

August 15, 2019

Kara Tebeau
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**Re: Prospective Purchaser Agreement
Sagamore Spokane, LLC**

Dear Ms. Tebeau:

This letter is a request for a Prospective Purchaser Agreement authorized under the Model Toxics Control Act (RCW Chapter 70.105D), WAC 173-340-520 and Department of Ecology Policy 520B: Interim Policy – Prospective Purchaser Agreements.

I. PROPERTY BACKGROUND AND HISTORY.

A. Purchaser. The subject property is being purchased by Sagamore Spokane, LLC, a Washington limited liability company that has entered into a "Purchase and Sale Agreement and Joint Escrow Instructions," dated April 23, 2019 ("**PSA**") with Eric Brown Properties, LLC. Sagamore has not owned, occupied, or held an interest in the real property. The real property consists of approximately 3.16 acres of land located in the City of Spokane, State of Washington. Exhibits A-1 and A-2 describe the real property (the "**Property**"). At present, the Property does not contain any improvements other than underground sewer and water facilities owned by the City of Spokane and pilings and footings from the Hamilton Street Bridge, which is part of a state highway owned and operated by WSDOT.

B. Consent Decree. On September 11, 2002, the State of Washington Department of Ecology, Avista Corporation, and the Burlington Northern and Santa Fe Railway Company entered into a Consent Decree for the Property. The Consent Decree provided for remedial action on the Property known as the "Hamilton Street Bridge Site." See Attachment 1. For the past seventeen (17) years, remedial actions have been undertaken pursuant to a Final Cleanup Action Plan, as amended. See Attachments 2 and 3.

C. Restrictive Covenants (WAC 173-340-440). On January 29, 2003, a WSDOE restrictive covenant granted by the Burlington Northern and Santa Fe Railway Company was recorded with the Spokane County Auditor. See Attachment 4. On September 9, 2004, Spokane River Properties ("**SRP**"), Limited executed and recorded a restrictive covenant with the Spokane County Auditor. Attachment 5. Spokane River Properties was the predecessor-in-

interest to Eric Brown Properties, LLC (the present owner). See Attachment 4. It should be noted that Spokane River Properties was found by the Department of Ecology to be jointly and severally liable under the Model Toxics Control Act ("MTCA") via the Consent Decree filed September 12, 2002, an Enforcement Order signed July 13, 2004, and the Restrictive Covenant dated September 9, 2004. Note, the 2002 Consent Decree was not signed by Spokane River Properties. Thus, SRP (and successors) were not relieved of liability under MTCA. See Consent Decree, Introduction, Section D, Section xviii "Other Actions," Section D.

D. Land Use Permitting. On August 17, 2001, the City of Spokane Hearing Examiner approved a Shoreline Substantial Development/Conditional Use Permit ("**Shoreline Permit**") with a Binding Site Plan to allow the Property to be developed for office use, a restaurant and potentially a hotel. The Shoreline Permit includes development of a public trail and a public outlook along the river plus landscaping and stormwater control. According to the City of Spokane Shoreline Master Program, the development approval allows commercial uses that would "facilitate public access to and enjoyment of a shoreline area." Hearing Examiner Decision, p. 5. See Attachment 6.

The use also complies with the City Comprehensive Plan and the goals of the Shoreline Master Program by improving and enhancing public access and enjoyment of the Spokane River. On May 28, 2002, the Department of Ecology approved the Shoreline Permit issued by the City. Because of the remedial actions and associated cleanup activities, the time requirements for development under the Shoreline Permit were suspended. WAC 173-27-090. At present, the City, through a series of Shoreline Permit modifications, has approved the development of residential units with supportive commercial use. In a recent permit modification, the City found

The proposed development will facilitate residential living uses located close to shorelines that are preferred and encouraged by the City of Spokane and Washington State, and will expand upon view corridors to the river.

Attachment 7. As of this date, preliminary plans have been developed and submitted to the City for the predevelopment conference which begins the process of obtaining building permits to construct on the Property.¹

¹ Sagamore Spokane intends to sequence construction under the Shoreline Permit. First, the buildings and improvements adjacent to the river will be constructed. Then the development plans for the back-half of the property will be submitted to the City in a manner consistent with the City's development regulations. This development phasing has been discussed with the City and a second predevelopment conference is being planned for this part of the Project.

II. PROSPECTIVE PURCHASER CONSENT DECREE.

The following is the request for a Prospective Purchaser Agreement (Consent Decree) pursuant to WAC 173-340-520. This letter describes the best available information to date.

1. The proposed remedial action, including schedule.

- a. A Final Cleanup Action is implemented at the Property. Subsequent to construction of the cleanup action in 2005, the Site has undergone two 5-year period reviews by WSDOE in 2010 and 2015; the most recent concluding that “the cleanup actions completed at the Site are currently protective of human health and the environment.”²

The proposed remedial actions are required by the Final Cleanup Action and will enhance the existing cleanup action environmental cap and stormwater management components; and ultimately enhance protectiveness of human health and the environment.

The proposed remedial actions will be implemented during construction of the proposed redevelopment. The proposed redevelopment schedule is being prepared.

2. Settlement will lead to a more expeditious cleanup and be consistent with previous orders.

- a. Settlement facilitates WSDOE approval of the proposed remedial actions (to be implemented during proposed redevelopment construction) consistent with requirements of the Ecology-approved 2005 Final Cleanup Action.

3. Project Site Plan. The project site plan and photos are shown on Attachment 8. Phase I of the development will consist of two four-story buildings consisting primarily of apartments plus some limited commercial use ("**Project**"). A view corridor between the two buildings will be established as well as pedestrian, bicycle and trail access along the Spokane River frontage. Landscaping will maintain and enhance river vegetation with the pedestrian and trail access connecting to downtown Spokane, the University District, and Gonzaga University. Phase II design work has commenced.

4. Environmental Contamination. The characterization of environmental contamination on the Property by WSDOE is under the 2002 Consent Decree. The October 2015 Second Five Year Review required by the Final Cleanup Action and prepared by Ecology summarizes the environmental contamination.

² The WSDOE website and the Eastern Regional Office (Spokane) contains the Final Cleanup Action Plan and documents discussed in this Section II.

“The conclusions from the Site investigations are summarized as follows:

- a. Soils within the Site boundaries are impacted with SVOCs, PAHs, VOCs, and inorganic compounds.*
- b. Based on visual observations, surface soil contamination was only present on the western portion of the American Tar Company³ property and consisted of tar and cinder. The remaining soil contamination was covered by at least 2 feet of imported soil and gravel. The extent of contamination in some areas extended up to 80 feet bgs, and the majority of soil contamination is located below the groundwater table. The estimated volume of soil exceeding the total carcinogenic PAHs (cPAHs) soil cleanup level for the entire Site may be as much as 92,000 cubic yards.*
- c. Constituents associated with the former manufactured gas processes and/or coal tar processing were not detected in the soil beyond the Site boundaries.*
- d. Indicator hazardous substances (IHSs) developed by Ecology for soil consists of six PAHs, total cPAHs, TPH, carbazole, cyanide, arsenic, barium, lead, mercury, and selenium.*
- e. Groundwater monitoring was focused on evaluating groundwater quality outside of the affected soil area. Groundwater within the non-aqueous phase liquid (NPL)-affected area was assumed to be contaminated for the purposes of the Remedial Investigation (RI).*
- f. Relatively few VOCs, SVOCs, PAHs, and inorganic constituents were detected in the groundwater samples analyzed, and those that were detected have not been detected with any consistency.*
- g. Because groundwater inside the soil-impacted area is considered to be contaminated by the soil, Indicator Hazardous Substances (IHSs) developed by Ecology for groundwater are identical to the IHSs for soil.*
- h. Natural attenuation parameters in groundwater indicated a rapid decrease in carbon dioxide, sulfate, and methane concentrations, and an increase in nitrogen concentrations with distance from the source. These trends support the conclusion that natural attenuation processes such as aerobic biodegradation and oxidation are occurring at the Site, which results in rapid destruction or transformation of IHSs present in Site groundwater.*
- i. The limited extent of groundwater contamination detected outside of the impacted soil areas indicate that the source material has a low solubility, and any constituents that may be partitioning into groundwater are rapidly attenuating through natural physical, chemical, and biological processes (i.e., natural attenuation).*
- j. No indicator constituents above cleanup levels were identified in sediment. Sediment is not an affected media for the Site.*

³ The American Tar Company's present status/ownership is unknown.

- k. No indicator constituents above cleanup levels were identified in surface water. Surface water is not an affected media for the Site.*
 - l. Two wells were installed in the area of NAPL-affected soil to evaluate the physical and chemical characteristics of the NAPL; however, samples of NAPL could not be collected due to insufficient NAPL volume in the wells. The limited occurrence of NAPL in the product wells supports the conclusion that NAPL migration is very limited or not occurring.*
 - m. All detected parameters in the Spokane River sediments were well below the preliminary Washington State draft freshwater sediment quality values.*
 - n. The low frequency of criteria exceedance for groundwater, in conjunction with the lack of associated sediment impact, indicates that groundwater is not adversely impacting the Spokane River or any associated ecological receptors.”*
5. Summary of Historical Use and Conditions. Prior to entry of the Consent Decree and Restrictive Covenants, the final cleanup action plan was adopted by WSDOE on August 10, 2001. See Attachment 8 (which includes a list of other environmental documents that have been generated during the last 17 years).
6. Historical Use of the Property. Between 1905 and 1948, coal gas and carbureted water gas was produced at the Property. Gas mixing, storage and distribution continued under Spokane Natural Gas Company until 1956. The waste from coal gas production, termed "coal tar," was transported to a coal tar processing and distribution facility on an adjacent parcel leased from Northern Pacific Railroad (today Burlington Northern Santa Fe).
- In 1958, Washington Water Power (now Avista Corporation) merged with Spokane Natural Gas Company and operated at the site until 1962 or 1963. Subsequently, Richard Brown leased the property and in 1978 purchased the property from Washington Water Power. He established Brown Building Materials. In 1982 Mr. Brown conveyed the Property to Spokane River Properties.
7. Date for Detailed Proposal. Sagamore Spokane is ready to immediately submit a detailed proposal to conduct the proposed remedial action at the Property.
8. Special Scheduling for Remedial Action. As set forth above, the Final Cleanup Action was implemented in 2005. The proposed remedial actions will be implemented during construction of the proposed Project. The Project schedule is being finalized.
9. Other Potentially Liable Persons. We are unaware of any other potentially liable persons other than the Seller, Eric Brown Properties, LLC.
10. Proposed Public Participation Plan. [to be submitted by separate correspondence].

11. Waiver of WAC 173-340-500(5). The prospective purchaser (Sagamore Spokane) waives the procedural requirements set forth in WAC 173-340-500 and by signature on this letter accepts, for purposes of settlement, "potentially liable person" status as set forth in MTCA. We observe that the Consent Decree (Attachment 1) and Restrictive Covenant (Attachment 4) establish "PLP" status.

12. Detailed Cleanup Proposal [See WAC 173-340-520(1)(b)(ii)].
 - a. Technical scope of work describing remedial action

The technical scope of work for the PPCD is comprised within two deliverables: 1) an Engineering Design Report (EDR), and 2) a Construction Completion Report.

 - i. The EDR will be submitted to WSDOE prior to the commencement of any Site activities and will include:
 1. Contaminated Materials Management Plan (CMMP) to define the handling requirements of any and all contaminated media (contaminated soils, debris, groundwater and/or stormwater) generated during the proposed redevelopment. The CMMP will define the characterization, segregation, handling and disposal requirements for each of the media.
 2. Figure overlays of proposed redevelopment footprints with the contaminated media.
 3. Description of the geotechnical and any ground improvement designs. These designs will show the locations of subsurface structural features as they relate to contaminated media. This description will need to demonstrate that the geotechnical elements will not negatively impact the immobile MGP soil contamination. (particularly as it relates to Ecology's primary concern – mobilization of the contaminants toward the Spokane River).
 4. Restoration of existing soil cap, where necessary.
 5. A description of stormwater control designs, and descriptions of hardscape surfaces to prevent infiltration.
 6. Monitoring well abandonment and replacement plans for 2002 Consent Decree long-term monitoring requirements.
 7. Health and Safety requirements during construction.
 8. Any building engineering controls, such as a chemical vapor barrier

 - ii. Upon completion of the proposed remedial action, a Construction Completion Report will be submitted to Ecology and include:

1. Document implementation of the proposed remedial action as described in the EDR. It would also present any deviations from the scope of the EDR.
 2. Any modifications to the long-term groundwater monitoring program, that will continue after implementation of the proposed remedial action.
 3. An environmental covenant recorded for the new Property Owner.
- b. Data, studies and other information supporting settlement. See above and Attachments.
- c. Potentially liable person's ability to finance scope of work. Sagamore Spokane is prepared to invest the equity necessary for the development of the Project, which is reportedly estimated at \$43 million dollars as generally described in Section I(D) above. This includes the multi-family residential (and commercial) development, pedestrian/trail adjacent to the river, greenspace, common area and landscaping and associated parking. Project construction is anticipated to commence prior to the end of 2019.
- d. Schedule for Negotiations and Remedial Actions. Sagamore Spokane is ready to immediately commence negotiations of the remedial action. Under the PSA Sagamore Properties has a due diligence period which expires on October 23, 2019. Thus, Sagamore requests review and processing of the Prospective Purchaser Agreement be expedited given the existing remediation, institutional controls and agreements that have been implemented under MTCA.

13. Statutory Requirements of RCW 70.105D.040(5).

- a. Persons not currently liable for remedial action. Sagamore Spokane is prepared to enter into the Consent Decree. Its members, are not "persons" who are currently liable for remedial action on the Property. Through the PSA, with Brown Properties, LLC, a potentially liable person, Sagamore Spokane, will be acquiring all right, title, and interest to the real property described on Exhibits A-1 and A-2.
- b. Substantial New Resources. Since the remedial action began in 2002, the Property has been vacant except for maintenance performed by WSDOT on the Hamilton Street Bridge. The Project will be developed over a portion of the contaminated site. In general, the disturbed areas will be restored with hard surface or capping that enhance the protectiveness of the existing environmental cap. The continued long-term monitoring will be in accordance with the existing Final Cleanup Action Plan.

- c. Redevelopment of the Property. The Prospective Purchaser Agreement will expedite and support the present and future cleanup activities. The proposed financial investment is significant and will allow this historical industrial site to be redeveloped in support of Spokane's planning efforts in the University District. The Property will be connected to the recently developed Martin Luther King Boulevard, Centennial Trail, and pedestrian ways, which provide connectivity through the urban core. This development should be a catalyst to stimulate the redevelopment of surrounding industrial (underutilized and vacant) properties. Thus, the objectives set forth in the City Shoreline Master Program (under the State Shoreline Management Act) and the associated City Comprehensive Plan will be furthered especially since this is a targeted area for multifamily residential development within the City.
- d. Substantial Public Benefit. As set forth above, the Project will occupy a vacant and abandoned manufacturing facility which deposited hazardous substances on the Property. The redevelopment will not cause or contribute to any further contamination.

Sagamore Spokane's development will provide substantial economic benefits to the City in terms of adding excess of 250 new residential units, parking facilities and pedestrian amenities which do not presently exist on the Property. The residents will be living in the University District, which contains the new medical school and other educational facilities for university students. This type of private development is precisely called for in City of Spokane plans and development regulations.

WSDOE Policy 520B: Interim Policy – Prospective Purchaser Agreements, Section 8.

The Project will return the Property to a higher and better use through the following new public benefits.

- i. An increase in available multi-family housing in the University District, will support professionals, students, and other residents who will be new to this neighborhood. This area, adjacent to the Central Business District, is designated for economic development through institutions of higher education.
- ii. The existing Shoreline Permit (and Phase II) are consistent with the land use plans and regulatory requirements of the City and State of Washington.

- iii. Enhanced social benefit and impact by adding housing and redeveloping an area which is presently underutilized with numerous vacant properties.
- iv. New recreational opportunities through enjoyment of the Spokane River will be available to residents as well as the public through new enhanced paths, sidewalks and access points.
- v. The Project will add to the tax base of the City without exacerbating or creating new environmental or hazardous waste contamination.

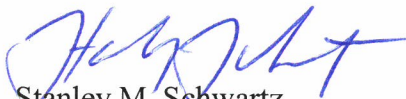
III. CONCLUSION.

For almost two decades, this property has been awaiting redevelopment. The existing Shoreline Permit and subsequent City land use planning actions have made the project feasible, viable, and gained the support of the City. Through the Environmental Consultants (Aspect Consulting), the Design Team (ALSC Architects) and the General Contractor (Baker Construction) the Project's development will not negatively impact the remediation and monitoring activities and controls.

Sagamore Spokane respectfully requests that the Department of Ecology enter into a Prospective Purchaser Agreement (Consent Decree) in order to support the continued monitoring (Institutional Controls) and facilitate the future planned development of this Property.

Very Truly Yours,

WITHERSPOON • KELLEY



Stanley M. Schwartz

SMS/kh

Enclosure

cc: Christer Loftenius, WSDOE
Charles Dubroff, Sagamore Spokane
Robert Hayes, Sagamore Spokane
ALSC Architects
Aspect Consulting