

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

ARE-SEATTLE 33 LLC

AGREED ORDER

No. DE 18215

TO: ARE-Seattle 33 LLC  
c/o Maggie Capelle  
400 Dexter Avenue North, Suite 200  
Seattle, WA 98109

**TABLE OF CONTENTS**

I.	INTRODUCTION.....	2
II.	JURISDICTION.....	2
III.	PARTIES BOUND.....	2
IV.	DEFINITIONS.....	2
V.	FINDINGS OF FACT.....	3
VI.	ECOLOGY DETERMINATIONS.....	5
VII.	WORK TO BE PERFORMED.....	6
VIII.	TERMS AND CONDITIONS.....	9
	A. Payment of Remedial Action Costs.....	9
	B. Designated Project Coordinators.....	9
	C. Performance.....	10
	D. Access.....	11
	E. Sampling, Data Submittal, and Availability.....	11
	F. Public Participation.....	12
	G. Retention of Records.....	13
	H. Resolution of Disputes.....	14
	I. Extension of Schedule.....	15
	J. Amendment of Order.....	17
	K. Endangerment.....	17
	L. Reservation of Rights.....	18
	M. Transfer of Interest in Property.....	19
	N. Compliance with Applicable Laws.....	19
	O. Indemnification.....	21
IX.	SATISFACTION OF ORDER.....	21
X.	ENFORCEMENT.....	21
	EXHIBIT A	Location Diagram
	EXHIBIT B	Legal Description of Property
	EXHIBIT C	Scope of Work and Schedule of Deliverables

## **I. INTRODUCTION**

The mutual objective of the State of Washington, Department of Ecology (Ecology) and ARE-Seattle 33 LLC (ARE) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the PLP(s) to implement the Scope of Work and provide the associated deliverables per the schedule detailed in Exhibit C (Scope of Work and Schedule of Deliverables). Ecology believes the actions required by this Order are in the public interest.

## **II. JURISDICTION**

This Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

## **III. PARTIES BOUND**

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of the PLP(s) hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such party to comply with this Order. The PLP(s) agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the PLP(s)'s responsibility under this Order. The PLP(s) shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

## **IV. DEFINITIONS**

Unless otherwise specified herein, the definitions set forth in RCW 70.105D and WAC 173-340 shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as the 701 Dexter Site. The Site constitutes a facility under RCW 70.105D.020(8). The Site is defined by where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located. Based upon factors currently known to Ecology, the Site is

generally located at 701 Dexter Avenue North in the South Lake Union neighborhood of Seattle, Washington as shown in the Location Diagram (Exhibit A).

- B. Parties: Refers to the State of Washington, Department of Ecology and ARE.
  - C. Potentially Liable Person (PLP): Refers to ARE.
  - D. Property: Refers to the real property within the Site, located at 701 Dexter Avenue North. A legal description of the Property is attached as Exhibit B.
  - E. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order.
- All exhibits are integral and enforceable parts of this Order.

## V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by the PLP(s):

- A. Based upon factors currently known, the Site is generally located at 701 Dexter Avenue North, Seattle Washington 98109, including King County Parcel 224900-0245 (Property) in the South Lake Union area of Seattle as shown in the Location Diagram (Exhibit A). The Ecology Facility Site ID is 78082 and the Cleanup Site ID is 15112.
- B. The Property is currently developed with a six-story commercial building with above-ground parking on the first two levels of the building, as well as a surface parking lot on the western portion of the property. The building is currently occupied by tenants solely for commercial office use.
- C. ARE is the Property owner as recorded by King County, Washington, May 2019. ARE is a registered limited liability company with the Washington Secretary of State, UBI #604258659.
- D. Groundwater and soil vapor samples at the Site were found to have contaminants that exceeded the MTCA Method B cleanup levels or soil vapor screening levels. Groundwater located in the southwest portion of the Property had concentrations of chloroform that exceeded the MTCA Method B cleanup level. Soil vapor samples at the Property contained volatile organic compounds (benzene, chloroform, naphthalene,

acrolein, and bromodichloromethane) that exceeded Method B screening levels. Benzene in soil vapor in excess of the screening level was detected throughout the Property. Additionally, soil samples exceeded the most stringent Method A cleanup level for chromium (chromium was not speciated, therefore the most stringent cleanup level applies for screening purposes).

- E. The Property is bounded to the east by Dexter Avenue North, to the west by Aurora Avenue North (Highway 99), to the south by Roy Street, and to the north by a multi-family residential building and a temporary shelter and transitional housing facility, (pending permitted redevelopment with an additional multi-family residential building).
- F. The Property was developed with a single-family residence in 1893, and with single family and multifamily residences from 1905 to, at least, 1925. From 1936 to the early 1980s, the Property was developed with a restaurant on the western portion of the property and a paved parking on the remainder of the property. From 1984 to the present, the current commercial building has occupied the majority of the Property, with paved parking on the western portion adjacent to Aurora Avenue. Some of the commercial businesses that have operated on the Site since approximately 1984 include Gray and Osborne, Inc. Consulting Engineers, Francis and Company LLC, and Thomas Hart Advertising.
- G. There are no records of heating oil underground storage tanks (USTs) having been used or installed on or beneath the Property. The current commercial building was constructed in 1984.
- H. Auto repair facilities were located north of the Property in the 1940s. The north adjacent property at 701 Valley Street was fully redeveloped into a multifamily residential building in 2012, while the separate property at 712 Aurora Avenue North will be developed into a multi-family residential building in the near future. The property to the south across Roy Street was previously the location of a gasoline service station in the 1920's and an auto repair facility in the 1930's. The property to the east at 700 Dexter,

across Dexter Avenue North, was previously the location of a refueling facility, automotive repair shop, and dry cleaner. A chlorinated solvent groundwater plume, which also includes an area of petroleum hydrocarbon contamination, has been attributed to the facility at 700 Dexter due to historical operations (Agreed Order No. DE 14302). Three of the facilities listed above are included in Ecology's Confirmed and Suspected Contaminated Sites List. More information on each facility, and other nearby facilities, can be obtained from Ecology's website (<https://apps.ecology.wa.gov/neighborhood/>).

- I. ARE is the current owner and operator of the Property. ARE intends to redevelop the Property. The existing 6-story commercial building will be demolished to accommodate an 11-story commercial building to be used as office and research laboratory space. A vehicular entry along Roy Street will provide access to an internal loading dock and multiple levels of below-grade parking.
- J. There is no surface water present at the Property. The Property is covered with commercial buildings and paved asphalt areas, with the ground surface sloping gently towards Lake Union to the east / northeast. Water from precipitation flows downgradient from the Property until captured by stormwater drains.

## **VI. ECOLOGY DETERMINATIONS**

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by the PLP(s).

A. ARE is an "owner" as defined in RCW 70.105D.020(22) of a "facility" as defined in RCW 70.105D.020(8).

B. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(32) and (13), respectively, has occurred or may have occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to ARE dated January 7, 2020, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and

concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that ARE is a PLP under RCW 70.105D.040 and notified ARE of this determination by letter dated February 11, 2020.

D. Pursuant to RCW 70.105D.030(1) and .050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

E. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study, or design of a cleanup action plan. Either party may propose an interim action under this Order. If the Parties are in agreement concerning the interim action, the Parties will follow the process in Section VII.D. If the Parties are not in agreement, Ecology reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70.105D, or to undertake the interim action itself.

## **VII. WORK TO BE PERFORMED**

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the PLP(s) take the following remedial actions at the Site. These remedial actions must be conducted in accordance with WAC 173-340:

A. The PLP(s) will complete a Remedial Investigation, Feasibility Study, and submit an Agency Review preliminary Draft Cleanup Action Plan for the Site in accordance with the schedule and terms of the Scope of Work and Schedule, Exhibit C, and all other requirements of this Order. The following naming conventions shall be used for documents: Agency Review Draft (designation for the first time Ecology receives a document); Public Review Draft

(designates a document ready for public comment); Final (designation for a document after public comment and Ecology approval); and the preliminary Draft Cleanup Action Plan (designation for the PLP(s) version of the DCAP).

B. If the PLP(s) learns of a significant change in conditions at the Site, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in soil, groundwater, air or soil gas, then the PLP(s) shall, within seven (7) days of learning of the change in condition, notify Ecology in writing of said change and provide Ecology with any reports or records (including laboratory analyses, sampling results) relating to the change in conditions.

C. The PLP(s) shall submit to Ecology written monthly Progress Reports that describe the actions taken during the previous month to implement the requirements of this Order. All Progress Reports shall be submitted by the tenth (10th) day of the month in which they are due after the effective date of this Order. Unless otherwise specified by Ecology, Progress Reports and any other documents submitted pursuant to this Order shall be sent by electronic mail, return receipt requested, to Ecology's project coordinator. The frequency of progress reports may be changed from monthly to quarterly by written approval from Ecology. The Progress Reports shall include the following:

1. A list of on-site activities that have taken place during the month.
2. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests.
3. Description of all deviations from the Scope of Work and Schedule (Exhibit C) during the current month and any planned deviations in the upcoming month.
4. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule.
5. All raw data (including laboratory analyses) received during the previous quarter (if not previously submitted to Ecology), together with a detailed description of the underlying samples collected.

6. A list of deliverables for the upcoming month if different from the schedule.

D. All plans or other deliverables submitted by the PLP(s) for Ecology's review and approval under the Exhibit C shall, upon Ecology's approval, become integral and enforceable parts of this Order.

E. All data collected during remedial action for the Site must be entered in Ecology's Environmental Information Management (EIM) database. Validated data will be submitted to Ecology within 60 days of sample collection, unless an extension is approved by Ecology.

F. If the Parties agree on an interim action under Section VI.E, the PLP(s) shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, by the date determined by Ecology. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). The PLP(s) shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Interim Action Work Plan becomes an integral and enforceable part of this Order, and the PLP(s) is required to conduct the interim action in accordance with the approved Interim Action Work Plan.

G. If Ecology determines that the PLP(s) has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to the PLP(s), perform any or all portions of the remedial action or at Ecology's discretion allow the PLP(s) opportunity to correct. In an emergency, Ecology is not required to provide notice to the PLP(s), or an opportunity for dispute resolution. The PLP(s) shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

H. Except where necessary to abate an emergency situation or where required by law, the PLP(s) shall not perform any remedial actions at the Site outside those remedial actions required by this Order to address the contamination that is the subject of this Order, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section VIII.J. (Amendment of Order). In the event of an emergency, or where actions are taken as required by



law, the PLP(s) must notify Ecology in writing of the event and remedial action(s) planned or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of the event.

## **VIII. TERMS AND CONDITIONS**

### **A. Payment of Remedial Action Costs**

The PLP(s) shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under RCW 70.105D, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Ecology will send the PLP(s) an invoice and an itemized statement quarterly, along with a general statement of work performed. Ecology has accumulated \$3,307.62 in remedial action costs related to this Site as of April 30, 2020. For all Ecology costs incurred, the PLP(s) shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70.105D.055, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

### **B. Designated Project Coordinators**

The project coordinator for Ecology is:

Tanner Bushnell  
Toxics Cleanup Program – NWRO  
Washington Department of Ecology

3190 160<sup>th</sup> Avenue SE  
Bellevue, WA 98008-5452  
(425) 649-7265  
[tanner.bushnell@ecy.wa.gov](mailto:tanner.bushnell@ecy.wa.gov)

The project coordinator for ARE is:

Thomas (Thom) C. Morin, L.G.  
TRC Companies  
1180 NW Maple Street, Suite 310  
Issaquah, WA 98027  
(425) 395-0030  
[tmorin@trccompanies.com](mailto:tmorin@trccompanies.com)

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the PLP(s), and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

**C. Performance**

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct supervision of an engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43 and 18.220.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a

professional engineer. The professional engineer must be registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43 and 18.220.

The PLP(s) shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

**D. Access**

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that the PLP(s) either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the PLP(s)'s progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the PLP(s). The PLP(s) shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the PLP(s) where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by the PLP(s) unless an emergency prevents such notice. All persons who access the Site pursuant to this section shall comply with any applicable health and safety plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

**E. Sampling, Data Submittal, and Availability**

With respect to the implementation of this Order, the PLP(s) shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to

Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, the PLP(s) shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the PLP(s) pursuant to implementation of this Order. The PLP(s) shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the PLP(s) and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.E (Access), Ecology shall notify the PLP(s) prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under WAC 173-50 for the specific analyses to be conducted, unless otherwise approved by Ecology.

#### **F. Public Participation**

A Public Participation Plan is required for the Site.

Ecology shall maintain the responsibility for public participation at the Site. However, the PLP(s) shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing lists and prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before meetings related to remedial action work to be performed at the Site with the interested public and/or local governments. Likewise, Ecology shall notify the PLP(s) prior to the issuance of all press releases and fact sheets related to the Site, and before meetings related to the Site with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the PLP(s) that do not receive prior Ecology approval, the PLP(s) shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions or as a presenter.

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- a. Seattle Public Library  
Central District  
1000 4<sup>th</sup> Avenue  
Seattle, WA 98104
- b. Ecology's Northwest Regional Office  
Washington Department of Ecology  
3190 160th Avenue SE  
Bellevue, WA 98008-5452

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Site shall be maintained in the repository at Ecology's Northwest Regional Office in Bellevue, Washington.

**G. Retention of Records**

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, the PLP(s) shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert

a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, the PLP(s) shall make all records available to Ecology and allow access for review within a reasonable time.

Nothing in this Order is intended to waive any right the PLP(s) may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If the PLP(s) withholds any requested records based on an assertion of privilege, the PLP(s) shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged.

#### **H. Resolution of Disputes**

1. In the event that the PLP(s) elects to invoke dispute resolution the PLP(s) must utilize the procedure set forth below.

a. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), the PLP(s) has fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute (Informal Dispute Notice).

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar days Ecology's project coordinator shall issue a written decision (Informal Dispute Decision) stating: the nature of the dispute; the position of the PLP(s) with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

c. The PLP(s) may then request regional management review of the dispute. This request (Formal Dispute Notice) must be submitted in writing to the Northwest Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of

Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

d. The Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar days of receipt of the Formal Dispute Notice. The Decision on Dispute shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

4. In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section VII.E (Work to be Performed) or initiating enforcement under Section X (Enforcement).

#### **I. Extension of Schedule**

1. The PLP(s) request for an extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

- a. The deadline that is sought to be extended.
- b. The length of the extension sought.
- c. The reason(s) for the extension.
- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on the PLP(s) to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

a. Circumstances beyond the reasonable control and despite the due diligence of the PLP(s) including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the PLP(s) or such as orders and directives issued by local, state or federal governmental agencies in response to an imminent threat to human health and/or the environment.

b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, pandemic, or other unavoidable casualty.

c. Endangerment as described in Section VIII.K (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of the PLP(s).

3. Ecology shall act upon the written request of the PLP(s) for extension in a timely fashion. Ecology shall give the PLP(s) written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.J (Amendment of Order) when a schedule extension is granted.

4. At the request of the PLP(s), an extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of one of the following:

a. Delays in the issuance of a necessary permit which was applied for in a timely manner.

b. Other circumstances deemed exceptional or extraordinary by Ecology.

c. Endangerment as described in Section VIII.K (Endangerment).



**J. Amendment of Order**

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.L (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and the PLP(s). Ecology will provide its written consent to a formal amendment only after public notice and opportunity to comment on the formal amendment.

When requesting a change to the Order, the PLP(s) shall submit a written request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request is received. If Ecology determines that the change is substantial, then the Order must be formally amended. Reasons for the disapproval of a proposed change to this Order shall be stated in writing. If Ecology does not agree to a proposed change, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.H (Resolution of Disputes).

**K. Endangerment**

In the event Ecology determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct the PLP(s) to cease such activities for such period of time as it deems necessary to abate the danger. The PLP(s) shall immediately comply with such direction.

In the event the PLP(s) determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment, the PLP(s) may cease such activities. The PLP(s) shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction, the PLP(s) shall provide Ecology with documentation

of the basis for the determination or cessation of such activities. If Ecology disagrees with cessation of activities by the PLP(S), it may direct the PLP(s) to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, the obligations of the PLP(s) with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII.I (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

**L. Reservation of Rights**

This Order is not a settlement under RCW 70.105D. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against the PLP(s) to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the PLP(s) regarding remedial actions required by this Order, provided the PLP(s) complies with this Order.

Ecology nevertheless reserves its rights under RCW 70.105D, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health or the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

By entering into this Order, the PLP(s) does not admit to any liability for the Site. Although the PLP(s) is committing to conducting the work required by this Order under the terms of this Order, the PLP(s) expressly reserves all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

**M. Transfer of Interest in Property**

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by the PLP(s) without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to the PLP(s)'s transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the PLP(s) shall: (1) provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and (2) at least thirty (30) days prior to any transfer, the PLP(s) shall notify Ecology of said transfer. Upon transfer of any interest, the PLP(s) shall notify all transferees of the restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

**N. Compliance with Applicable Laws**

1. *Applicable Laws.* All actions carried out by the PLP(s) pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits or approvals, except as provided in RCW 70.105D.090. At this time, no federal, state, or local requirements have been identified as being applicable to the actions required by this Order. The PLP(s) has a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or the PLP(s), Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and the PLP(s) must implement those requirements.

2. *Relevant and Appropriate Requirements.* All actions carried out by the PLP(s) pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. At this time, no relevant and appropriate requirements have been identified as being applicable to the actions required by this Order. If additional relevant and

appropriate requirements are identified by Ecology or the PLP(s), Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and the PLP(s) must implement those requirements.

3. Pursuant to RCW 70.105D.090(1), the PLP(s) may be exempt from the procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, the PLP(s) shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70.105D.090(1) that have been issued by local government, the Parties agree that Ecology has the non-exclusive ability under this Order to enforce those local government permits and/or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this section.

4. The PLP(s) has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or the PLP(s) determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or the PLP(s) shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the PLP(s) shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by the PLP(s) and on how the PLP(s) must meet those requirements. Ecology shall inform the PLP(s) in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The PLP(s) shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for the state to administer any federal law, the exemption shall not apply and the PLP(s) shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits or approvals.

**O. Indemnification**

The PLP(s) agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (1) for death or injuries to persons, or (2) for loss or damage to property, to the extent arising from or on account of acts or omissions of the PLP(s), its officers, employees, agents, or contractors in entering into and implementing this Order. However, the PLP(s) shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

**IX. SATISFACTION OF ORDER**

The provisions of this Order shall be deemed satisfied upon receipt by the PLP(s) of written notification from Ecology that the PLP(s) has completed the remedial activity required by this Order, as amended by any modifications, and that the PLP(s) has complied with all other provisions of this Agreed Order.

**X. ENFORCEMENT**

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

- A. The Attorney General may bring an action to enforce this Order in a state or federal court.
- B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.

C. A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:

1. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply.

2. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: October 20, 2020

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**




Robert W. Warren  
Section Manager  
Toxics Cleanup Program  
Northwest Regional Office  
(425) 649-7000

**ARE-SEATTLE NO. 33, LLC,**  
a Delaware limited liability company

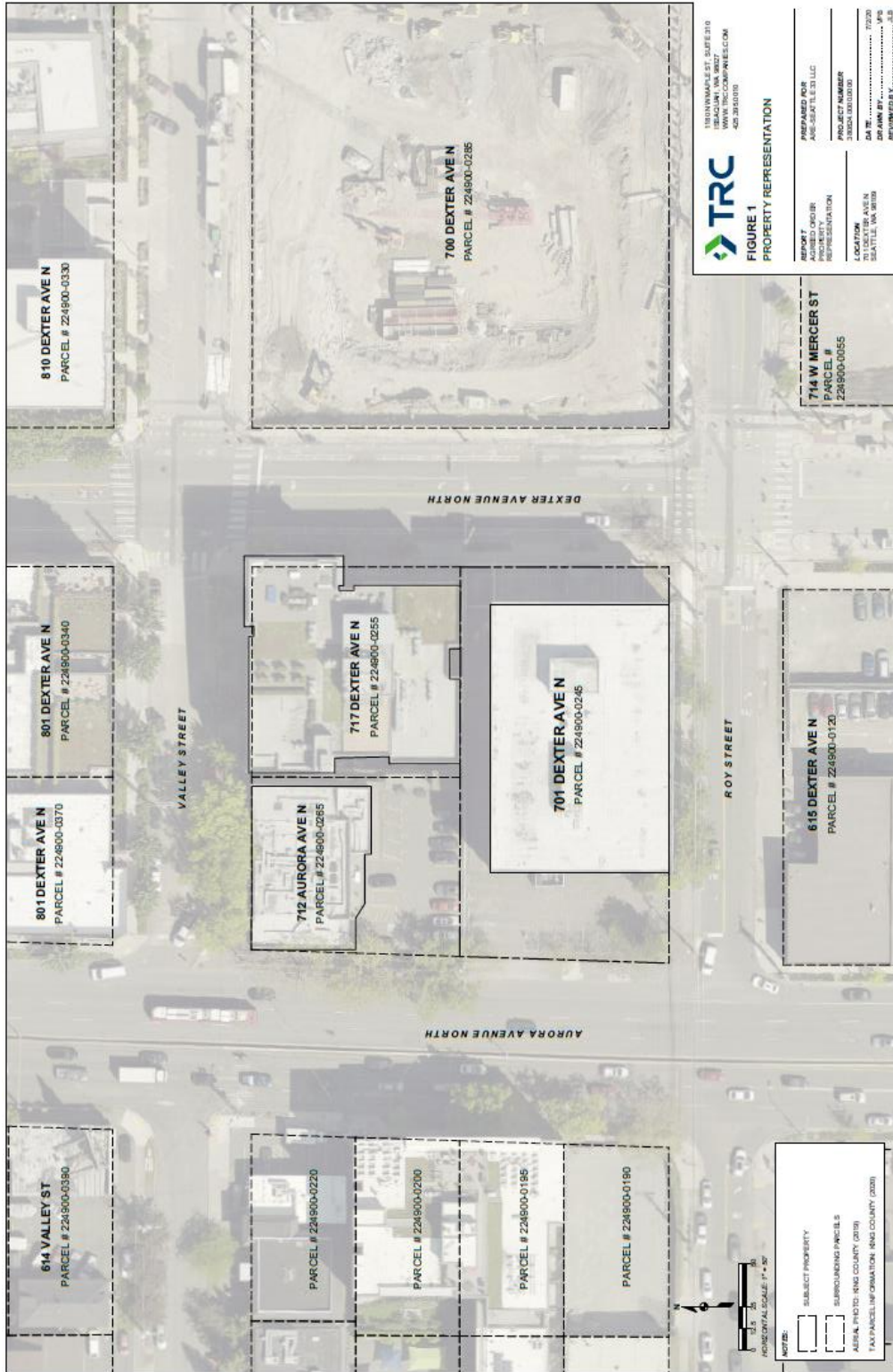
By: Alexandria Real Estate Equities, L.P.,  
a Delaware limited partnership, its managing member

By: ARE-QRS Corp.,  
a Maryland corporation, its general partner

By:   
Name: JOHN HART COLE  
Title: SVP Strategic Market Director  
Date: 8/14/2020



# EXHIBIT A LOCATION DIAGRAM





## EXHIBIT B

### LEGAL DESCRIPTION

#### Parcel A:

Lots 1 and 2, Block 6, Eden Addition to the City of Seattle, according to the plat thereof recorded in Volume 1 of Plats, Page 61A, in King County, Washington;

Except the East 7 feet thereof heretofore condemned in King County Superior Court Cause No. 61981 for the widening of Dexter Avenue, as provided under Ordinance No. 17628 of the City of Seattle; and

Lots 7 and 8, Block 6, Eden Addition to the City of Seattle, according to the plat thereof recorded in Volume 1 of Plats, page 61A, in King County, Washington;

Except that portion thereof condemned in King County Superior Court Cause No. 236360 for the widening of Aurora Avenue, as provided under Ordinance No. 59719 of the City of Seattle.

#### Parcel B:

Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 10, Eden Addition to the City of Seattle, according to the plat thereof recorded in Volume 1 of Plats, Page 61A, in King County, Washington;

Together with that portion of vacated Aloha Street adjoining Lots 4 and 5 on the North, vacated by Ordinance No. 7448 of the City of Seattle, which upon vacation attached to said property by operation of law;

Except the East 7 feet of Lots 1, 2, 3 and 4 in said Block 10, condemned for widening of Dexter Avenue in King County Superior Court Cause No. 61981 under Ordinance No. 17628 of the City of Seattle; and

Except those portions of Lots 5, 6, 7 and 8, condemned in King County Superior Court Cause No. 236360 for widening of Aurora Avenue as provided by Ordinance No. 59719 of the City of Seattle.

## EXHIBIT C

### Scope of Work and Schedule of Deliverables

# **EXHIBIT C – SCOPE OF WORK (SOW) AND SCHEDULE**

## **SCOPE OF WORK**

### **PURPOSE**

The work under this Agreed Order (AO) involves conducting a Remedial Investigation (RI) and Feasibility Study (FS), conducting interim actions (if required or agreed to by Ecology), and preparing a preliminary Draft Cleanup Action Plan (DCAP) to select a cleanup alternative. The purpose of the RI, FS, and preliminary DCAP for the Site is to provide sufficient data, analysis, and evaluations to enable Ecology to select a cleanup alternative for the Site.

The PLP(s) shall coordinate with Ecology throughout the development of an Interim Action (if required or agreed to by Ecology), RI, FS, and preliminary DCAP, and shall keep Ecology informed of changes to any Work Plan or other project plans, and of any issues or problems as they develop.

The Scope of Work (SOW) is divided into eight major tasks as follows:

- Task 1. Remedial Investigation Work Plan
- Task 2. Remedial Investigation
- Task 3. Interim Action(s)
- Task 4. Feasibility Study
- Task 5. State Environmental Policy Act (SEPA) Compliance
- Task 6. Public Participation
- Task 7. DCAP
- Task 8. Progress Reports

### **TASK 1. REMEDIAL INVESTIGATION WORK PLAN**

The PLP(s) shall prepare a Remedial Investigation Work Plan (Work Plan). The Work Plan shall include an overall description and schedule of all RI activities. The Work Plan shall clearly describe the project management strategy for implementing and reporting on RI activities. The responsibility and authority of all organizations and key personnel involved in conducting the RI will be outlined.

A Key Project Meeting will be held prior to submittal of the Work Plan. The purpose of the meeting is to review requirements for the Work Plan and plan RI field work, discuss the preliminary conceptual site model, and identify project data needs and possible interim actions.

The Work Plan shall describe general facility information; site history and conditions; including previous operations; past field investigations, including any data collection and analysis of soils, air, soil vapor, and groundwater; a conceptual site model showing contaminants, migration pathways in all environmental media, and potential receptors; geology and groundwater system characteristics; past, current, and future land use; identification of natural resources and ecological receptors; hazardous substances and their sources, etc., in compliance with WAC 173-340-350.

As part of the project background, existing environmental data on site soil, groundwater, and soil vapor will be compiled and evaluated for data gaps. The data gaps will be used as the basis for conducting additional site investigations, if necessary. The Work Plan will also identify specific data collection procedures in a Sampling and Analysis Plan (SAP) and Quality Assurance Project Plan (QAPP) as part of the Work Plan in compliance with WAC 173-340-820 for defining the nature and extent of contamination. The PLP(s) will also submit a copy of the Health and Safety Plan (HASP) for the project.

The SAP identifies the proposed number and location of all environmental samples and methods, including soil borings, groundwater monitoring wells, soil, groundwater, stormwater, soil vapor, and catch basin samples, approximate depths and corresponding elevations, and includes a QAPP. The SAP will describe the sampling objectives, the rationale for the sampling approach (based upon the identified data gaps), and plans for data use, and shall provide a detailed description of sampling tasks. The SAP shall describe specifications for sample identifiers; sampling equipment; the type, number, and location of samples to be collected; the analyses to be performed; descriptions of sampling equipment and methods to be used; sample documentation; sample containers, collection and handling; management of investigation-derived waste; data and records management; and schedule.

The QAPP will be prepared in accordance with the Guidance for Preparation of Quality Assurance Project Plans, EPA Region 10, Quality Data Management Program, QA/R-5 and requirements of the EPA Contract Laboratory Program. The QAPP will also follow Ecology's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies (Revised December 2016)<sup>1</sup>. Laboratories must meet the accreditation standards established in WAC 173-50.

The SAP, including the QAPP, will be submitted to Ecology for review and approval. As with all environmental work at the site, work may not begin without written approval from Ecology. The plan shall provide seven (7) days notice to Ecology prior to beginning sampling. Ecology may obtain split samples.

The PLP(s) or their contractors shall enter all new sampling data generated under this SAP and any other data used to define the Site to Ecology for entry into the Environmental Information Management System (EIM) in accordance with WAC 173-340-840(5) and

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<sup>1</sup> <https://fortress.wa.gov/ecy/publications/summarypages/0403030.html>

Ecology's Toxics Cleanup Program Policy 840: Data Submittal Requirements. Only validated data will be entered into the EIM database within 30 days of submittal.

RI Work Plan tasks and subtasks may include, but are not limited to the following, as necessary to address data gaps identified in the Work Plan:

- Sampling and analysis of soil vapor, soil, and groundwater;
- Evaluate the potential for contaminants to be transported through the vapor intrusion pathway;
- Evaluate the potential for off-property groundwater to impact on-property groundwater, soil vapor, or the vapor intrusion pathway.
- Evaluate the potential for redevelopment of the subject property to impact the extent of contaminant plumes off-property and nearby.

The PLP(s) will provide Ecology with an Agency Review Draft RI Work Plan. Once Ecology reviews and approves the Work Plan, it will be considered the Final Work Plan. The Work Plan shall not be implemented until approved by Ecology. Once approved by Ecology, the PLP(s) will implement the Final Work Plan according to the schedule contained in this Exhibit.

The PLP(s) shall prepare two (2) copies of the Agency Review Draft RI Work Plan and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and comment. After addressing Ecology's comments on the Agency Review Draft Work Plan and after Ecology approval, the PLP(s) shall prepare three (3) copies of the Final Work Plan and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology.

## **TASK 2. REMEDIAL INVESTIGATION**

The PLP(s) shall conduct an RI that meets the requirements of WAC 173-340-350(7) according to the Work Plan as approved by Ecology. The RI will determine the nature and extent of contamination exceeding preliminary Model Toxics Control Act (MTCA) cleanup levels and screening levels, and other regulatory requirements. The RI must provide sufficient data and information to design a cleanup plan protective of human health and the environment.

Field sampling and analysis will be completed in general accordance with the SAP and QAPP. Deviation(s) from the approved SAP and QAPP must be communicated to Ecology as soon as possible and documented as required by Ecology.

The PLP(s) shall provide interim data reports and updates to Ecology as new site data and information become available. Laboratory analysis data shall also be provided in electronic format when it is final. Raw laboratory data will be provided to Ecology upon request.

Prior to submittal of the Agency Review Draft RI Report, a Key Project Meeting will be held. During the Remedial Investigation Pre-Report Check-In, Ecology and the PLP(s) will review available data and an updated conceptual site model and discuss the content and organization of the Draft RI Report.

The PLP(s) shall compile the results of the investigation into an Agency Review Draft RI Report. The PLP(s) shall prepare two (2) copies of the Agency Review Draft RI Report and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and comment.

After addressing Ecology's comments on the Agency Review Draft RI Report, the PLP(s) shall prepare three (3) copies of a Public Review Draft RI Report and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution and public comment. Electronic survey data for monitoring locations, electronic lab data, and maps of contaminant distribution shall also be provided for both the Agency Review Draft RI Report and Public Review Draft RI Reports either in the report or as attachments. The RI Report will not be considered Final until after a public review and comment period.

If the data collected during this investigation is insufficient to define the nature and extent of contamination, and/or to select a cleanup action an additional phase of investigation shall be conducted to define the extent of contamination. The scope and schedule of any such additional necessary assessment will be discussed with and approved by Ecology, and may be performed contemporaneously with other remedial activities.

### **TASK 3. INTERIM ACTIONS**

Remedial actions implemented prior to completion of the RI and/or FS, including those that:

- are technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance;
- correct a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed;
- are needed to provide for completion of the remedial investigation/feasibility study or design of the cleanup action;

will be considered interim actions. As detailed in the AO, if required by Ecology or if proposed by the PLP(s) and approved by Ecology, an interim action may be implemented based upon information in the Agency Review Draft RI Report. Interim actions will be implemented in accordance with WAC 173-340-430 and the AO, and will be designed in a manner that will not foreclose reasonable alternatives for any final cleanup action that may be required.

The scope of the interim actions may include, but not be limited to:

- Soil removal
- Groundwater remediation
- Repair, slip lining, replacement, or closure of stormwater conveyances or other structures such as conduit, vaults, catch basins, etc.
- Removal of underground storage tanks and pipes (if present)
- Proper abandonment of old wells
- Removal of contaminated building or other structural material
- Construction of a treatment facility
- vapor control or mitigation

If an interim action is to be performed, the PLP(s) will prepare and submit for Ecology approval an Agency Review Draft Interim Action Work Plan (IAWP) with detail commensurate with the work to be performed. The Agency Review Draft IAWP shall include, as appropriate:

- Description of the interim action including its purpose, general requirements, and relationship to the (final) cleanup action (to the extent known);
- Summary of relevant RI and/or FS information, including at a minimum existing site conditions and alternative interim actions considered;
- Information regarding design and construction requirements, including a proposed schedule and personnel roles and responsibilities;
- Compliance Monitoring Plan;
- SAP/QAPP/HASP;
- Necessary permits.

The PLP(s) will be responsible for complying with the State Environmental Policy Act (SEPA) Rules including preparing and submitting an environmental checklist for the interim action, and will assist Ecology with presentations at any additional meetings or hearings that might be necessary for SEPA compliance or as part of the Public Participation Plan. As discussed in Task 5, the SEPA review for the interim action shall be focused on review and analysis of the interim action, and will likely adopt or incorporate the City of Seattle's SEPA review associated with the planned redevelopment of the Site.

The PLP(s) shall prepare two (2) copies of the Agency Review Draft Interim Action Work Plan and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review. The PLP(s) shall incorporate Ecology's comments and then prepare two (2) copies of the Public Review Draft Interim Action Work Plan and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology. After a public notice and comment period for the Public Review Draft IAWP (and SEPA determination), Ecology will approve the IAWP (if appropriate) and the document will be considered Final. The PLP(s) shall prepare three (3) copies of the Final

Interim Action Work Plan submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats. Once approved by Ecology, the PLP(s) will implement the interim action according with the approved schedule.

Upon successful completion of the work, an Agency Review Draft Interim Action Report will be prepared as a separate deliverable. The PLP(s) shall prepare two (2) copies of the Agency Review Draft Interim Action Report and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and approval. After incorporating Ecology's comments on the Agency Review Draft Interim Action Report and after Ecology approval, the PLP(s) shall prepare three (3) copies of the Final Interim Action Report and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology.

#### **TASK 4. FEASIBILITY STUDY**

The PLP(s) shall use the information obtained in the RI, as well as data obtained through the interim action, to prepare an Agency Review Draft Feasibility Study (FS) that meets the applicable requirements of WAC 173-340-350(8) according to the Schedule in this exhibit. The Agency Review Draft FS will evaluate remedial alternatives for site cleanup, consistent with MTCA requirements to ensure protection of human health and the environment by eliminating, reducing, or otherwise controlling risk posed through each exposure pathway and migration route.

Prior to beginning the FS, a Key Project Meeting will be held to review applicable state and federal laws, potential remedial alternatives, and establish points of compliance and potentially applicable cleanup levels.

The Agency Review Draft FS will provide a detailed analysis of each remedial alternative according to the applicable requirements of WAC 173-340-350, MTCA Remedial Investigation and Feasibility Study. The remedial alternatives will be evaluated for compliance with the applicable requirements of WAC 173-340-360, Selection of Cleanup Actions, including a detailed evaluation of remedial alternatives relative to the following criteria:

- Compliance with Cleanup Standards and Applicable Laws
- Protection of Human Health
- Protection of the Environment
- Provision for a Reasonable Restoration Time Frame
- Use of Permanent Solutions to the Maximum Extent Practicable
- The Degree to which Recycling, Reuse, and Waste Minimization are Employed
- Short-term Effectiveness
- Long-Term Effectiveness
- Net Environmental Benefit
- Implementability
- Provision for Compliance Monitoring



- Cost-Effectiveness
- Prospective Community Acceptance

The remedial alternative that is judged to best satisfy the evaluation criteria will be identified. Justification for the selection will be provided, and the recommended remedial alternative further developed, in the FS Report.

The PLP(s) shall prepare one copy of the Agency Review Draft FS and submit it, including one electronic copy in Word (.doc) and Adobe (.pdf) formats, to Ecology for review. After addressing Ecology's comments on the Agency Review Draft FS, The PLP(s) shall prepare three (3) copies of the Public Review Draft FS and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution and public comment. The FS will not be considered Final until after a public review and comment period.

#### **TASK 5. SEPA COMPLIANCE**

The PLP(s) shall be responsible for complying with the State Environmental Policy Act (SEPA) Rules, including preparing and submitting an environmental checklist for either an Interim Action or for the selected remedial alternative that will be implemented through the Cleanup Action Plan. If the result of the threshold determination is a determination of significance (DS), the PLP(s) shall be responsible for the preparation of draft and final environmental impact statements. The PLP(s) shall assist Ecology with coordinating SEPA public involvement requirements with MTCA public involvement requirements whenever possible, such that public comment periods and meetings or hearings can be held concurrently.

It is acknowledged that the PLP(s) has participated, and continues to participate, in the City of Seattle's SEPA process for the planned redevelopment of the Site, and that this separate SEPA process includes disclosure of the planned remedial activities that will be implemented during the redevelopment. The SEPA review required under the AO shall be focused on review and analysis of the Interim Action or the selected remedial alternative that will be implemented through the Cleanup Action Plan, and will likely adopt or incorporate the City of Seattle's SEPA review associated with the planned redevelopment of the Site.

#### **TASK 6. PUBLIC PARTICIPATION**

The PLP(s) shall support Ecology in presenting the IAWP, Public Review Draft RI Report, FS, Draft Cleanup Action Plan and the SEPA evaluations at public meeting(s) or hearing(s) as required. The PLP(s) will assist Ecology with presentations at any additional meetings or hearings that might be necessary for SEPA compliance or as part of the Public Participation Plan.

After the public comment periods are completed and if more than 10 comments are received, the PLP(s) shall prepare an Agency Review Draft Responsiveness Summary that addresses public comments. The PLP(s) shall prepare two (2) copies of the Agency Review Draft Responsiveness Summary and submit them to Ecology for review and approval, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution and public comment.

After addressing Ecology's comments and after Ecology approval, the PLP(s) shall prepare five (5) copies of the Final Responsiveness Summary and submit them to Ecology for distribution, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats.

#### **TASK 7. PRELIMINARY DRAFT CLEANUP ACTION PLAN**

Upon Ecology approval of the Final Remedial Investigation Report and Final Feasibility Study, a Key Project Meeting will be held regarding the Cleanup Action Plan. The Cleanup Action Plan Meeting will be used to review plans for developing the Agency Review preliminary Draft Cleanup Action Plan (DCAP).

The PLP(s) shall prepare an Agency Review preliminary DCAP in accordance with WAC 173-340-380 that provides a proposed remedial action to address the contamination present on the Site. The Agency Review preliminary DCAP shall include a general description of the proposed remedial actions, cleanup standards developed from the RI/FS and rationale regarding their selection, a schedule for implementation, description of any institutional controls proposed, and a summary of applicable local, state, and federal laws pertinent to the proposed cleanup actions.

The PLP(s) will submit the Agency Review preliminary DCAP for Ecology's review. The Agency Review preliminary DCAP will include, but not be limited to, the information listed under WAC 173-340-380. The PLP(s) shall prepare two (2) copies of the Agency Review preliminary DCAP and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review.

After receiving Ecology's comments on the Agency Review preliminary DCAP, if any, the PLP(s) shall revise the preliminary DCAP to address Ecology's comments. If requested by Ecology, the PLP(s) shall submit five (5) copies of the Public Review DCAP including one electronic copy each in Word (.doc) and Adobe (.pdf) formats.

#### **TASK 8. PROGRESS REPORTS**

The PLP(s) shall submit Progress Reports on a monthly basis to Ecology; this submittal frequency may be revised in accordance with Section VII.(C) of the AO. Progress Reports will be submitted to the Ecology project coordinator by the 10th of the month following the reporting period. If this day is a weekend or holiday, Progress Reports will be submitted

to Ecology on the next business day. At a minimum, Progress Reports will contain the following information regarding the preceding reporting period:

- A description of the actions which have been taken to comply with the AO;
- Summaries of sampling and testing reports and other data reports received by the PLP(s);
- Summaries of deviations from approved Work Plans;
- Summaries of contacts with representatives of the local community, public interest groups, press, and federal, state, or tribal governments;
- Summaries of problems or anticipated problems in meeting the schedule or objectives set forth in the SOW and Work Plan;
- Summaries of solutions developed and implemented or planned to address any actual or anticipated problems or delays;
- Changes in key personnel; and
- A description of work planned for the next reporting period.

## SCHEDULE OF DELIVERABLES

The schedule for deliverables described in the Agreed Order and the Scope of Work is presented below. If the date for submission of any item or notification required by this Schedule of Deliverables occurs on a weekend, state or federal holiday, the date for submission of that item or notification is extended to the next business day following the weekend or holiday. Where a deliverable due date is triggered by Ecology notification, comments or approval, the starting date for the period shown is the date the PLP(s) received such notification, comments or approval by certified mail, return receipt requested, unless otherwise noted below. Where triggered by Ecology receipt of a deliverable, the starting date for the period shown is the date Ecology receives the deliverable by certified mail, return receipt requested, or the date of Ecology signature on a hand-delivery form.

<b>AO Milestones and Deliverables</b>	<b>Completion Times (Calendar Days)</b>
Monthly Progress Reports	Due on the 10 <sup>th</sup> each month, beginning after the first full month following the effective date of the Agreed Order
Agency Review Draft RI Work Plan	Within 90 days following effective date of the Agreed Order
Final RI Work Plan	Within 30 days following receipt of Ecology comments to the Agency Review Draft RI Work Plan
Completion of RI Field Work	Within 120 days following Ecology approval of the Final RI Work Plan with SAP, QAPP and HASP and all necessary permits or access agreements
Submittal of validated RI data	Within 30 days following receipt of all final laboratory data
Agency Review Draft RI Report	Within 90 days following submittal of validated RI data
Public Review Draft RI Report	Within 45 days following receipt of Ecology comments to Agency Review Draft RI Report
Agency Review Draft IA Work Plan	Within 90 days following receipt of Ecology comments to Agency Review Draft RI Report
Public Review Draft IA Work Plan	Within 45 days following receipt of Ecology comments to Agency Review Draft IAWP
Final IA Work Plan	Within 30 days following receipt of Ecology comment, subsequent to public comment
Final RI Report	Within 30 days following receipt of Ecology comment, subsequent to public comment
Completion of IA Field Work	Within 120 days following Ecology approval of the Final IA Work Plan
Submittal of validated IA data	Within 30 days following receipt of all final laboratory data

Draft IA Completion Report	Within 90 days following submittal of validated IA data
Agency Review Draft FS Report	Within 90 days following Ecology's request to proceed with FS
Public Review Draft FS Report	Within 45 days following receipt of Ecology comments to Agency Review Draft FS Report
Final FS Report	Within 30 days following receipt of Ecology comment, subsequent to public comment
Agency Review preliminary Draft Cleanup Action Plan (DCAP)	Within 90 days following approval of Final FS
Public Review Draft Cleanup Action Plan (DCAP)	Within 45 days following receipt of Ecology comments, if any comments are received