

PUBLIC COMMENT DRAFT

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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

ESTELITA’S LIBRARY, a Washington
501(c)(3) not-for-profit corporation,

Defendant.

NO. _____

PROSPECTIVE PURCHASER
CONSENT DECREE

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I. INTRODUCTION

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2 1. The mutual objective of the State of Washington, Department of Ecology
3 (Ecology) and Estelita's Library, a Washington not-for-profit corporation (Defendant) under this
4 Decree is to provide for remedial action at a facility located at 2901 17th Avenue South in Seattle,
5 Washington, where there has been a release or threatened release of hazardous substances. More
6 specifically, the mutual objectives of the Parties to this Decree are to: (1) resolve the potential
7 liability of Defendant for contamination at the CL Auto Repair Site (Site) arising from a
8 release(s) or threatened release(s) of hazardous substances in advance of Defendant obtaining an
9 ownership interest in real property at the Site; and (2) to facilitate the implementation of remedial
10 action at the Site so it may be redeveloped and reused as a cultural hub and community-informed
11 affordable housing development with approximately 65 residential units for low-income
12 individuals and families to support and uplift the lives and voices of the most marginalized
13 communities in South Seattle (Project). This Decree requires Defendant to complete a Remedial
14 Investigation and Feasibility Study (RI/FS), develop a draft Cleanup Action Plan (dCAP), and
15 implement the remedial actions contained in the final Cleanup Action Plan (fCAP), all of which
16 will be performed pursuant to the Schedule in Exhibit C.

17 2. Ecology has determined that these actions are necessary to protect human health
18 and the environment.

19 3. The Complaint in this action is being filed simultaneously with this Decree. An
20 Answer has not been filed, and there has not been a trial on any issue of fact or law in this case.
21 However, the Parties wish to resolve the issues raised by Ecology's Complaint. In addition, the
22 Parties agree that settlement of these matters without litigation is reasonable and in the public
23 interest, and that entry of this Decree is the most appropriate means of resolving these matters.

24 4. By signing this Decree, the Parties agree to its entry and agree to be bound by its
25 terms.
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1 vicinity of the Site. RCW 70A.305.040(4)(b) requires that such a settlement be entered as a
2 consent decree issued by a court of competent jurisdiction.

3 3. Ecology has determined that a release or threatened release of hazardous
4 substances has occurred at the Site that is the subject of this Decree.

5 4. The actions to be taken pursuant to this Decree are necessary to protect public
6 health and the environment.

7 5. This Decree has been subject to public notice and comment.

8 6. Defendant has not been named as a PLP for the Site, and Defendant has certified
9 under Section IX (Certification of Defendant) that it is not currently liable for the Site under
10 MTCA. Defendant expects to close and acquire property at the Site pursuant to a Purchase and
11 Sale Agreement no later than December 31, 2024.

12 7. The Property (as defined herein) comprises a portion of the Site. Defendant will
13 incur potential liability under RCW 70A.305.040(1) at the time it acquires an interest in the
14 Property for performing remedial actions or paying remedial costs incurred by Ecology or third
15 parties resulting from past releases or threatened releases of hazardous substances at the Site.
16 This Decree settles Defendant's liability as described herein for this Site upon it obtaining an
17 ownership interest in the Property.

18 8. Defendant intends to redevelop the Property for the Project, as described further
19 in this Decree.

20 9. Ecology finds that this Decree and/or the remedial actions required by the Decree:
21 (a) will yield substantial new resources to facilitate cleanup of the Site; (b) will lead to a more
22 expeditious cleanup of hazardous substances at the Site in compliance with cleanup standards
23 established under RCW 70A.305.030(2)(e) and Chapter 173-340 WAC; (c) will promote the
24 public interest by facilitating the redevelopment or reuse of the Site for an affordable housing
25 development; (d) will not contribute to the existing release or threatened release at the Site; (e)
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1 will not interfere with remedial actions that may be needed at the Site; and (f) will not increase
2 or contribute to health risks to persons at or in the vicinity of the Site.

3 10. Defendant has agreed to undertake the actions specified in this Decree and
4 consents to the entry of this Decree under MTCA.

5 III. PARTIES BOUND

6 This Decree shall apply to and be binding upon the Parties to this Decree, their successors
7 and assigns. The undersigned representative of each party hereby certifies that they are fully
8 authorized to enter into this Decree and to execute and legally bind such party to comply with
9 this Decree. Defendant agrees to undertake all actions required by the terms and conditions of
10 this Decree. No change in ownership or corporate status shall alter Defendant's responsibility
11 under this Decree. Defendant shall provide a copy of this Decree to all agents, contractors, and
12 subcontractors retained to perform work required by this Decree, and shall ensure that all work
13 undertaken by such agents, contractors, and subcontractors complies with this Decree.

14 IV. DEFINITIONS

15 1. Unless otherwise specified herein, all definitions in RCW 70A.305.020, and
16 WAC 173-340 shall control the meanings of the terms in this Decree.

17 A. Site: The Site is referred to as CL Auto Repair Site, CSID #10376, FSID
18 #74542995. The Site includes the Property located at 2901 17th Avenue South in Seattle,
19 Washington, and the Property is outlined and described in more detail in Exhibits A and
20 B. The Site constitutes a facility under RCW 70A.305.020(8). The Site is defined as all
21 areas where hazardous substances, other than a consumer product in consumer use, have
22 been deposited, stored, disposed of, or placed, or otherwise come to be located. The final
23 delineation of the Site will be completed after full characterization and investigation in
24 compliance with WAC 173-340-350.

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1 B. Between approximately 1939 and 2022, the Property was used by prior
2 owners and operators (including but not limited to entities affiliated with ExxonMobil
3 Corporation) for gasoline distribution and automotive repair operations. Releases of
4 contamination at or from the Site are related to these historic operations.

5 C. Multiple remedial investigations have been performed at the Property and
6 the Site. Information about the nature and extent of releases of hazardous substances on
7 and beneath the Property and the Site can be obtained from the reports at
8 <https://apps.ecology.wa.gov/cleanupsearch/site/10376#site-documents>, which are
9 hereby incorporated by reference. Remedial activities to address the releases of
10 hazardous substances at the Property and the Site have not yet been designed or
11 implemented.

12 D. Release(s) and/or potential release(s) of hazardous substances have
13 occurred at the Site. The following hazardous substances at the Site have been detected
14 at concentrations above MTCA cleanup levels: (a) TPH-G, TPH-D, TPH-O, PAHs, lead
15 and related volatile constituents (benzene, xylenes) in soil; (b) TPH-G, TPH-D, TPH-O,
16 PAHs, and related volatile constituents (benzene, xylenes, naphthalene) in groundwater;
17 and (c) petroleum-related volatile constituents (benzene, naphthalene) in soil gas. These
18 hazardous substances have been released from the Site into the environment including
19 soil, groundwater, and soil gas.

20 E. Ecology has performed a site hazard assessment and ranking for the Site
21 and pursuant to MTCA, and the site rating was medium.

22 **VI. WORK TO BE PERFORMED**

23 1. This Decree contains a program designed to protect human health and the
24 environment from the known release, or threatened release, of hazardous substances at, on, or
25 from the Site. All remedial action(s) conducted by Defendant at the Site shall be done in
26 accordance with WAC 173-340.

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1 2. Defendant shall complete an RI/FS and a dCAP in accordance with the Scope of
2 Work and Schedule contained attached to this Decree (Exhibit C). Following Ecology’s approval
3 of the RI/FS and the dCAP as public review documents, the RI/FS and dCAP shall be subject to
4 public comment. Ecology may make changes to the RI/FS and/or dCAP to reflect comments or
5 concerns raised in the public comment period, and then Ecology will issue the final RI/FS and
6 the fCAP.

7 3. Following Ecology issuance of the fCAP, Defendant shall implement that fCAP
8 subject to the Schedule provided under this Decree and any additional schedule requirements in
9 the fCAP. The Decree will be amended to add the fCAP as an exhibit.

10 4. Defendant will conduct the remedial actions for the Property and the Site as
11 described in the fCAP, once issued by Ecology. The Property will be remediated to the cleanup
12 levels identified in the fCAP in a manner consistent with MTCA and its implementing
13 regulations, and redeveloped with a cultural hub community space and dedicated rental units
14 restricted for affordable housing for a minimum of 30 years, along with related commercial and
15 retail space that will be consistent with applicable King County zoning provisions and
16 comprehensive plan designations.

17 5. Until the fCAP is final and until implementation of remedial actions under the
18 fCAP are required, no redevelopment of the Property may proceed; provided, that Ecology may
19 allow for redevelopment to occur on a parcel-specific basis if: (1) a fCAP for the Property has
20 been issued by Ecology; (2) the parcel-specific redevelopment is accompanied by a remedial
21 action that implements Ecology’s selected cleanup action for that portion of the Site; and (3)
22 Ecology determines that proceeding with the parcel-specific redevelopment and remedial action
23 is consistent with and will not preclude, complicate, or render more expensive the final cleanup
24 action for the Site, and will not exacerbate the known releases or result in recontamination of the
25 Property or the Site.

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1 6. Under WAC 173-340-430, an interim action is a remedial action that is
2 technically necessary to reduce a threat to human health or the environment by eliminating or
3 substantially reducing one or more pathways for exposure to a hazardous substance, that corrects
4 a problem that may become substantially worse or cost substantially more to address if the
5 remedial action is delayed, or that is needed to provide for completion of a site hazard
6 assessment, RI/FS, or design of a dCAP. Either Party may propose an interim action under this
7 Decree. If the Parties agree on the performance of an interim action, Defendant shall prepare and
8 submit to Ecology an Interim Action Work Plan (IAWP), including a related Scope of Work and
9 Schedule, by the date determined by Ecology. Ecology will provide public notice and
10 opportunity to comment on the IAWP in accordance with WAC 173-340-600(16). Defendant
11 shall not conduct the interim action until Ecology approves the IAWP. Upon approval by
12 Ecology, the IAWP becomes an integral and enforceable part of this Decree, and Defendant is
13 required to conduct the interim action in accordance with the approved IAWP. If the Parties are
14 not in agreement, Ecology reserves its authority to require interim action(s) under a separate
15 order or other enforcement action under MTCA, or to undertake the interim action itself.

16 8. All plans or other deliverables submitted by Defendant for Ecology's review and
17 approval under the Scope of Work and Schedule (Exhibit C) shall, upon Ecology's approval,
18 become integral and enforceable parts of this Decree. These deliverables include the RI/FS, the
19 IAWP (if an interim action is performed), the IA Completion Report (if an interim action is
20 performed), and the fCAP and any additional deliverables identified in the fCAP or any Schedule
21 or Scope of Work contained therein.

22 9. If Defendant learns of a significant change in conditions at the Site, including but
23 not limited to a statistically significant increase in contaminant and/or chemical concentrations
24 in groundwater or indoor air, Defendant, within seven (7) days of learning of the change in
25 condition, shall notify Ecology in writing of said change and provide Ecology with any reports
26 or records (including laboratory analyses, sampling results) relating to the change in conditions.

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1 10. Pursuant to WAC 173-340-440(11), Defendant shall maintain sufficient and
2 adequate financial assurance mechanisms to cover all costs associated with the operation and
3 maintenance of the remedial action implemented pursuant to the fCAP at the Site, including
4 institutional controls, compliance monitoring, and potential corrective measures.

5 A. Within sixty (60) days of the effective date of this Decree, Defendant shall
6 submit to Ecology for review and approval an estimate of the costs associated with the
7 operation and maintenance of the remedial action at the Site that it will incur in carrying
8 out the terms of this Decree. Within sixty (60) days after Ecology approves the
9 aforementioned cost estimate, Defendant shall provide proof of financial assurances
10 sufficient to cover those costs in a form acceptable to Ecology.

11 B. Defendant shall adjust the financial assurance coverage and provide
12 Ecology's project coordinator with documentation of the updated financial assurance for:

13 i. Inflation, annually, within thirty (30) days of the anniversary date
14 of the entry of this Decree; or if applicable, the modified anniversary date
15 established in accordance with this section, or if applicable, ninety (90) days after
16 the close of Defendant's fiscal year if the financial test or corporate guarantee is
17 used.

18 ii. Changes in cost estimates, within thirty (30) days of issuance of
19 Ecology's approval of a modification or revision to the CAP that result in
20 increases to the cost or expected duration of remedial actions. Any adjustments
21 for inflation since the most recent preceding anniversary date shall be made
22 concurrent with adjustments for changes in cost estimates. The issuance of
23 Ecology's approval of a revised or modified CAP will revise the anniversary date
24 established under this section to become the date of issuance of such revised or
25 modified CAP.
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1 C. The Financial Assurance Officer for Ecology shall work with the project
2 coordinators to review and approve financial assurance coverage pursuant to this Decree
3 and make determinations on any adjustments necessary based on the annual reporting.
4 As of the execution date of this Decree, Ecology's Financial Assurance Officer is Joanna
5 Seymour, 360-485-5992 or joar461@ECY.WA.GOV

6 11. Environmental (Restrictive) Covenants (ECs) will be used to implement the
7 institutional controls for the Site as may be required by the fCAP and the requirements of this
8 Decree.

9 A. In addition to any restrictions related to environmental conditions, to be
10 further described in the fCAP, the ECs to be recorded shall require that the project will
11 provide Affordable Housing units. By agreement of the project coordinators, subject to
12 the requirement of any applicable grant agreement between the Parties, and prior to the
13 recording of any EC required by the Decree, the Parties will further define: (1) the
14 specific requirements for the number of Affordable Housing units that will be subject to
15 the Covenant (a minimum of 20% percent of all housing units be Affordable Housing
16 rental units); (2) the term of land use restriction (a minimum of 30 years); and (3) the
17 instrument(s) required to be recorded to restrict land use to the requirements of this
18 section. The affordable housing requirements shall, through this Decree, attach to
19 Defendant prior to the ECs being recorded on title for the Property.

20 B. In the event that, prior or subsequent to the above-referenced ECs being
21 recorded, the Property or any parcels which comprise the Property are transferred to a
22 successor in interest who is not a party to this Decree, the Parties agree that compliance
23 with the affordable housing requirements in this Decree and the ECs are necessary in
24 order for that successor in interest to enjoy the protections provided in RCW
25 70A.305.040(4)(e). In the event such a successor in interest fails to comply with the
26 affordable housing requirements in this Decree or the ECs, Ecology reserves its authority

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1 to pursue an action for cost recovery from such successors in interest pursuant to RCW
2 70A.305.050(3), but only to the extent that funds from Ecology's Affordable Housing
3 Cleanup Grant Program have been expended at or for the Site. In consultation with
4 Defendant, Ecology will prepare the ECs consistent with WAC 173-340-440,
5 RCW 64.70, and any policies or procedures specified by Ecology. The ECs shall restrict
6 future activities and uses of the Site as agreed to by Ecology and Defendant.

7 C. After approval by Ecology, Defendant shall record the ECs for affected
8 parcels owned by Defendant with the office of the King County Auditor as detailed in
9 the Schedule (Exhibit C). Defendant shall provide Ecology with the original recorded
10 Environmental (Restrictive) Covenants within thirty (30) days of the recording date.

11 D. If provided for in the fCAP for the Site, institutional controls may be
12 required on properties not owned by Defendant. Defendant will undertake good faith
13 efforts to engage with the owners of each affected property so that an Ecology-approved
14 EC is recorded as detailed in the fCAP. Upon a showing that Defendant has made a good
15 faith effort to secure an EC for an affected property and failed to do so, Ecology may
16 assist Defendant. Defendant shall provide Ecology with the original recorded EC within
17 thirty (30) days of the recording date.

18 8. Unless otherwise directed by Ecology, Defendant shall submit to Ecology written
19 quarterly Progress Reports that describe the actions taken during the previous quarter to
20 implement the requirements of this Decree. All Progress Reports shall be submitted every ninety
21 (90) days after the effective date of this Decree. Unless otherwise specified in writing by
22 Ecology, Progress Reports and any other documents submitted pursuant to this Decree shall be
23 sent by electronic mail to Ecology's project coordinator. The Progress Reports shall include the
24 following:

- 25 A. A list of on-site activities that have taken place during the quarter.
26 B. Description of any sample results which deviate from the norm.

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1 C. Detailed description of any deviations from required tasks not otherwise
2 documented in project plans or amendment requests.

3 D. Description of all deviations from the Scope of Work and Schedule
4 (Exhibit C) during the current month and any planned deviations in the upcoming month.

5 E. For any deviations in schedule, a plan for recovering lost time and
6 maintaining compliance with the schedule.

7 F. All raw data (including laboratory analyses) received during the previous
8 quarter (if not previously submitted to Ecology), together with a detailed description of
9 the underlying samples collected.

10 G. A list of planned activities for the upcoming month.

11 9. Except in the case of an emergency, Defendant agrees not to perform any
12 remedial actions at the Site outside the scope of this Decree without prior written approval of
13 Ecology. In the case of an emergency, Defendant must notify Ecology of the event and remedial
14 action(s) as soon as practical, but no later than twenty-four (24) hours after discovery of the
15 emergency.

16 VII. DESIGNATED PROJECT COORDINATORS

17 1. The project coordinator for Ecology is:

18 Shreejita Basu
19 PO BOX 330316
20 Shoreline, WA 98133
21 (206) 773-7950
22 shreejita.basu@ecy.wa.gov

23 2. The project coordinators for Defendant are:

24 Ali Cochrane, LG
25 Aspect Consulting (a Geosyntec Company)
26 710 2nd Avenue, Suite 550
Seattle, WA 98104
(206) 838-6594
Ali.cochrane@aspectconsulting.com

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1 Edwin Lindo
2 Estelita's Library
3 241 Martin Luther King Jr. Way South
4 Seattle, WA 98144
5 (415) 342-9009
6 edwin@estelitas.org
7 edwin.lindo@gmail.com

8 3. Each project coordinator shall be responsible for overseeing the implementation
9 of this Decree. Ecology's project coordinator will be Ecology's designated representative for the
10 Site. To the maximum extent possible, communications between Ecology and Defendant and all
11 documents, including reports, approvals, and other correspondence concerning the activities
12 performed pursuant to the terms and conditions of this Decree shall be directed through the
13 project coordinators. The project coordinators may designate, in writing, working level staff
14 contacts for all or portions of the implementation of the work to be performed required by this
15 Decree.

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

VIII. PERFORMANCE

18 1. Except as otherwise provided for by RCW 18.43 and 18.220, all geologic and
19 hydrogeologic work performed pursuant to this Decree shall be under the supervision and
20 direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct
21 supervision of an engineer registered by the State of Washington.

22 2. Except as otherwise provided for by RCW 18.43.130, all engineering work
23 performed pursuant to this Decree shall be under the direct supervision of a professional engineer
24 registered by the State of Washington.

25 3. Except as otherwise provided for by RCW 18.43.130, all construction work
26 performed pursuant to this Decree shall be under the direct supervision of a professional engineer

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1 registered by the State of Washington or a qualified technician under the direct supervision of a
2 professional engineer registered by the State of Washington.

3 4. As required by RCW 18.43 and 18.220, any documents submitted containing
4 geologic, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed
5 professional.

6 5. Defendant shall notify Ecology in writing of the identity of any engineer(s) and
7 geologist(s), contractor(s) and subcontractor(s), and other key personnel to be used in carrying
8 out the terms of this Decree, in advance of their involvement at the Site.

9 IX. CERTIFICATION OF DEFENDANT

10 1. Defendant represents and certifies that, to the best of its knowledge and belief, it
11 has fully and accurately disclosed to Ecology the information currently in its possession or
12 control that relates to the environmental conditions at and in the vicinity of the Property and the
13 Site, as well as Defendant's right and title thereto.

14 2. Defendant represents and certifies that it did not cause or contribute to any release
15 or threatened release of hazardous substances at the Property or the Site and is not otherwise
16 currently potentially liable for the Site under RCW 70A.305.040(1).

17 X. ACCESS

18 1. Ecology or any Ecology authorized representative shall have access to enter and
19 freely move about all property at the Site that Defendant either owns, controls, or has access
20 rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs,
21 and contracts related to the work being performed pursuant to this Decree; reviewing
22 Defendant's progress in carrying out the terms of this Decree; conducting such tests or collecting
23 such samples as Ecology may deem necessary; using a camera, sound recording, or other
24 documentary type equipment to record work done pursuant to this Decree; and verifying the data
25 submitted to Ecology by Defendant.

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

7 3. Defendant shall make all reasonable efforts to secure access rights for those
8 properties within the Site not owned or controlled by Defendant where remedial activities or
9 investigations will be performed pursuant to this Decree.

10 4. Ecology or any Ecology authorized representative shall give reasonable notice
11 before entering any Site property owned or controlled by Defendant unless an emergency
12 prevents such notice. All Parties who access the Site pursuant to this section shall comply with
13 any applicable health and safety plan(s). Ecology employees and their representatives shall not
14 be required to sign any liability release or waiver as a condition of Site property access.

15 **XI. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY**

16 1. With respect to the implementation of this Decree, Defendant shall make the
17 results of all sampling, laboratory reports, and/or test results generated by it or on its behalf
18 available to Ecology by submitting data as detailed in this section. Pursuant to WAC 173-340-
19 840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in
20 accordance with paragraph 8 of Section VI (Work to be Performed), Ecology's Toxics Cleanup
21 Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified
22 by Ecology for data submittal.

23 2. If requested by Ecology, Defendant shall allow Ecology and/or its authorized
24 representative to take split or duplicate samples of any samples collected by Defendant pursuant
25 to the implementation of this Decree. Defendant shall notify Ecology seven (7) days in advance
26 of any sample collection or work activity at the Site. Ecology shall, upon request, allow

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1 Defendant and/or its authorized representative to take split or duplicate samples of any samples
2 collected by Ecology pursuant to the implementation of this Decree, provided that doing so does
3 not interfere with Ecology’s sampling. Without limitation on Ecology’s rights under Section X
4 (Access), Ecology shall notify Defendant prior to any sample collection activity unless an
5 emergency prevents such notice.

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

9 XII. ACCESS TO INFORMATION

10 1. Defendant shall provide to Ecology, upon request, copies of all records, reports,
11 documents, and other information (including records, reports, documents, and other information
12 in electronic form) (hereinafter referred to as “Records”) within Defendant’s possession or
13 control or that of their contractors or agents relating to activities at the Site or to the
14 implementation of this Decree, including, but not limited to, sampling, analysis, chain of custody
15 records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or
16 other documents or information regarding the work. Defendant shall also make available to
17 Ecology, for purposes of investigation, information gathering, or testimony, their employees,
18 agents, or representatives with knowledge of relevant facts concerning the performance of the
19 work.

20 2. Nothing in this Decree is intended to waive any right Defendant may have under
21 applicable law to limit disclosure of Records protected by the attorney work-product privilege
22 and/or the attorney-client privilege. If Defendant withholds any requested Records based on an
23 assertion of privilege, Defendant shall provide Ecology with a privilege log specifying the
24 Records withheld and the applicable privilege. No Site-related data collected pursuant to this
25 Decree shall be considered privileged, including: (1) any data regarding the Site, including, but
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1 not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical,
2 radiological, biological, or engineering data, or the portion of any other record that evidences
3 conditions at or around the Site; or (2) the portion of any Record that Defendant is required to
4 create or generate pursuant to this Order.

5 3. Notwithstanding any provision of this Order, Ecology retains all of its
6 information gathering and inspection authorities and rights, including enforcement actions
7 related thereto, under any other applicable statutes or regulations.

8 **XIII. RETENTION OF RECORDS**

9 During the pendency of this Decree, and for ten (10) years from the date this Decree is
10 no longer in effect as provided in Section XXVI (Duration of Decree), Defendant shall preserve
11 all records, reports, documents, and underlying data in its possession relevant to the
12 implementation of this Decree and shall insert a similar record retention requirement into all
13 contracts with project contractors and subcontractors. Upon request of Ecology, Defendant shall
14 make all records available to Ecology and allow access for review within a reasonable time.

15 **XIV. TRANSFER OF INTEREST IN PROPERTY**

16 1. No voluntary conveyance or relinquishment of title, easement, leasehold, or other
17 interest in any portion of the Site shall be consummated by Defendant without provision for
18 continued operation and maintenance of any containment system, treatment system, and/or
19 monitoring system installed or implemented pursuant to this Decree.

20 2. Prior to Defendant's transfer of any interest in all or any portion of the Site, and
21 during the effective period of this Decree, Defendant shall provide a copy of this Decree to any
22 prospective purchaser, lessee, transferee, assignee, or other successor in said interest. At least
23 thirty (30) days prior to any transfer, Defendant shall notify Ecology of said transfer; provided,
24 however, that Defendant shall not be required to notify Ecology for a lease of spaces or units for
25 residential or commercial / retail uses after Ecology has determined that there are no health risks
26 to the residents or tenants of the spaces or units. Upon its transfer of any interest, Defendant shall

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1 notify all transferees of the restrictions on the activities and uses of the property under this Decree
2 and incorporate any such use restrictions into the transfer documents.

3 **XV. RESOLUTION OF DISPUTES**

4 1. In the event that Defendant elects to invoke dispute resolution, Defendant must
5 utilize the procedure set forth below.

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

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

18 C. Defendant may then request regional management review of the dispute.
19 Defendant must submit this request (Formal Dispute Notice) in writing to the Toxics
20 Cleanup Section Manager for the Northwest Regional Office within seven (7) calendar
21 days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall
22 include a written statement of dispute setting forth: the nature of the dispute; the disputing
23 Party's position with respect to the dispute; and the information relied upon to support
24 its position.
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1 D. The Section Manager shall conduct a review of the dispute and shall issue
2 a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar
3 days of receipt of the Formal Dispute Notice.

4 E. If Defendant finds the Section Manager’s decision of the disputed matter
5 unacceptable, Defendant may then request final management review of that decision.
6 Defendant must submit this request (Final Review Request) in writing to the Program
7 Manager for the Toxics Cleanup Program within seven (7) calendar days of Defendant’s
8 receipt of the Decision on Dispute. The Final Review Request shall include a written
9 statement of dispute setting forth: the nature of the dispute; the disputing Defendant’s
10 position with respect to the dispute; and the information relied upon to support its
11 position.

12 F. Ecology’s Program Manager for the Toxics Cleanup Program shall
13 conduct a review of the dispute and shall issue a written decision regarding the dispute
14 (Final Decision on Dispute) within thirty (30) calendar days of receipt of the Final
15 Review Request. The Program Manager’s decision shall be Ecology’s final decision on
16 the disputed matter.

17 2. If Ecology’s Final Decision on Dispute is unacceptable to Defendant, then
18 Defendant has the right to submit the dispute to the Court for resolution. The Parties agree that
19 one judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute
20 arising under this Decree. Under RCW 70A.305.070, Ecology’s investigative and remedial
21 decisions shall be upheld unless they are arbitrary and capricious.

22 3. The Parties agree to only utilize the dispute resolution process in good faith and
23 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
24 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay,
25 the other party may seek sanctions.
26

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1 to expiration of the deadline for which the extension is requested, and good cause exists for
2 granting the extension. All extensions shall be requested in writing. The request shall specify:

3 A. The deadline that is sought to be extended.

4 B. The length of the extension sought.

5 C. The reason(s) for the extension.

6 D. Any related deadline or schedule that would be affected if the extension
7 were granted.

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

11 A. Circumstances beyond the reasonable control and despite the due
12 diligence of Defendant including delays caused by unrelated third parties or Ecology,
13 such as (but not limited to) delays by Ecology in reviewing, approving, or modifying
14 documents submitted by Defendant.

15 B. A shelter in place or work stoppage mandated by state or local
16 government order due to public health and safety emergencies.

17 C. Acts of God, including fire, flood, blizzard, extreme temperatures, storm,
18 or other unavoidable casualty.

19 D. Endangerment as described in Section XVII (Endangerment).

20 However, neither increased costs of performance of the terms of this Decree nor changed
21 economic circumstances shall be considered circumstances beyond the reasonable control of
22 Defendant.

23 3. Ecology shall act upon any Defendant's written request for extension in a timely
24 fashion. Ecology shall give Defendant written notification of any extensions granted pursuant to
25 this Decree. A requested extension shall not be effective until approved by Ecology or, if
26 required, by the Court. Unless the extension is a substantial change, it shall not be necessary to

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1 amend this Decree pursuant to Section XV (Amendment of Decree) when a schedule extension
2 is granted.

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

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

8 B. Other circumstances deemed exceptional or extraordinary by Ecology.

9 C. Endangerment as described in Section XVII (Endangerment).

10 XVIII. ENDANGERMENT

11 1. In the event Ecology determines that any activity being performed at the Site
12 under this Decree is creating or has the potential to create a danger to human health or the
13 environment, Ecology may direct Defendant to cease such activities for such period of time as it
14 deems necessary to abate the danger. Defendant shall immediately comply with such direction.

15 2. In the event Defendant determines that any activity being performed at the Site
16 under this Decree is creating or has the potential to create a danger to human health or the
17 environment, Defendant may cease such activities. Defendant shall notify Ecology's project
18 coordinator as soon as possible, but no later than twenty-four (24) hours after making such
19 determination or ceasing such activities. Upon Ecology's direction, Defendant shall provide
20 Ecology with documentation of the basis for the determination or cessation of such activities. If
21 Ecology disagrees with Defendant's cessation of activities, it may direct Defendant to resume
22 such activities.

23 3. If Ecology concurs with or orders a work stoppage pursuant to this section,
24 Defendant's obligations with respect to the ceased activities shall be suspended until Ecology
25 determines the danger is abated, and the time for performance of such activities, as well as the
26 time for any other work dependent upon such activities, shall be extended, in accordance with

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1 Section XVII (Extension of Schedule), for such period of time as Ecology determines is
2 reasonable under the circumstances.

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

5 **XIX. COVENANT NOT TO SUE**

6 1. Covenant Not to Sue: In consideration of Defendant's compliance with the terms
7 and conditions of this Decree, Ecology covenants not to institute legal or administrative actions
8 against Defendant regarding the release or threatened release of hazardous substances at the
9 Property and the Site. This Covenant Not to Sue does not cover any other hazardous substance(s)
10 or area. Ecology retains all of its authority relative to any hazardous substance(s) or area not
11 covered by this Decree.

12 This Covenant Not to Sue shall have no applicability whatsoever to:

13 A. Criminal liability.

14 B. Liability for damages to natural resources.

15 C. Any Ecology action, including cost recovery, against PLPs not a party to
16 this Decree.

17 2. Pursuant to RCW 70A.305.040(4)(c), the Court shall amend this Covenant Not
18 to Sue if factors not known at the time of entry of this Decree are discovered and present a
19 previously unknown threat to human health or the environment.

20 3. Reopeners: Ecology specifically reserves the right to institute legal or
21 administrative action against Defendant to require it to perform additional remedial actions at
22 the Site and to pursue appropriate cost recovery, pursuant to RCW 70A.305.050, under any of
23 the following circumstances:

24 A. Upon Defendant's failure to meet the requirements of this Decree.
25
26

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1 B. Failure of the remedial action to meet the cleanup standards identified in
2 the fCAP, which will be incorporated as an Exhibit to this Decree when completed
3 pursuant to the Scope of Work and Schedule (Exhibit C).

4 C. Upon Ecology's determination that remedial action beyond the terms of
5 this Decree is necessary to abate an imminent and substantial endangerment to human
6 health or the environment.

7 D. Upon the availability of information previously unknown to Ecology
8 regarding Site factors including the nature, quantity, migration, pathway, or mobility of
9 hazardous substances, and Ecology's determination, in light of this information, that
10 further remedial action is necessary at the Site to protect human health or the
11 environment.

12 E. Upon Ecology's determination that additional remedial actions are
13 necessary to achieve cleanup standards within the reasonable restoration time frame set
14 forth in the fCAP.

15 4. Except in the case of an emergency, prior to instituting legal or administrative
16 action against Defendant pursuant to this section, Ecology shall provide Defendant with fifteen
17 (15) calendar days' notice of such action.

18 XX. CONTRIBUTION PROTECTION

19 1. With regard to claims for contribution against Defendant, the Parties agree that
20 Defendant is entitled to protection against claims for contribution for matters addressed in this
21 Decree as provided by RCW 70A.305.040(4)(d).

22 XXI. INDEMNIFICATION

23 1. Defendant agrees to indemnify and save and hold the State of Washington, its
24 employees, and agents harmless from any and all claims or causes of action (1) for death or
25 injuries to persons, or (2) for loss or damage to property to the extent arising from or on account
26 of acts or omissions of Defendant, its officers, employees, agents, or contractors in entering into

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1 and implementing this Decree. However, Defendant shall not indemnify the State of Washington
2 nor save nor hold its employees and agents harmless from any claims or causes of action to the
3 extent arising out of the negligent acts or omissions of the State of Washington, or the employees
4 or agents of the State, in entering into or implementing this Decree.

5 **XXII. COMPLIANCE WITH APPLICABLE LAWS**

6 1. *Applicable Law.* All actions carried out by Defendant pursuant to this Decree
7 shall be done in accordance with all applicable federal, state, and local requirements, including
8 requirements to obtain necessary permits, except as provided in RCW 70A.305.090. The permits
9 or specific federal, state, or local requirements that the agency has determined are applicable and
10 that are known at the time of the execution of this Decree have been identified in Exhibit D.
11 Defendant has a continuing obligation to identify additional applicable federal, state, and local
12 requirements which apply to actions carried out pursuant to this Decree, and to comply with
13 those requirements. As additional federal, state, and local requirements are identified by Ecology
14 or the Defendant, Ecology will document in writing if they are applicable to actions carried out
15 pursuant to this Decree, and the Defendant must implement those requirements.

16 2. *Relevant and Appropriate Requirements.* All actions carried out by Defendant
17 pursuant to this Decree shall be done in accordance with relevant and appropriate requirements
18 identified by Ecology. The relevant and appropriate requirements that Ecology has determined
19 apply to the Project have been identified in Exhibit D. If additional relevant and appropriate
20 requirements are identified by Ecology or the Defendant, Ecology will document in writing if
21 they are applicable to actions carried out pursuant to this Decree and the Defendant must
22 implement those requirements.

23 3. Pursuant to RCW 70A.305.090(1), Defendant may be exempt from the
24 procedural requirements of RCW 70A.15, 70A.205, 70A.300, 77.55, 90.48, and 90.58 and of
25 any laws requiring or authorizing local government permits or approvals. However, Defendant
26 shall comply with the substantive requirements of such permits or approvals. For permits and

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1 | approvals covered under RCW 70A.305.090(1) that have been issued by local government, the
2 | Parties agree that Ecology has the non-exclusive ability under this Decree to enforce those local
3 | government permits and/or approvals. The exempt permits or approvals and the applicable
4 | substantive requirements of those permits or approvals, as they are known at the time of the
5 | execution of this Decree, have been identified in Exhibit D.

6 | 4. Defendant has a continuing obligation to determine whether additional permits or
7 | approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial
8 | action under this Decree. In the event either Ecology or Defendant determines that additional
9 | permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the
10 | remedial action under this Decree, it shall promptly notify the other party of its determination.
11 | Ecology shall determine whether Ecology or Defendant shall be responsible to contact the
12 | appropriate state and/or local agencies. If Ecology so requires, Defendant shall promptly consult
13 | with the appropriate state and/or local agencies and provide Ecology with written documentation
14 | from those agencies of the substantive requirements those agencies believe are applicable to the
15 | remedial action. Ecology shall make the final determination on the additional substantive
16 | requirements that must be met by Defendant and on how Defendant must meet those
17 | requirements. Ecology shall inform Defendant in writing of these requirements. Once established
18 | by Ecology, the additional requirements shall be enforceable requirements of this Decree.
19 | Defendant shall not begin or continue the remedial action potentially subject to the additional
20 | requirements until Ecology makes its final determination.

21 | 5. Pursuant to RCW 70A.305.090(2), in the event Ecology determines that the
22 | exemption from complying with the procedural requirements of the laws referenced in
23 | RCW 70A.305.090(1) would result in the loss of approval from a federal agency that is necessary
24 | for the state to administer any federal law, the exemption shall not apply and Defendant shall
25 | comply with both the procedural and substantive requirements of the laws referenced in
26 | RCW 70A.305.090(1), including any requirements to obtain permits or approvals.

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XXIII. REMEDIAL ACTION COSTS

1
2 1. Defendant shall pay to Ecology costs incurred by Ecology pursuant to this Decree
3 and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology
4 or its contractors for, or on, the Site under RCW 70A.305, including remedial actions and Decree
5 preparation, negotiation, oversight, and administration. These costs shall include work
6 performed both prior to and subsequent to the entry of this Decree. Ecology's costs shall include
7 costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2).
8 For all costs incurred, Defendant shall pay the required amount within thirty (30) days of
9 receiving from Ecology an itemized statement of costs that includes a summary of costs incurred,
10 an identification of involved staff, and the amount of time spent by involved staff members on
11 the project. A general statement of work performed will be provided upon request. Itemized
12 statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay
13 Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result
14 in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

15 2. In addition to other available relief, pursuant to RCW 19.16.500, Ecology may
16 utilize a collection agency and/or, pursuant to RCW 70A.305.060, file a lien against real property
17 subject to the remedial actions to recover unreimbursed remedial action costs.

XXIV. IMPLEMENTATION OF REMEDIAL ACTION

18
19 1. If Ecology determines that the Defendant has failed to make sufficient progress
20 or failed to implement the remedial action, in whole or in part, Ecology may, after notice to
21 Defendant, perform any or all portions of the remedial action or at Ecology's discretion allow
22 the Defendant opportunity to correct. In an emergency, Ecology is not required to provide notice
23 to Defendant, or an opportunity for dispute resolution. The Defendant shall reimburse Ecology
24 for the costs of doing such work in accordance with Section XXII (Remedial Action Costs).

25 2. Except where necessary to abate an emergency or where required by law, the
26 Defendant shall not perform any remedial actions at the Site outside those remedial actions

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1 required by this Decree to address the contamination that is the subject of this Decree, unless
2 Ecology concurs, in writing, with such additional remedial actions pursuant to Section XV
3 (Amendment of Decree). In the event of an emergency, or where actions are taken as required
4 by law, Defendant must notify Ecology in writing of the event and remedial action(s) planned
5 or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of
6 the event.

7 **XXV. PERIODIC REVIEW**

8 If the fCAP requires implementation of a cleanup action that requires a periodic review
9 under WAC 173-340-420(2), then so long as remedial activities continue at the Property and/or
10 Site, the Parties agree to review the progress of remedial activities at the Site and to review the
11 data accumulated as a result of monitoring at the Site as often as is necessary and appropriate
12 under the circumstances.. Unless otherwise agreed to by Ecology, at least every five (5) years
13 after the initiation of cleanup action at the Site, the Parties shall confer regarding the status of
14 the Site and the need, if any, for further remedial action at the Site. Under Section XIX (Covenant
15 Not to Sue), Ecology reserves the right to require further remedial action at the Site under
16 appropriate circumstances. This provision shall remain in effect for the duration of this Decree.

17 **XXVI. PUBLIC PARTICIPATION**

18 1. Ecology shall maintain the responsibility for public participation at the Site.
19 However, Defendant shall cooperate with Ecology, and shall:

20 A. If agreed to by Ecology, develop appropriate mailing lists, prepare drafts
21 of public notices and fact sheets at important stages of the remedial action, such as the
22 submission of work plans, remedial investigation/feasibility study reports, cleanup action
23 plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and
24 distribute such fact sheets and prepare and distribute public notices of Ecology's
25 presentations and meetings.
26

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1 B. Notify Ecology’s project coordinator prior to the preparation of all press
2 releases and fact sheets, and before meetings related to remedial action work to be
3 performed at the Site with the interested public and/or local governments. Likewise,
4 Ecology shall notify Defendant prior to the issuance of all press releases and fact sheets
5 related to remedial action work to be performed at the Site, and before meetings related
6 to remedial action work to be performed at the Site with the interested public and/or local
7 governments. For all press releases, fact sheets, meetings, and other outreach efforts by
8 Defendant that do not receive prior Ecology approval, Defendant shall clearly indicate to
9 its audience that the press release, fact sheet, meeting, or other outreach effort was not
10 sponsored or endorsed by Ecology.

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

14 D. When requested by Ecology, arrange and/or continue information
15 repositories at the following locations:

- 16 i. Department of Ecology
17 Northwest Regional Office
18 15700 Dayton Avenue North
19 Shoreline, WA 98133
- 20 ii. Estelita’s Library
21 241 Martin Luther King Jr. Way South
22 Seattle, WA 98144

23 At a minimum, copies of all public notices, fact sheets, and documents relating to public
24 comment periods shall be promptly placed in this repository. A copy of all documents
25 related to this Site shall be maintained at Ecology’s Northwest Regional Office in
26 Shoreline, Washington.

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XXVII. DURATION OF DECREE

1
2 The remedial program required pursuant to this Decree shall be maintained and continued
3 until Defendant has received written notification from Ecology that the requirements of this
4 Decree have been satisfactorily completed. This Decree shall remain in effect until dismissed by
5 the Court. When dismissed, Section XIII (Retention of Records), Section XIX (Covenant Not to
6 Sue), Section XXI (Contribution Protection), Section XXII (Indemnification), and Section
7 XXVIII (Claims Against the State) shall survive.

XXVIII. CLAIMS AGAINST THE STATE

8
9 Defendant hereby agrees that it will not seek to recover any costs accrued in
10 implementing the remedial action required by this Decree from the State of Washington or any
11 of its agencies; and further, that Defendant will make no claim against the State Toxics Control
12 Account, the Local Toxics Control Account, the Environmental Legacy Stewardship Account,
13 or a MTCA Cleanup Settlement Account for any costs incurred in implementing this Decree.
14 Except as provided above, however, Defendant expressly reserves its right to seek to recover
15 any costs incurred in implementing this Decree from any other PLP. This section does not limit
16 or address funding that may be provided under WAC 173-322A.

XXIX. EFFECTIVE DATE

17
18 This Decree is effective upon the date it is entered by the Court.

XXX. WITHDRAWAL OF CONSENT

19
20 If the Court withholds or withdraws its consent to this Decree, it shall be null and void at
21 the option of any party and the accompanying Complaint shall be dismissed without costs and
22 without prejudice. In such an event, no party shall be bound by the requirements of this Decree.
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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON
Attorney General

Barry Rogowski
Program Manager
Toxics Cleanup Program
(360) 407-7177

Derek J. Threet, WSBA #45808
Assistant Attorney General
(360) 586-6762

Date: _____

Date: _____

ESTELITA'S LIBRARY,
a Washington non-profit corporation

Edwin J. Lindo
Governor
(415) 342-9009

Date: _____

ENTERED this ____ day of _____ 2024.

JUDGE / COMMISSIONER
King County Superior Court

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Exhibit A



ArcGIS Pro 3.0 Project: Esri\swr\Library_22024\Deliverables\Exhibits\Esri\site\chicago.aprx | UTM 32Q8 2011 Spheroid: Washington North FRS 4802 F 10S | Date Served: 4/29/2024 | Exported: 4/29/2024 12:02 by Nina Koehnle

Exhibit A

17TH AVE S

S FOREST ST

S FOREST ST

BEACON AVE S

17TH AVE S

3086003356

 Subject Property

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 King County Tax Parcel



Site Location Diagram

Estelita's Library Beacon Hill Affordable Housing Development Project
Seattle, Washington



APR-2024

PROJECT NO.
AS230572

BY
ALC / NLK

REVISED BY:
- - - / - - -

FIGURE NO.

1

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Exhibit B

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EXHIBIT B

LEGAL DESCRIPTION

The East 60 feet of Lot 5 and the North 40 feet of Lot 6, Block 53, T. Hanford's Addition to South Seattle, according to the plat thereof recorded in Volume 1 of Plats, page 141, in King County, Washington.

Situated in the City of Seattle, County of King, State of Washington.

Abbreviated Legal: Ptn Lts 5 & 6, Blk 53, T. Hanford's Add. to South Seattle

Parcel No.: 308600-3356-05

Address: 2901 17th Avenue South, Seattle, Washington, 98144

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Exhibit C

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EXHIBIT C

SCOPE OF WORK AND SCHEDULE

Scope of Work

Pursuant to the Prospective Purchaser Consent Decree (PPCD), Estelita's Library, a Washington not-for-profit corporation (Estelita's) will complete investigation and cleanup activities for the Site in accordance with the Model Toxics Control Act (MTCA) Regulation (Washington Administrative Code [WAC] 173-340) subject to Washington State Department of Ecology (Ecology) review and approval. Following completion of the final Remedial Investigation (RI) and Feasibility Study (FS) and selection of a final cleanup alternative presented in a final Cleanup Action Plan (CAP), Estelita's will implement the remedy.

Estelita's shall coordinate with Ecology throughout preparation of the RI, FS, interim action (if required), draft CAP, and implementation of the cleanup, and shall keep Ecology informed of changes to any Work Plan or other project plans, and of any issues 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) (if required)
- Task 4. Feasibility Study
- Task 5. State Environmental Policy Act (SEPA) Compliance
- Task 6. Public Participation
- Task 7. Draft Cleanup Action Plan
- Task 8. Implementation of Final Cleanup Action Plan

Task 1. Remedial Investigation Work Plan

Estelita's shall utilize data already obtained prior to entry of the PPCD and 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 RI Work Plan. The purpose of the Remedial Investigation Planning Meeting is to review requirements for the Work Plan and plan Remedial Investigation field work, discuss the preliminary Conceptual Site Model, and identify project data needs and possible interim actions.

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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, groundwater, and soil gas; 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 and WAC 173-204-550.

As part of the project background, existing environmental data on site soils, air, groundwater, and soil gas will be compiled and evaluated for data gaps. The data gaps will be used as the basis for conducting additional site investigations. 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 and WAC 173-204-600 for defining the nature and extent of contamination. Estelita's will also submit a copy of the Health and Safety Plan (HASP) for the project in compliance with WAC 173-340-810. Estelita's will also work with Ecology to prepare any plans required for cultural resource protection in compliance with WAC 173-340-815.

The SAP will identify the proposed number and location of all environmental samples, methods and media, including soil borings, groundwater monitoring wells, , approximate depths, and include a quality assurance project plan. 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; data and records management; and schedule.

The Quality Assurance Project Plan (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 (July 2004). Laboratories must meet the accreditation standards established in WAC 173-50. Data quality objectives will reflect the criteria or threshold values used for the source control evaluation.

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.

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Estelita's or their contractors shall submit all new sampling data generated under this SAP and any other recently collected data 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. EIM data submittal will occur 30 days after data is validated.

- RI Work Plan tasks and subtasks may include the following: Sampling and analysis of soil, groundwater, soil gas and indoor air;
- Drilling, well installation, and sample collection in City-owned rights-of-way and adjacent or adjoining properties;
- Transmissivity evaluation of light non-aqueous phase liquid (LNAPL).

Estelita's will provide Ecology with an Agency Review Draft 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, Estelita's will implement the Final Work Plan according to the schedule contained in this Exhibit.

Estelita's shall submit the Agency Review Draft RI Work Plan electronically in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and comment. After incorporating Ecology's comments on the Agency Review Draft Work Plan and after Ecology approval, Estelita's shall submit the Final Work Plan electronically in Word (.doc) and Adobe (.pdf) formats, to Ecology. Once approved by Ecology, Estelita's will implement the Final RI Work Plan according to the schedule contained in this Exhibit.

Task 2. Remedial Investigation

Estelita's shall conduct an RI that meets the requirements of WAC 173-340-350 and WAC 173-204-550 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 other regulatory requirements. The RI must provide sufficient data and information to define the nature and extent of contamination.

The RI must meet the substantive requirements of MTCA and shall accomplish the following objectives:

- Further evaluate nature and extent of petroleum-based contamination in soil, soil gas, indoor air, and groundwater on, beneath and originating from the C L Auto Repair Site, including adjacent properties and City of Seattle rights-of-way (Site).

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- Delineate the lateral and vertical extent of petroleum contamination in soil, groundwater and soil gas at and in the vicinity of the Site.
- Assess potential for vapor intrusion of COCs to buildings on the Property and within the boundaries of the Site, including measurements of COC concentrations in sub-slab soil vapor and indoor air in the buildings, if necessary.
- Evaluate subsurface utilities and their role as preferential pathways for potential contamination migration.
- Determine the nature and extent of contamination at the Site and develop an updated Conceptual Site Model, including the establishment of cleanup standards.

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 immediately and documented as required by Ecology.

Estelita'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 has been validated. 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 Estelita's will review available data and an updated conceptual site model and discuss the content and organization of the Draft RI Report.

Estelita's shall compile the results of the Site investigation into an Agency Review Draft RI Report. Estelita's shall submit the Agency Review Draft RI Report electronically in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and comment.

After incorporating Ecology's comments on the Agency Review Draft RI Report, Estelita's shall submit a Public Review Draft RI Report electronically in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution and public comment. Electronic survey data for monitoring locations, electronic lab data, and GIS 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 plan an additional phase of investigation shall be conducted to define the extent of contamination. The scope and

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schedule of any such additional necessary assessment will be discussed with and approved by Ecology and may be performed concurrently with other remedial activities.

Task 3. Interim Actions (if required)

Remedial actions implemented prior to completion of the RI/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; or
- are needed to provide for completion of the remedial investigation/feasibility study or design of the cleanup action.

The above will be considered interim actions, which will be implemented in accordance with WAC 173-340-430 and the PPCD, and will be designed in a manner that will not foreclose reasonable alternatives for any final cleanup action that may be required.

As detailed in the PPCD, if required by Ecology, or if proposed by Estelita's and approved by Ecology, Estelita's will implement an interim action. Based upon information in the Agency Review Draft RI Report, interim action(s) may be needed to expedite control of releases to environmental media pursuant to WAC 173-340-430.

The scope of the interim actions may include, but not be limited to, typical source control or containment elements such as:

- Soil removal
- LNAPL 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
- Proper abandonment of old wells
- Removal of contaminated building or other structural material
- Construction of a treatment facility

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If an interim action is to be performed, Estelita'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/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
- Permits required.

Estelita's will also submit a copy of the Health and Safety Plan for the project. Estelita's will also work with Ecology to prepare any plans required for cultural resource protection in compliance with WAC 173-340-815. Estelita'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.

Estelita's shall submit the Agency Review Draft Interim Action Work Plan electronically in Word (.doc) and Adobe (.pdf) formats, to Ecology for review. Estelita's shall incorporate Ecology's comments and then submit the Public Review Draft Interim Action Work Plan electronically 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. Estelita's shall submit the Final Interim Action Work Plan electronically in Word (.doc) and Adobe (.pdf) formats. Once approved by Ecology, Estelita'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. Estelita's shall submit the Agency Review Draft Interim Action Report electronically 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, Estelita's shall submit the Final Interim Action Report electronically in Word (.doc) and Adobe (.pdf) formats, to Ecology.

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Task 4. Feasibility Study

Estelita's shall use the information obtained in the RI to prepare an Agency Review Draft Feasibility Study (FS) that meets the applicable requirements of WAC 173-340-351 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. The Agency Review Draft FS may be combined with the Agency Review Draft RI.

Prior to beginning the FS, a Key Project Meeting will be held to review Applicable or Relevant and Appropriate Requirements (ARARs), potential remedial alternatives and establish points of compliance. This Key Project Meeting may be combined with the Task 1. Key Project Meeting.

The FS must meet the substantive requirements of MTCA and shall accomplish the following objectives:

- Develop cleanup options (including potential interim actions) for affected media at the Site and evaluate the cleanup options through a Feasibility Study.
- Present the results to Ecology for review and applicable public comment.

The Agency Review Draft FS must include a detailed analysis of each remedial alternative according to the applicable requirements of WAC 173-340-351 and 173-204-550. The remedial alternatives will be evaluated for compliance with the applicable requirements of WAC 173-340-360 and 173-204-570.

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.

Estelita's shall submit the Agency Review Draft FS electronically in Word (.doc) and Adobe (.pdf) formats, to Ecology for review. After addressing Ecology's comments on the Agency Review Draft FS, Estelita's shall submit the Public Review Draft FS electronically in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution and public comment. The Public Review Draft FS may be combined with the Public Review Draft RI Report. The FS will not be considered Final until after a public review and comment period.

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Task 5. SEPA compliance

Estelita's shall be responsible for complying with the State Environmental Policy Act (SEPA) Rules including preparing and submitting an environmental checklist. If the result of the threshold determination is a determination of significance (DS), Estelita's shall be responsible for the preparation of Draft and Final environmental impact statements. Estelita'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.

Task 6. Public Participation

Estelita's shall support Ecology in presenting the Public Review Draft RI Report and the Public Review Draft FS Reports and SEPA evaluations at public meetings or hearing. Estelita'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, Estelita's shall work with Ecology to respond to public comments. At Ecology's direction, Estelita's will prepare an Agency Review Draft Responsiveness Summary that addresses public comments. Estelita's shall submit the Agency Review Draft Responsiveness Summary to Ecology for review and approval, electronically in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution and public comment.

After addressing Ecology's comments and after Ecology approval, Estelita's shall submit the Final Responsiveness Summary to Ecology for distribution, electronically in Word (.doc) and Adobe (.pdf) formats.

Task 7. 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).

Estelita'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 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

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proposed, and a summary of applicable local, state, and federal laws pertinent to the proposed cleanup actions.

Estelita's will submit an Agency Review preliminary DCAP for Ecology's review and approval. The Agency Review preliminary DCAP will include, but not be limited to, the information listed under WAC 173-340-380. Estelita's shall submit the Agency Review preliminary DCAP electronically in Word (.doc) and Adobe (.pdf) formats, along with all supporting electronic files, to Ecology for review and approval.

After receiving Ecology's comments on the Agency Review preliminary DCAP, if any, Estelita's shall revise the preliminary DCAP to address Ecology's comments and submit Public Review DCAP electronically in Word (.doc) and Adobe (.pdf) formats.

Task 8. Implementation of Final Cleanup Action Plan

The Parties intend that Ecology will select a final Site remedy in a final CAP (fCAP) and that Estelita's will conduct additional remedial actions pursuant to and consistent with the fCAP.

When Estelita's has obtained sufficient funds to implement the final CAP at the Site, the Parties shall revise this Scope of Work and Schedule as necessary to govern such additional remedial action(s). The Parties understand that the Site consists of multiple areas and that Estelita's is currently only purchasing and redeveloping a specific parcel within the Site.

Ecology may authorize parcel-specific redevelopment and remedial action where such redevelopment and remedial action implements the fCAP for that portion of the Site, the redevelopment and remedial action is consistent with, will not preclude, complicate, or render more expensive the final Site-wide cleanup action in the CAP, and that the redevelopment and remedial action will not result in recontamination at the Site.

A cleanup action report (CAR) will be prepared following successful implementation of the fCAP. Schedule for delivery of the cleanup action report will be dictated in the fCAP.

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Proposed Scope and Schedule of Deliverables*

Following is the proposed scope and schedule following completion of the PPCD. If the date for submission of any item or notification required by this Schedule of Deliverables occurs on a weekend or a state / federal holiday, then the date for submission of that item or notification shall be extended to the next business day. Where a deliverable due date is triggered by Ecology notification, comments or approval, the starting date for the period shown is the date Estelita's received such notification, comments or approval. Where triggered by Ecology receipt of a deliverable, the starting date for the period shown is the date Ecology receives the deliverable in the form requested by Ecology.

If requested by Estelita's and approved by Ecology, the RI and FS reports may be combined into one document. Upon Ecology's approval of the request, the schedule will be amended to reflect the change.

Note that documents are considered to be Agency Review Drafts until Ecology has approved them as Final.

Deliverables	Target Completion Timelines
File Consent Decree in Court (CD Effective Date)	Within 30 days of execution by Estelita's and Ecology
Quarterly Progress Reports	Due the 10th of every month, beginning after the first full quarter following the effective date of the PPCD but no sooner than 10 days after the effective date of a grant agreement
Agency Review Draft RI Work Plan	60 calendar days following the effective date of a grant agreement that includes grant funding sufficient for the completion of the RI and FS.
Revised Agency Review RI Work Plan	45 calendar days following receipt of Ecology comments on the Agency Review Draft RI Work Plan. The document will be considered "Final" upon Ecology's approval.
Completion of RI Field Work	12 months following Ecology approval of the RI Work Plan
Agency Review Draft RI Report	90 calendar days following receipt of all validated laboratory data
Public Review Draft RI Report	45 calendar days following receipt of Ecology comments on Agency Review Draft RI Report. The document will be

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	considered completed for public review upon Ecology's approval.
Final RI Report	30 calendar days following the end of the public comment period. This document will incorporate any changes resulting from public comments.
Agency Review Draft FS	90 days following completion of Public Review Draft RI Report
Public Review Draft FS	45 calendar days following receipt of Ecology's comments on the Agency Review draft FS. The document will be considered completed for public review upon Ecology's approval.
Final FS Report	30 calendar days following the end of the public comment period. This document will incorporate any changes resulting from public comments.
Agency Review Preliminary DCAP	90 calendar days following Ecology approval of the Final RI and FS Reports
Public Review DCAP	45 calendar days following receipt of Ecology's comments on the Agency Review Preliminary DCAP. The document will be considered completed for public review upon Ecology's approval.
SEPA Checklist	As appropriate
Agency Review Responsiveness Summary	30 days following completion of public comment period
Final Responsiveness Summary	30 days following Ecology approval of Agency Review Responsiveness Summary
Final CAP	60 days following submittal of Final Responsiveness Summary
Draft Engineering Design Report as outlined in the Final CAP	As defined in the Final CAP Schedule

**Ecology and Estelita's may request revisions or amendments to the schedule of work based on the availability of grant funding for the performance of remedial activities for the Site.*

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Exhibit D

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EXHIBIT D

LIST OF APPLICABLE OR RELEVANT AND APPROPRIATE REQUIREMENTS

The MTCA (Chapter 70.105D Revised Code of Washington [RCW]) requires that cleanup actions comply with applicable state and federal laws (WAC 173-340-360(2)a(iii)), which include legally applicable requirements, as well as requirements that the department determines are relevant and appropriate. Applicable or relevant and appropriate regulations and/or cleanup requirements that must be considered in the selection and implementation of the cleanup action may include:

- The Resource Conservation and Recovery Act (RCRA)
- Washington Hazardous Waste Management Act (Chapter 70.105 RCW)
- Federal and state Clean Air Acts (42 USC 7401 et seq.; 40 CFR 50; RCW 70.94; WAC 173-400, 403) and Puget Sound Clean Air Agency Regulations
- The State Environmental Policy Act (SEPA) (RCW 43.21C; WAC 197-11)
- Occupational Safety and Health Administration and Washington Industrial Safety and Health Act regulations (29 CFR 1910.120; Chapter 296-62 WAC) governing worker safety during cleanup action execution.
- Washington Industrial Safety and Health Act (WISHA) and Washington Department of Labor and Industries Regulations, Chapter 296 WAC, including Safety Standards for Construction Work (Chapter 296-155 WAC)
- Washington State Water Well Construction Regulations (Chapter 173-160 WAC) regulating groundwater well installation and decommissioning as part of the cleanup action.
- Washington State Water Quality Standards for Groundwater (WAC 173-200)
- Washington Dangerous Waste Regulations (Chapter 173-303 WAC) would apply if dangerous wastes are generated, and United State Department of Transportation and Washington State Department of Transportation regulations regarding transport of hazardous materials (49 Code of Federal Regulations [CFR] Parts 171-180) would apply if regulated material is transported off-site as part of the cleanup action.
- If construction-generated dewatering water or stormwater from the cleanup action is discharged to surface waters of the State of Washington, such discharge would need to comply with requirements of a National Pollutant Discharge Elimination System (NPDES) Construction Stormwater General Permit (CSGP).
- Underground Injection Control Program (Chapter 173-218 WAC) which governs discharge of fluids from underground injection control (UIC) injection wells to protect groundwater.

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- The Archeological and Historical Preservation Act (16 USCA 496a-1) would be applicable if any subject materials are discovered during grading and excavation activities. Interactions with Department of Archaeology and Historic Preservation (DAHP), including Cultural Resources Consultations, have occurred for the Site as required by Grant Agreement nos. OTGP-2023-EstLib-00017 and TCPAHP-2325-EstLib-00008, and additional interactions with DAHP will be required by future grant agreements.
- Guidance for Evaluating Vapor Instruction in Washington State
- Permits from local municipalities as required for activities at the Site. Examples include King County and City of Seattle permits for sewer discharges, and City of Seattle grading permits, street-use permits, or shoreline permits.
- Work at the Site conducted under a Grant and Loan Agreement with the state of Washington, Department of Ecology will be subject to the general terms and conditions for Department of Ecology Grants and Loans.