not the current site owner, **proof of site access sufficient to complete the remediation must be submitted.** Proof must show that the requestor will have access to the property before signing the BCA and throughout the BCP project, including the ability to place an easement on the site Is this proof attached? ☒ Yes ☐ No

Note: a purchase contract does not suffice as proof of access.

Section V. Property description and description of changes/additions/reductions (if applicable)

ADDRESS [Not Applicable]

CITY/TOWN

ZIP CODE

TAX BLOCK AND LOT (TBL) (in existing agreement)

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage

Check appropriate boxes below:

☐

Changes to metes and bounds description or TBL correction

☐

Addition of property (may require additional citizen participation depending on the nature of the expansion – see attached instructions)

Approximate acreage added: _____

ADDITIONAL PARCELS:

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage

☐

Reduction of property

Approximate acreage removed: _____

PARCELS REMOVED:

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage

If requesting to modify a metes and bounds description or requesting changes to the boundaries of a site, please attach a revised metes and bounds description, survey, or acceptable site map to this application.

Supplement to the Application To Amend Brownfield Cleanup Agreement And Amendment - Questions for Sites Seeking Tangible Property Credits in New York City ONLY.

Property is in Bronx, Kings, New York, Queens, or Richmond counties.	☐ Yes ☐ No
Requestor seeks a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit.	☐ Yes ☐ No
Please answer questions below and provide documentation necessary to support answers.	
1. Is at least 50% of the site area located within an environmental zone pursuant to Tax Law 21(6)? Please see DEC's website for more information.	☐ Yes ☐ No
2. Is the property upside down as defined below?	☐ Yes ☐ No
From ECL 27-1405(31): "Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.	
3. Is the project an affordable housing project as defined below?	☐ Yes ☐ No
From 6 NYCRR 375- 3.2(a) as of August 12, 2016: (a) "Affordable housing project" means, for purposes of this part, title fourteen of article twenty seven of the environmental conservation law and section twenty-one of the tax law only, a project that is developed for residential use or mixed residential use that must include affordable residential rental units and/or affordable home ownership units. (1) Affordable residential rental projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which defines (i) a percentage of the residential rental units in the affordable housing project to be dedicated to (ii) tenants at a defined maximum percentage of the area median income based on the occupants' households annual gross income. (2) Affordable home ownership projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which sets affordable units aside for home owners at a defined maximum percentage of the area median income. (3) "Area median income" means, for purposes of this subdivision, the area median income for the primary metropolitan statistical area, or for the county if located outside a metropolitan statistical area, as determined by the United States department of housing and urban development, or its successor, for a family of four, as adjusted for family size.	

PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

Existing Agreement Information	
BCP SITE NAME: 229 Homer Street	BCP SITE NUMBER: C905044
NAME OF CURRENT APPLICANT(S): Benson Construction and Development, LLC	
INDEX NUMBER OF EXISTING AGREEMENT: C905044-09-15	
EFFECTIVE DATE OF EXISTING AGREEMENT: October 13, 2015	

Declaration of Amendment:

By the Requestor(s) and/or Applicant(s) signatures below, and subsequent signature by the Department, the above application to amend the Brownfield Cleanup Agreement described above is hereby approved. This Amendment is made in accordance with and subject to all of the BCA and all applicable guidance, regulations and state laws applicable thereto. All other substantive and procedural terms of the Agreement will remain unchanged and in full force and effect regarding the parties to the Agreement.

Nothing contained herein constitutes a waiver by the Department or the State of New York of any rights held in accordance with the Agreement or any applicable state and/or federal law or a release for any party from any obligations held under the Agreement or those same laws.

Statement of Certification and Signatures: New Requestor(s) (if applicable)

(Entity)

I hereby affirm that I am (title Managing Member) of (entity Homer Street Properties, LLC); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

R. Donald Benson signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: September 19, 2017 Signature: 

Print Name: R. Donald Benson

Statement of Certification and Signatures: Existing Applicant(s) (an authorized representative of each applicant must sign)

(Entity)

I hereby affirm that I am Owner (title) of Benson Construction and Development, LLC (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. R. Donald Benson signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: September 19, 2017

Signature: R. Donald Benson

Print Name: R. Donald Benson

REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT

Status of Agreement:

☐

PARTICIPANT

A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.

☐

VOLUNTEER

A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.

Effective Date of the Original Agreement:

Signature by the Department:

DATED:

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:

Robert W. Schick, P.E., Director
Division of Environmental Remediation

SUBMITTAL INFORMATION:

- **Two (2)** copies, one hard copy with original signatures and one electronic copy in Portable Document Format (PDF) must be sent to:

Chief, Site Control Section
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233-7020

FOR DEPARTMENT USE ONLY

BCP SITE T&A CODE: _____ **LEAD OFFICE:** _____

PROJECT MANAGER: _____

ATTACHMENT 2

NYSDOS ENTITY INFORMATION HOMER STREET PROPERTIES, LLC

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through June 11, 2014.

Selected Entity Name: HOMER STREET PROPERTIES, LLC

Selected Entity Status Information

Current Entity Name: HOMER STREET PROPERTIES, LLC

DOS ID #: 3604577

Initial DOS Filing Date: DECEMBER 12, 2007

County: CATTARAUGUS

Jurisdiction: NEW YORK

Entity Type: DOMESTIC LIMITED LIABILITY COMPANY

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

HOMER STREET PROPERTIES, LLC

221 HOMER STREET

OLEAN, NEW YORK, 14760

Registered Agent

NONE

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include the name(s) and address(es) of the original members, however this information is not recorded and only available by [viewing the certificate.](#)

***Stock Information**

# of Shares	Type of Stock	\$ Value per Share
-------------	---------------	--------------------

No Information Available

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
DEC 12, 2007	Actual	HOMER STREET PROPERTIES, LLC

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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ATTACHMENT 3

**JOINT UNANIMOUS WRITTEN CONSENT
HOMER STREET PROPERTIES, LLC**

HOMER STREET PROPERTIES, LLC
JOINT UNANIMOUS WRITTEN CONSENT
OF THE SHAREHOLDERS AND OFFICERS

September 12, 2017

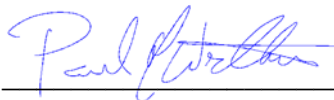
The undersigned and Managing Members of **HOMER STREET PROPERTIES, LLC**, a New York limited corporation (the "Company"), hereby jointly consent to the adoption of the following resolutions without a meeting and direct that this Consent be filed with the minutes of the Company.

RESOLVED, that R. DONALD BENSON (an "Authorized Person") be, and hereby is, authorized, directed, and empowered, acting alone, in the name or on behalf of the Corporation, to execute the Brownfield Cleanup Program (BCP) Application, the Brownfield Cleanup Agreement (BCA) and amendments thereof, or any other documents or agreements necessary to enter and participate in the New York State Department of Environmental Conservation's Brownfield Cleanup Program (Environmental Conservation Law Article 27, Title 14) for property located at 229 Homer Street, Olean, New York; and be it further

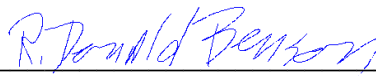
RESOLVED, that the Authorized Person is hereby authorized, empowered and directed to take all such action on behalf of the Corporation as they may deem necessary, appropriate or advisable to carry out the intent and purposes of the foregoing resolution; and be it further

RESOLVED, that any acts of any officer of the Corporation and of any persons designated and authorized to act by any such officer of the Corporation, which acts would have been authorized by the foregoing resolutions except that such acts were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved and adopted as acts of the Corporation.

IN WITNESS WHEREOF, the undersigned have executed this Joint Unanimous Written Consent as of the date set forth above.



Name: Paul H. Werthman
Managing Member



Name: R. Donald Benson
Managing Member

ATTACHMENT 4

ACCESS AUTHORIZATION FOR HOMER STREET PROPERTIES, LLC

Benson Construction and Development, LLC

September 12, 2017

Ms. Kelly Lewandowski
Chief, Site Control Section
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, New York 12233-7020

**Re: Access Authorization
229 Homer Street Site
BCP Site Number C905044**

Dear Ms. Lewandowski:

Benson Construction and Development, LLC is the owner of the above-referenced site (the "Site") and acknowledges Homer Street Properties LLC as an additional Applicant to the existing Brownfield Cleanup Agreement (BCA) for redevelopment of the Site under the NY State Brownfield Cleanup Program (BCP).

Benson Construction and Development, LLC authorizes Homer Street Properties, LLC and its designated contractors and consultants unlimited access to the Site to perform the required work related to and necessary to secure a Certificate of Completion, including placing an environmental easement on the Site, provided all activities are completed in accordance with the existing BCA.

Please contact me if you have any questions or require additional information.

Benson Construction and Development, LLC



R. Donald Benson
Owner of 229 Homer Street

ATTACHMENT 5

STATEMENT OF VOLUNTEER STATUS HOMER STREET PROPERTIES, LLC

ATTACHMENT 5
BCA Amendment Application – Part 1, Section IV
Requestor Volunteer Status
229 Homer Street Site

PART 1, SECTION IV – REQUESTOR ELIGIBILITY INFORMATION

The Requestor as a Volunteer

A BCP applicant may be either a “Participant” or a “Volunteer.”

A “Participant” is an applicant who either (i) was the owner of the site at the time of the disposal or discharge of contaminants; or (ii) is otherwise responsible according to applicable principles of statutory or common law liability, unless such person’s liability arises solely as a result of such person’s ownership or operation of or involvement with the site subsequent to the disposal or discharge [NY ECL 27-1405(1)(a)].

A “Volunteer” is an applicant other than a participant, including a person whose liability arises solely as a result of such person’s ownership or operation of or involvement with the site subsequent to the disposal or discharge of contaminants provided that such person exercises appropriate care with respect to the contamination [NY ECL 27-1405(1)(b)].

Since the Applicant is a prospective purchaser who became involved with the property after the disposal or discharge of contaminants at the site, Homer Street Properties, LLC is entitled to Volunteer status under NY ECL27-1405(1)(b).