

*Dearborn Corp Campus/Goodwill (former Dearborn 5490)*  
*Project #8684*  
*SFC JIAK5*

Prepayment # \_\_\_\_\_ - \_\_\_\_\_  
AFRS PROJ - AMD

## AGREEMENT

Between the

**State of Washington, Department of Ecology**

and

**Dearborn Street Developers LLC**

This Agreement is made and entered into between the Washington State Department of Ecology (Ecology) and Dearborn Street Developers LLC, 2620 Second Ave, Seattle WA 98121, ("Applicant"), for remedial action to be undertaken at the Goodwill Dearborn Site (Site), generally located at **1400 South Lane Street**.

WHEREAS, Ecology is responsible for the implementation of the Model Toxics Control Act (Chapter 70.105D RCW, hereinafter "MTCA") and its implementing regulations (Chapter 173-340 WAC);

WHEREAS, Applicant is not currently a PLP but is considering the acquisition of property or properties that comprise all or a portion of the Site;

WHEREAS, Applicant agrees to provide Ecology with funds which will reimburse Ecology for time and materials already devoted to discussions regarding site assessment, characterization and a potential prospective purchaser consent decree (PPCD) and such future costs incurred by Ecology to oversee the remedial investigation, feasibility analysis, public participation, and negotiation and preparation of consent decree for this Site; and

WHEREAS, Ecology has determined that this Agreement is in the public interest, because it facilitates cleanup of the Site.

NOW, THEREFORE, in consideration of the promises contained in this agreement, the parties agree to the following:

**PAYMENT OBLIGATIONS.**

This is a time and materials contract. Applicant agrees to pay Ecology for services and materials provided by Ecology in fulfilling the work, and at the rates, described in attachment A, which by this reference is incorporated into this Agreement. Included within this Agreement is Applicant's responsibility to reimburse Ecology for time and materials incurred from and after July 13, 2006 related to this Site. Should Applicant fail to pay for services or materials rendered, Ecology shall have no further obligation to render the services beyond those for which payment has been tendered.

Applicant agrees to pay a minimum of \$12,500 as a deposit within ten (10) days after execution by both parties of this Agreement. This payment shall be deposited in the State Toxics Control Account (Account), and used toward payment of service and materials provided by Ecology's. Failure to pay Ecology's costs within ninety (90) days of receipt of an invoice shall result in interest charges pursuant to WAC 173-340-550(4). All interest earned on the deposited funds shall remain in the Account; Applicant shall not be entitled to interest earned on deposited funds. Any deposited funds not used for services or materials provided under this Agreement shall be refunded to Applicant without interest.

Costs incurred shall include direct and indirect activities as specified in WAC 173-340-550(2). Direct labor cost shall include review time by the site manager and the assistant attorney general assigned to the site. An estimate of current hourly rates associated with the primary staff assigned to this Site are set forth in

Attachment A. Other people may assist the site manager and Assistant Attorney General (AAG) as needed. These hourly rates may be adjusted by Ecology during the performance of this Agreement to ensure full compensation for the services provided. Applicant's only remedy for adjustment of rates during the performance of the Agreement is termination of the Agreement for convenience. Applicant shall pay the adjusted rates for services rendered prior to an election to terminate.

The costs of materials used during the review, cost of public notice, mileage, etc will also be specified in the invoice. All equipment purchased by Ecology to implement this agreement, using funds paid under this Agreement, shall become Ecology property and will remain the property of Ecology after termination of this Agreement. Ecology shall not purchase equipment exceeding \$ 500 in value without prior approval of Applicant.

At the end of each quarter, Ecology shall invoice Applicant for work under this Agreement. The invoice will include a summary of staff-related costs incurred, a general description of work performed, an identification of involved staff, and the amount of time spent by involved staff members on the project.

Pursuant to WAC 173-340-550(b), this agreement is preliminary to an Consent Decree. Once a Consent Decree is in effect, the decree will govern the work to be performed. The cost recovery provisions in the decree will replace this Agreement

#### **PERIOD OF PERFORMANCE**

This Agreement shall be effective on the date it is executed by the parties and shall remain in effect for a period of 48 months from such date, unless terminated sooner as provided herein.

## **NO WARRANTY**

Ecology agrees to use its best efforts to provide the services identified in this agreement without warranty that such services will meet expected time frames for Applicants development schedule. Any opinions or advice provided by Ecology regarding the Site or Applicant's potential liability, should Applicant acquire the property, shall not give rise to any actions against Ecology, and Ecology and its employees shall be immune from liability of any nature arising from any advice or assistance provided. Applicant should rely upon its own due diligence and consultants for information relating to the property. The only agreement between Ecology and Applicant relating to liability associated with the property shall be as specified in a prospective purchaser consent decree entered with the court should the parties successfully negotiate such a consent decree.

## **RECORDS SUPPORTING REQUEST FOR PAYMENT**

Ecology shall maintain all records supporting every request for payment in a manner which will provide an audit trail of the expenditures made pursuant to this Agreement and shall be available to Applicant or its representatives upon request.

## **TERMINATION**

Each party may terminate this agreement upon thirty (30) days' written notice if the other party has breached any of the terms of this Agreement and has failed to remedy such breach within 30 days following receipt of notice of the breach.

Either party may terminate this Agreement for its convenience upon not less than ninety (90) days' prior written notice. Applicant shall be obligated for payment pursuant to this Agreement for all work performed prior to the effective date of termination.

## **DISPUTE RESOLUTION**

Except as otherwise provided in this Agreement, any dispute arising under this Agreement concerning the adequacy of performance of this agreement which is not disposed of either by agreement between the parties or by termination, shall be decided by Ecology's Toxics Cleanup Program Manager or other authorized official of Ecology, who shall reduce his/her decision to writing and furnish a signed copy to Applicant. The decision of Ecology's Toxics Cleanup Program Manager, or Ecology's authorized official, shall be the final and conclusive decision of Ecology unless, within thirty (30) days from the date of receipt of such copy, Applicant mails or otherwise furnishes to Ecology's Toxics Cleanup Program Manager a written appeal addressed to the Director of Ecology. A decision of the Director, or the Director's duly authorized representative for the determination of such appeals, shall be the final and conclusive decision of Ecology.

Review of the decision of Ecology shall not be sought under Chapter 43.21B RCW. Any action or proceeding brought to enforce or otherwise arising out of or relating to this Agreement shall be brought in the Superior Court of Thurston County. Pending final resolution of a dispute pursuant to this paragraph, Applicant shall proceed diligently with the performance of this Agreement and in accordance with Ecology's final decision.

## **CONTRACT MANAGEMENT**

The work described herein shall be conducted under the coordination of the following persons:

**Ecology**

**Sunny Becker**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Applicant:**

**Darrell Vange**

**Dearborn Street Developers LLC**

**2620 Second Ave, Seattle WA 98121**

### **Entire Agreement.**

This Agreement constitutes the entire agreement between the parties. No other prior and contemporaneous negotiations, understandings and agreements, whether oral or written shall be deemed to exist or bind any of the parties hereto.

### **AGREEMENT ON ALTERATIONS AND AMENDMENTS**

Ecology and Applicant may mutually amend this Agreement. Such amendments shall not be binding unless they are in writing and signed by authorized representatives of both parties.

### **Washington Law.**

This Agreement shall be construed, interpreted and enforced pursuant to the laws of the State of Washington. Venue shall be in Thurston County. The terms of this

Agreement shall be given their ordinary meaning and shall not be presumed construed in favor of or against either party hereto.

**Counterparts.**

This Agreement may be signed in counterparts, any one of which shall be deemed an original.

**Attorneys' Fees and Costs.**

In the event that either party commences any legal action relating to the provisions of this Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees together with paralegal, accountant and expert witness fees and all other fees, costs and expenses actually incurred and reasonably necessary in connection therewith, and costs, including those incurred on appeal, in addition to all other amounts provided by law, regardless of whether the matter proceeds to judgment or is resolved by the defaulting party curing the default.

**Assignability.**

This Agreement shall not be assigned without the prior written consent of the other party except as provided hereafter.

**Advice of Counsel.**

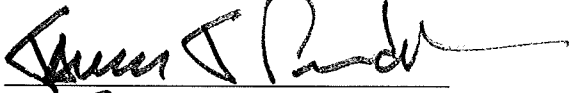
Applicant acknowledges that it has had an opportunity to seek independent legal advice regarding the transaction.

In witness thereof, the parties execute this Agreement.

STATE OF WASHINGTON

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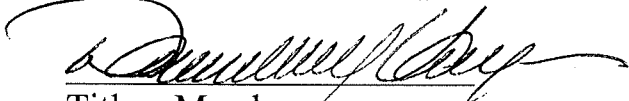
DEPARTMENT OF ECOLOGY



Title: Program Manager

Date: 11/16/06

Dearborn Street Developers, LLC.



Title: Member

Date:

Approved as to form only:

\_\_\_\_\_

Assistant Attorney General



## Attachment A

### GOODWILL DEARBORN SITE

#### PROJECT SCOPE OF WORK

Ecology shall provide a site manager and appropriate staff to oversee the investigation, analysis, public participation and negotiation and preparation of a consent decree, if such decree is deemed acceptable to Ecology based on Ecology's sole discretion. Nothing in the Agreement binds Ecology to make a positive determination that Applicant will receive a consent decree. The individual assigned will be knowledgeable and experienced in the application of the Model Toxics Control Act (MTCA), and related laws and regulations.

Work under this Agreement will include but not be limited to the following:

- Review data associated with the Site
- Review work plan for draft remedial investigation report and feasibility analysis
- Review draft remedial investigation report and feasibility analysis
- Review final remedial investigation report and feasibility analysis
- Review draft clean up action plan
- Prepare and implement public participation plan
- Perform public outreach activities
- Coordinate to the extend possible Ecology MTCA process with local government permitting process for the project.
- Draft or review cleanup action plan
- Draft or review prospective purchaser consent decree

Ecology staff assigned to this project are not solely dedicated to performance of the work associated with this Goodwill Dearborn Site. The assigned staff will

coordinate their other regulatory assignments with their responsibilities for this Goodwill Dearborn Site. To promote better coordination of these multiple responsibilities, at the inception of the Agreement, and during the first week of each month thereafter (or such other times the parties deem appropriate), the Ecology Site Manager shall meet with the Applicant's Project Manager to establish priorities, tasks and projected accomplishments for the coming month, to review activity, progress, accomplishments and costs for the previous month, and to identify and resolve any problems and issues.

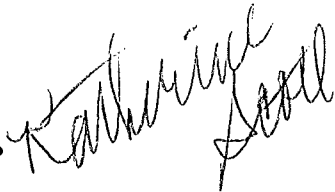
**PROJECT BUDGET**

- Estimated cost of staff services and support

<b>Position</b>	<b>Name</b>	<b>Hourly rate</b>
Unit Supervisor	Ching Pi Wang	\$111.59
Site Manager	Sunny Becker	\$101.09
Assistant Attorney General	Jim Schwartz	\$120.40
Assistant Attorney General	Jim Harmony	\$120.40
Public Participation Coordinator	Justin Asohmbom	\$73.19

NWRO

DEPARTMENT OF ECOLOGY

DATE: January 5, 2007  
TO: Debbie Iness, Fiscal  
FROM: Katherine Scott, TCP   
SUBJECT: Dearborn Corp Campus/ Goodwill (former Dearborn 5 & 90)  
Project Number 8684, SIC J1AK5

I have attached the Prepayment Agreement for Dearborn Corp Campus Site at 1400 South Lane Street, Seattle, WA dated November 16, 2006. Please invoice the applicant for \$12,500 prepayment to cover Ecology's time and material costs starting July 13, 2006, through November 16, 2010.

Please send the invoice to:

Darrell Vange  
Dearborn Street Developers LLC  
2620 Second Ave.  
Seattle, WA 98121  
Telephone number: not provided

Ecology's Site Manager (Project Coordinator) is:

Sunny Becker, NWRO – TCP (425) 649-7187  
Project # 8684, SIC J1AK5

If you have any questions regarding this project, please call me at 407-7213

Attachments




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CORPORATIONS

## Corporations Division - Registration Data Search

### DEARBORN STREET DEVELOPERS LLC

<b>UBI Number</b>	602566124
<b>Category</b>	Limited Liability Regular
<b>Profit/Nonprofit</b>	Profit
<b>Active/Inactive</b>	Active
<b>State of Incorporation</b>	WA
<b>Date of Incorporation</b>	12/15/2005
<b>License Expiration Date</b>	12/31/2006

#### Registered Agent Information

<b>Agent Name</b>	BRAD BREGHAM
<b>Address</b>	999 3RD AVE STE 1900
<b>City</b>	SEATTLE
<b>State</b>	WA
<b>ZIP</b>	98104

#### Special Address Information

<b>Address</b>
<b>City</b>
<b>State</b>
<b>Zip</b>

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**Your Search Criteria:**

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**License Type:** All Business and Professional Licenses

**Business Name:** Dearborn Street Developers LLC

**Sort By:** Name

Click on a name below for more information.

Results 1 - 1 of 1:

Name	License Type	City State Status
<a href="#">DEARBORN STREET DEVELOPERS LLC</a>	Washington State Business	
DEARBORN STREET DEVELOPERS LLC		

Results 1 - 1 of 1:

Information Current as of 01/04/2007 9:09PM Pacific Time

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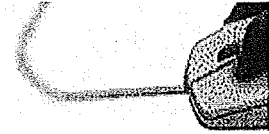
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**License Information:**

**Entity Name:** DEARBORN STREET DEVELOPERS LLC  
**Firm Name:** DEARBORN STREET DEVELOPERS LLC  
**License Type:** Washington State Business  
**Entity Type:** Limited Liability Company  
**UBI:** 602566124 Business ID:001 Location ID:  
**Status** To check the status of this company, go to [Secretary of State](#).

**Location Address:**

**Mailing Address:**

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Information Current as of 01/05/2007 4:17AM Pacific Time

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