

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by

ARE-SEATTLE NO. 33, LLC

AGREED ORDER AMENDMENT

No. DE 18215

TO: ARE-Seattle No. 33, LLC
c/o Jack Wells
400 Dexter Avenue North, Suite 200
Seattle, WA 98109

I. INTRODUCTION

Agreed Order No. DE 18215 (Order) entered into by the State of Washington, Department of Ecology (Ecology) and ARE-Seattle No 33, LLC (ARE) on October 20, 2020, requires that the Potentially Liable Party (PLP) perform a remedial investigation, feasibility study, and prepare a draft Cleanup Action Plan. By this Amendment to the Order (Amendment) Ecology removes the requirement to conduct a feasibility study and prepare a draft Cleanup Action Plan. Ecology believes the actions required by this Order are in the public interest.

This Amendment does not attempt to recite all of the provisions of the Order. Provisions of the Order not specifically changed in this Amendment remain in full force and effect.

II. JURISDICTION

This Amendment is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70A.305.050(1).

III. AMENDMENTS

Universal Amendment to the Order:

Throughout the Order and Exhibits, the phrase “ARE-Seattle 33, LLC” is replaced with “ARE-Seattle No. 33, LLC”.

Findings of Fact, Section V of the Order is Amended:

The Order, Section V. (Findings of Fact) is hereby amended to add the following

K. A remedial investigation was conducted at the Site in 2021 – 2022. Concentrations of soil and groundwater contaminants detected at the Site through the remedial investigation were all below preliminary cleanup levels.

L. In 2022, a lot-line to lot-line excavation was completed at the Site for redevelopment. A heating oil UST was discovered and removed during excavation. Analytical results from soil surrounding the UST identified petroleum contaminated soil below preliminary cleanup levels. Soil samples collected at the extent of the redevelopment excavation did not detect any contamination.

M. Based on information known to Ecology as of the date of this Amendment, there are no sources of contamination at the Site that present a threat to human health or the environment.

Work to be Performed, Section VII. of the Order is Amended:

The Order, Section VII.A (Work to be Performed) is hereby replaced with the following:

A The PLP(s) will complete a Remedial Investigation 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.

Scope of Work and Schedule, Exhibit C is Amended:

The Scope of Work and Schedule, Exhibit C is replaced with the attached Amended Exhibit C.

Effective date of this Amendment: May 6, 2024

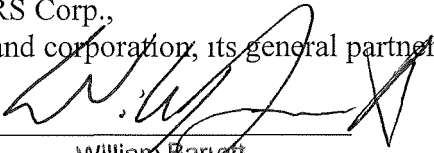
**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

Kimberly Wooten
Kimberly Wooten
Section Manager
Toxics Cleanup Program
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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 William Barrett
Title: Vice President
Real Estate Legal Affairs
Date 3/20/24

AMENDED 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). The purpose of the RI for the Site is to provide sufficient data, analysis, and evaluations to enable Ecology to select a cleanup alternative for the Site if required.

The PLP(s) shall coordinate with Ecology throughout the development of an Interim Action (if required or agreed to by Ecology), and RI 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 five major tasks as follows:

- Task 1. Remedial Investigation Work Plan
- Task 2. Remedial Investigation
- Task 3. Interim Action(s) (if required or agreed to by Ecology)
- Task 4. Public Participation
- Task 5. 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)¹. 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 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;

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

- 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 (If Required or Agreed to by Ecology)

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. PUBLIC PARTICIPATION

The PLP(s) shall support Ecology in presenting the IAWP (if required or agreed to by Ecology), or Public Review Draft RI Report, 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 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 5. 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.

AO Milestones and Deliverables	Completion Times (Calendar Days)
Monthly Progress Reports	Due on the 10 th 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
Final RI Report	Within 30 days following receipt of Ecology comment, subsequent to public comment