

Public Review Draft

STATE OF WASHINGTON KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

SouthEast Effective Development (SEED
Seattle),

Defendant.

NO. _____

PROSPECTIVE PURCHASER
CONSENT DECREE

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I. INTRODUCTION

1. The mutual objectives of the State of Washington, Department of Ecology (Ecology) and SouthEast Effective Development (SEED) under this Prospective Purchaser Consent Decree are to provide for (1) resolve the potential liability of SEED for contamination at Morningside Acres Tracts in Seattle, WA, arising from a release(s) or threatened release(s) of hazardous substances, in advance of SEED obtaining an ownership interest in real property at the Site; and (2) to facilitate implementation of remedial action at the Site, so it may be redeveloped and reused as an affordable housing development (Project). The Project is located at 5001, 5015, and 5021 Rainier Avenue South and will result in a mixed-use building with both affordable housing and commercial spaces, transforming a contaminated site into a vibrant economic development hub. The Project will provide approximately 100 affordable rental units and two commercial spaces reserved for Jazz Night School (JNS) and LEMS Life Enrichment Bookstore. JNS is a South Seattle nonprofit music school that provides a supportive environment for learning, performing, and enjoying jazz. LEMS Life Enrichment Bookstore is a local Black-owned bookstore and cultural hub that is evolving to foster cultural connections through arts, literature, and community outreach. SEED's goal for the Project is to prevent displacement, preserve cultural hubs, and provide affordable housing in Columbia City, an area at high risk for gentrification and displacement. SEED was founded in 1975 by community members seeking to improve the quality of life in Southeast Seattle, and currently owns 1,135 affordable apartments, helping to meet the need for affordable homes in Southeast Seattle. This Decree requires SEED to complete a Remedial Investigation and Feasibility Study (RI/FS), develop a draft Cleanup Action Plan (dCAP), and implement the remedial actions contained in the final Cleanup Action Plan (CAP) pursuant to the Schedule in Exhibit C.

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

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

4. By signing this Decree, the Parties agree to its entry and agree to be bound by its terms.

5. By entering into this Decree, the Parties do not intend to discharge non-settling parties from any liability they may have with respect to matters alleged in the Complaint. The Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for sums expended under this Decree.

6. This Decree shall not be construed as proof of liability or responsibility for any releases of hazardous substances or cost for remedial action nor an admission of any facts; provided, however, that SEED shall not challenge the authority of the Attorney General and Ecology to enforce this Decree.

7. The Court is fully advised of the reasons for entry of this Decree, and good cause having been shown:

Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter and over the Parties pursuant to the Model Toxics Control Act (MTCA), RCW 70A.305.

2. Authority is conferred upon the Washington State Attorney General by RCW 70A.305.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if, after public notice and any required public meeting, Ecology finds the proposed settlement would lead to a more expeditious cleanup of hazardous substances. In addition, under RCW 70A.305.040(5), the Attorney General may agree to a settlement with a person not currently

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liable for remedial action at a facility who proposes to purchase, redevelop, or reuse the facility, provided: the settlement will yield substantial new resources to facilitate cleanup; the settlement will expedite remedial action consistent with the rules adopted under MTCA; and Ecology determines based upon available information that the redevelopment or reuse of the facility is not likely to contribute to the existing release or threatened release, interfere with remedial actions that may be needed at the Site, or increase health risks to persons at or in the vicinity of the Site. RCW 70A.305.040(4)(b) requires that such a settlement be entered as a consent decree issued by a court of competent jurisdiction.

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

4. SEED has not been named as a PLP for the Site, and SEED has certified under Section IX (Certification of Defendant) that it is not currently liable for the Site under MTCA. SEED expects to close and acquire property at the Site pursuant to a Purchase and Sale Agreement no later than March 28, 2025. The property likely comprises a portion of the Site. SEED will incur potential liability under RCW 70A.305.040(1) at the time it acquires an interest in the Property at the Site for performing remedial actions or paying remedial costs incurred by Ecology or third parties resulting from past releases or threatened releases of hazardous substances at the Site. This Decree settles SEED's liability as described herein for this Site upon it obtaining an ownership interest in the parcels.

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

6. SEED intends to redevelop the Site for the Project, as described in this Decree.

7. This Decree has been subject to public notice and comment. The public comment period began on October 7, 2024 and concluded on November 7, 2024. A public meeting was held on October 22, 2024.

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

9. SEED has agreed to undertake the actions specified in this Decree and consents to the entry of this Decree under MTCA.

III. PARTIES BOUND

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

IV. DEFINITIONS

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

A. Site: The Site is referred to as the Morningside Acres Site, Cleanup Site ID No. 12408, VCP ID No. NW3345. The Site is located at 5001, 5015, and 5021 Rainer Avenue South, Seattle, WA. The Site constitutes a facility under RCW 70A.305.020(8). The Site is defined by where a hazardous substance, other than a consumer product in

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consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located. The Site will be further defined after characterization and investigation, pursuant to WAC 173-340-350.

B. Prospective Purchaser Consent Decree or Decree: Refers to this Consent Decree and each of the exhibits to this Decree. All exhibits are integral and enforceable parts of this Prospective Purchaser Consent Decree.

C. Property: Refers to the property that SEED will acquire for the Project and as described in Exhibit B (Property Legal Description). The Property consists of three contiguous tax parcels: King County Parcel Nos. 5649600130 (5021 Rainier Avenue South) referred to as the South Parcel; 5649600133 (5015 Rainier Avenue South) referred to as the Middle Parcel; and 5649600135 (5001 Rainier Avenue South) referred to as the North Parcel. The Property likely comprises a portion of the Site.

D. Defendant(s): Refers to SouthEast Effective Development (SEED).

E. Parties: Refers to the State of Washington, Department of Ecology and SouthEast Effective Development (SEED).

V. FINDINGS OF FACT

1. Ecology makes the following findings of fact without any express or implied admissions of such facts by SEED.

A. Based upon factors currently known to Ecology, the Site is generally located at 5001, 5015, and 5021 Rainer Avenue South, Seattle, WA as shown in the Site Location Diagram (Exhibit A). The nature and extent of the release(s) at the Site will be further defined by the Remedial Investigation (RI) and the CAP.

B. SEED is currently in negotiations with Washin and Kathleen Murakami, the current owners of the Property, to execute a Purchase and Sale Agreement and an Access Agreement for the Property. The Property composes a portion of the Site.

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C. Since approximately 1924, 5021 Rainier Avenue South, the South Parcel of the Property was used, at different times, by an automotive maintenance and repair facility, automobile and boat dealerships, a plumbing supply business, a pool hall, a fitness center, and a bookstore, which is the current tenant. The automotive maintenance and repair facility operated from approximately 1964 to 2012 and is the likely source of chlorinated volatile organic compound (CVOC) and Total Petroleum Hydrocarbon (TPH) releases. The Middle Parcel, 5015 Rainier Avenue South, was used as a lumberyard office from approximately 1926 to 1965, an insurance agent office from 1966 to 1980, and a convenience store from 1980 until the present. During the time the building on the Middle Parcel was used as a lumberyard office, the lumberyard was located on the adjacent property (or properties) to the west, not part of the Property. From 1927 to the early 1970s, 5001 Rainier Avenue South, the North Parcel, was used for at least two generations of gasoline service stations, both operated by Standard Oil of California or its successor, Chevron. It was later used for automotive repair business. The North Parcel is currently vacant and is being used as a commercial parking lot.

D. Soil, groundwater and likely soil gas contamination at the Property is related to automotive repair and parts washing facilities on the South Parcel, the gasoline service stations on the North Parcel, and several underground storage tanks on the South and North Parcels associated with those businesses. Prior remedial investigations have shown that contamination is present on the Property. CVOCs, TPH, and volatile petroleum hydrocarbons are present above applicable MTCA cleanup levels in soil and groundwater. Previous investigations indicate that CVOCs are present above MTCA Method B indoor air cleanup levels in air samples obtained from the building located at the Middle Parcel and South Parcel.

E. There have been a number of previous investigations at the Site. In 2005, a Phase I Environmental Site Assessment was conducted by Wolfe Environmental. The

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Phase I investigation concluded that the Property may have been impacted by releases of hazardous substances associated with the automotive maintenance and repair facility, the former gasoline service stations or the adjacent lumberyard, and/or a plastics manufacturing company, used car lot, and dry cleaning facility proximate to the Property. The Phase I assessment recommended sampling and analyzing soil and groundwater.

F. In 2006, a geophysical investigation identified three underground anomalies corresponding to potential USTs and/or buried debris.

G. In 2006, a limited Phase II Environmental Site Assessment was conducted to assess the presence of gasoline-range organic compounds (GRO), diesel-range organic compounds (DRO), oil-range organic compounds (ORO), mineral oil, VOCs, and lead in soil and shallow groundwater. This Phase II included advancing six borings to total depths ranging from 13 feet to 29 feet bgs; completing five of the six borings as groundwater monitoring wells; field screening soil encountered in the borings; and collecting groundwater and soil samples from those borings and monitoring wells for laboratory analysis.

H. In 2006, a supplemental Phase II ESA was conducted to further assess the presence of contaminants. The supplemental Phase II advanced three additional borings, and completed them as groundwater monitoring wells to depths of 12 to 17 feet; field screening soil; and collecting soil and groundwater samples from the wells and borings.

I. In 2007, additional subsurface exploration was conducted and summarized in a report prepared by G-Logics, Inc. to further characterize the nature and extent of chlorinated VOC and petroleum hydrocarbon contamination in soil and groundwater. This included advancing 18 borings to total depths ranging from 6 to 26 feet bgs; completing 10 of the 18 borings as groundwater monitoring wells; field screening soil; and collecting soil and groundwater samples. One exploration encountered a UST at a depth of approximately 18 inches below the basement floor of

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the warehouse building on the South Parcel, which appeared to be used for the storage of heating oil. This investigation also included collection of a sediment sample from the floor-drain sump in the basement of the warehouse building and analyzing it for VOCs, GRO, DRO and ORO, polychlorinated biphenyls (PCBs), and arsenic, cadmium, chromium, lead and mercury.

J. In 2013, groundwater sampling by The Riley Group, Inc. took samples from the 17 existing monitoring wells installed in 2006 and 2007 for testing of VOCs and petroleum hydrocarbons.

K. On five occasions between 2017 and 2018, Farallon Consulting, L.L.C. (Farallon) conducted supplemental soil and groundwater sampling on and off the Property to further characterize the nature and extent of chlorinated VOC and petroleum hydrocarbon contamination. This included advancing five additional borings to depths of 20 to 45 feet, completing three as groundwater monitoring wells; field screening soil; and collecting 19 soil samples and 35 groundwater samples from the borings and 18 monitoring wells.

L. In 2019, pursuant to a request by Ecology, Farallon conducted crawl space, basement, indoor, and outdoor air sampling to evaluate potential impacts to indoor air quality due to the vapor intrusion risk posed by the soil and groundwater contamination. These samples were collected over a period of 8 hours from the buildings present on the Property at the time, including the convenience store located on the Middle Parcel (5015 Rainier Avenue South), the former automotive maintenance and repair facility basement, and the basement crawl space at the back of the warehouse building located on the South Parcel (5021 Rainier Avenue South). Outdoor air samples were collected at a central location at the Property between the convenience store and warehouse building. Farallon noted at the time that none of the facilities at the time of

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sampling had operational heating, ventilating, and air conditioning (HVAC) systems, which may have affected the interpretation of sample results.

M. In 2019, Med-Tox Northwest conducted a hazardous building materials survey to identify potential hazardous materials present in the two buildings on the South and Middle Parcels. The survey included identification and testing for asbestos, lead-based paint, chlorofluorocarbons, PCBs, and mercury-containing materials that may be released during the proposed cleanup actions. Asbestos was identified on duct insulation and flooring in the warehouse building on the South Parcel, and assumed to be in the roofing material. Lead-based paint was identified at both buildings.

N. In April and August 2021, Farallon conducted supplemental soil and groundwater sampling on and off the property, including advancing six additional borings to depth ranging from 8.5 to 15 feet below the basement floor near the sump in the warehouse, collecting 12 soil samples from the borings, and collecting 17 groundwater samples from pre-existing monitoring wells.

O. Results from these prior investigations summarized in a 2022 Farallon RI/FS Report which was submitted to Ecology for review and opinion on June 27, 2022 along with the application to enroll the Site into the VCP. Ecology accepted the Site into the VCP on October 25, 2022 and issued an opinion on December 12, 2022 requesting completion of additional characterization of hazardous substances at the Site.

P. In 2023, and in response to Ecology's requests on December 12, 2022 and May 23, 2023, Farallon conducted two supplemental soil and groundwater investigations, including 13 new borings with 6 converted to additional groundwater monitoring wells to varying depths down to 48 feet. The purpose of the studies was to further evaluate the horizontal and vertical extent of chlorinated VOC and petroleum hydrocarbon contamination along the east and west Property boundaries. The studies resulted in Farallon producing two RIFS Addenda in April and August 2023.

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Q. Farallon completed a Remedial Investigation and Feasibility Study based on information from combined prior investigations on November 14, 2023. 94 soil and 120 groundwater samples were analyzed for petroleum-related compounds and 77 soil and 110 groundwater samples were analyzed for chlorinated VOC compounds; 1 sediment/sludge sample from the sump was analyzed for petroleum-related and chlorinated VOC compounds; and 7 air samples for VOC compounds were analyzed.

R. In a December 2023 opinion letter, Ecology determined that further action regarding off-property soil and groundwater contamination was required to obtain a No Further Action determination. In February 2024 Farallon submitted a workplan to Ecology to conduct a subsurface investigation in the Rainier Avenue South right of way, off of the Property, and submitted an additional remedial investigation workplan in April 2024. In May 2024 Ecology concurred with the April 2024 workplan, while providing comments related to additional groundwater sampling and development of a groundwater contour map. This off-property work has not occurred as of September 13, 2024.

S. Release(s) and/or potential release(s) of hazardous substances occurred at the Site. The following hazardous substances at the Site have been detected at concentrations above MTCA cleanup levels: Trichloroethylene (TCE), cis-1,2-dichloroethene (cis-DCE), trans-1,2-dichloroethene, 1,2-dichloroethane (1,2-DCA), vinyl chloride, 1,2-dichloropropane (1,2-DCP), total petroleum hydrocarbons (TPH) as gasoline-range organics (GRO), as diesel-range organics (DRO) and as oil-range organics (ORO), and benzene in soil; TCE, cis-DCE, 1,1,2-trichloroethane (1,1,2-TCA), 1,2-DCA, vinyl chloride, 1,2-DCP, DRO+ORO, GRO, and benzene, toluene, ethylbenzene, and total xylenes (BTEX) in groundwater; TCE, cis-DCE, 1,1,2-TCA, 1,2-DCA, vinyl chloride, TPH, and benzene, toluene, and xylenes in ambient air. These hazardous substances have been, and may continue to be, released at the Site into the environment including soil, groundwater, and air.

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T. Release(s) and/or potential release(s) of hazardous substances occurred at the Site. The following hazardous substances at the Site have been detected at concentrations above MTCA cleanup levels: TCE; cis-DCE, trans-1,2-dichloroethene, 1,2-DCA, vinyl chloride, 1,2-DCP, DRO+ORO, GRO, and benzene in soil; TCE, cis-DCE, 1,1,2-TCA, 1,2-DCA, vinyl chloride, 1,2-DCP, DRO+ORO, GRO, and BTEX in groundwater; TCE, cis-DCE, 1,1,2-TCA, 1,2-DCA, vinyl chloride, TPH, and benzene, toluene, and xylenes in ambient air. These hazardous substances have been, and may continue to be, released at the Site into the environment including soil, groundwater, and air.

U. In April 2024, Ecology completed the Site Hazard Assessment and Rating Process (SHARP) for the Morningside Acres Site. SHARP is used to evaluate exposure severity in soil, groundwater, surface water, sediment, and indoor air at contaminated sites. Based on the findings of this process, the Site received an overall “medium” rating and the indoor-air pathway was identified as having the highest potential for exposure to site contaminants. Additional information is provided in Ecology’s SHARP report.

V. SEED intends to redevelop the Site as mixed-use building with both affordable housing and commercial spaces, transforming a contaminated site into a vibrant economic development hub. The Project will provide approximately 100 affordable rental units and two commercial spaces reserved for Jazz Night School (JNS) and LEMS Life Enrichment Bookstore.

VI. WORK TO BE PERFORMED

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

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2. SEED shall complete an RI and Feasibility Study (FS). Following completion of the Final RI/FS Report, the Parties intend to amend the Decree to provide for SEED to conduct additional remedial actions at the Site. Such additional remedial actions by SEED are contingent upon SEED obtaining or having sufficient funding to conduct additional remedial actions; provided, that this contingency does not bind Ecology in the event the circumstances described in the reopener provisions of Section XIX.B.3 or B.4 arise. Such additional remedial actions may include a dCAP and implementation of the final CAP, according to the schedule contained therein. The RI and FS must be completed in accordance with the Scope of Work and Schedule attached to this Decree (Exhibit C). Following amendment of the Decree for additional remedial action, following Ecology's approval of the dCAP as a public review document, the draft CAP shall be subject to public comment. Ecology may make changes to the dCAP to reflect comments or concerns raised in the public comment period, and then Ecology will issue the final CAP.

3. Following Ecology issuance of the final CAP, SEED shall implement that CAP subject to this Decree's Schedule and any additional schedule requirements in the CAP. The Decree will be amended to add the final CAP as an exhibit.

4. SEED will conduct the remedial actions throughout the Site, as described in the Scope of Work and the final CAP, once issued by Ecology. In addition to the required remediation throughout the Site, the Site will be remediated to residential cleanup levels and redeveloped with dedicated rental units restricted for affordable housing for a minimum of 30 years, consistent with MTCA and its implementing regulations, WAC 173-340, and applicable King County zoning provisions and comprehensive plan designations.

5. Until the CAP is final and the Schedule requires implementation, no redevelopment of the parcels within the Property may proceed; provided, that Ecology may allow for redevelopment to occur on a property-specific basis if: (1) a final Cleanup Action Plan (CAP) for the Property has been issued by Ecology; (2) the property-specific redevelopment is accompanied by a remedial action that implements Ecology's selected cleanup action for that

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portion of the Site; and (3) Ecology determines that proceeding with the property-specific redevelopment and remedial action: (a) is consistent with, and will not preclude, complicate, or render more expensive the final cleanup action for the Site as a whole; and (b) will not exacerbate the known contamination/release or result in recontamination of the Property.

6. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study, or design of a cleanup action plan. Any Party may propose an interim action under this Order. If the Parties are in agreement concerning the interim action, SEED shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, by the date determined by Ecology. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). SEED shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Interim Action Work Plan becomes an integral and enforceable part of this Order, and SEED is required to conduct the interim action in accordance with the approved Interim Action Work Plan. If the Parties are not in agreement, Ecology reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70A.305, or to undertake the interim action itself.

7. All plans or other deliverables submitted by SEED for Ecology's review and approval under the CAP or Scope of Work and Schedule (Exhibit C) shall, upon Ecology's approval, become integral and enforceable parts of this Decree.

8. If SEED learns of a significant change in conditions at the Site, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in

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soil, groundwater, soil gas, ambient or indoor air, SEED, within seven (7) days of learning of the change in condition, shall notify Ecology in writing of said change and provide Ecology with any reports or records (including laboratory analyses, sampling results) relating to the change in conditions.

9. Pursuant to WAC 173-340-440(11), and if required by the CAP, SEED shall maintain sufficient and adequate financial assurance mechanisms to cover all costs associated with the operation and maintenance of the remedial action at the Site, including institutional controls, compliance monitoring, and corrective measures.

A. Within sixty (60) days of the effective date of Ecology's issuance of the CAP, if the CAP requires engineered and/or institutional controls that require financial assurance under WAC 173-340-440(11), SEED shall submit to Ecology for review and approval an estimate of the costs associated with the operation and maintenance of the remedial action at the Site that it will incur in carrying out the terms of the CAP. Within sixty (60) days after Ecology approves the aforementioned cost estimate, SEED shall provide proof of financial assurances sufficient to cover those costs in a form acceptable to Ecology.

B. If financial assurance is required, SEED shall adjust the financial assurance coverage and provide Ecology's project coordinator with documentation of the updated financial assurance for:

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

ii. Changes in cost estimates, within thirty (30) days of issuance of Ecology's approval of a modification or revision to the CAP that result in increases to the cost or expected duration of remedial actions. Any adjustments

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for inflation since the most recent preceding anniversary date shall be made concurrent with adjustments for changes in cost estimates. The issuance of Ecology's approval of a revised or modified CAP will revise the anniversary date established under this section to become the date of issuance of such revised or modified CAP.

10. Environmental (Restrictive) Covenants will be used to implement the institutional controls, if required by the CAP and the affordable housing requirements of the Decree.

A. In addition to any restrictions related to environmental conditions that may be provided for in the CAP, the Environmental (Restrictive) Covenant to be recorded shall require that the project will provide Affordable Housing units. By agreement of the project coordinators, subject to the requirement of any applicable grant agreement between the Parties, and prior to the recording of any Covenant required by the Decree, the Parties will further define: (1) the specific requirements for the number of Affordable Housing units that will be subject to the Covenant (a minimum of 20% percent of all housing units be Affordable Housing rental units); (2) the term of land use restriction (a minimum of 30 years); and (3) the instrument(s) required to be recorded to restrict land use to the requirements of this section. The affordable housing requirements shall, through this Decree, attach to SEED prior to the above-referenced Covenants being recorded.

B. In the event that, prior or subsequent to the above-referenced Covenants being recorded, one or more of the parcels is transferred to a successor in interest who is not a party to this Decree, compliance with this Decree's or the covenant's affordable housing requirements in this section is necessary in order for that successor in interest to enjoy the stay of enforcement provided in RCW 70A.305.040(4)(e). In the event such a successor in interest fails to comply with the affordable housing requirements, Ecology

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reserves authority to pursue an action for cost recovery from such successors pursuant to RCW 70A.305.050(3), to the extent funds from Ecology's Affordable Housing Cleanup Grant Program have been expended at the Site.

C. In consultation with SEED, Ecology will prepare the Environmental (Restrictive) Covenants consistent with WAC 173-340-440, RCW 64.70, and any policies or procedures specified by Ecology. The Environmental (Restrictive) Covenants shall restrict future activities and uses of the Site as agreed to by Ecology and SEED.

D. After approval by Ecology, SEED shall record the Environmental (Restrictive) Covenant for affected properties it owns with the office of the King County Auditor as detailed in the Schedule (Exhibit C). SEED shall provide Ecology with the original recorded Environmental (Restrictive) Covenants within thirty (30) days of the recording date.

E. If provided for in the CAP, and if part of the remedial action for the Site, institutional controls may be required on properties not owned by SEED. SEED will ensure that the owner of each affected property records an Ecology-approved Environmental (Restrictive) Covenant as detailed in the Schedule (Exhibit C). Upon a showing that SEED has made a good faith effort to secure an Environmental (Restrictive) Covenant for an affected property and has been unable to do so, Ecology may provide assistance to SEED. SEED shall provide Ecology with the original recorded Environmental (Restrictive) Covenant within thirty (30) days of the recording date.

11. Unless otherwise directed by Ecology, SEED shall submit to Ecology written monthly Progress Reports that describe the actions taken during the previous month to implement the requirements of this Decree. All Progress Reports shall be submitted by the tenth (10th) day of the month in which they are due after the effective date of this Decree. Unless otherwise specified in writing by Ecology, Progress Reports and any other documents submitted

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pursuant to this Decree shall be sent by electronic mail to Ecology's project coordinator. The Progress Reports shall include the following:

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

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

VII. DESIGNATED PROJECT COORDINATORS

1. The project coordinator for Ecology is:

Zak Wall
PO Box 330316 Shoreline, WA 98133
425-758-5231
zak.wall@ecy.wa.gov

2. The project coordinator for SEED is:

Katie Kang
Director of Real Estate Development
SouthEast Effective Development
5117 Rainier Ave S #1928, Seattle, WA 98118

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(206) 760-4266
kkang@seedseattle.org

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

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

VIII. PERFORMANCE

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

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

3. Except as otherwise provided for by RCW 18.43.130, all construction work performed pursuant to this Decree shall be under the direct supervision of a professional engineer registered by the State of Washington or a qualified technician under the direct supervision of a professional engineer registered by the State of Washington.

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

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

IX. CERTIFICATION OF DEFENDANT

1. SEED certifies that, to the best of its knowledge and belief, it has fully and accurately disclosed to Ecology the information currently in its possession or control that relates to the environmental conditions at and in the vicinity of the Site, or to SEED's right and title thereto.

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

X. ACCESS

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

2. Nothing in this Decree is intended by SEED to waive any right it may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If SEED withholds any requested records based on an

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assertion of privilege, it shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Decree shall be considered privileged.

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

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

XI. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY

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

2. If requested by Ecology, SEED shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by SEED pursuant to the implementation of this Decree. SEED shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow SEED and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Decree, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section IX (Access),

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Ecology shall notify SEED prior to any sample collection activity unless an emergency prevents such notice.

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

XII. ACCESS TO INFORMATION

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

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

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

XIII. RETENTION OF RECORDS

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

XIV. TRANSFER OF INTEREST IN PROPERTY

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

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

XV. RESOLUTION OF DISPUTES

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

A. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), SEED has fourteen (14) calendar days

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within which to notify Ecology's project coordinator in writing of its dispute (Informal Dispute Notice).

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

C. SEED may then request regional management review of the dispute. SEED must submit this request (Formal Dispute Notice) in writing to the Northwest Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

D. The Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar days of receipt of the Formal Dispute Notice.

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

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

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

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

4. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Decree, unless Ecology agrees in writing to a schedule extension or the Court so orders.

5. In case of a dispute, failure to either proceed with the work required by this Decree or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section XXII (Implementation of Remedial Action).

XVI. AMENDMENT OF DECREE

1. The Parties may agree to minor changes to the work to be performed without formally amending this Decree. Minor changes will be documented in writing by Ecology.

2. Substantial changes to the work to be performed shall require formal amendment of this Decree. This Decree may only be formally amended by a written stipulation among the

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Parties that is entered by the Court, or by order of the Court. Ecology will provide its written consent to a formal amendment only after public notice and opportunity to comment on the formal amendment. Such amendment shall become effective upon entry by the Court. Agreement to amend the Decree shall not be unreasonably withheld by any party.

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

XVII. EXTENSION OF SCHEDULE

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

- A. The deadline that is sought to be extended.
- B. The length of the extension sought.
- C. The reason(s) for the extension.
- D. Any related deadline or schedule that would be affected if the extension were granted.

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

- A. Circumstances beyond the reasonable control and despite the due diligence of SEED including delays caused by unrelated third parties or Ecology, such

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as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by SEED.

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

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

D. Endangerment as described in Section XVI (Endangerment).

3. However, neither increased costs of performance of the terms of this Decree nor changed economic circumstances shall be considered circumstances beyond the reasonable control of SEED, except as provided for in Section VI.2 regarding sufficient funding for SEED to perform the work.

4. Ecology shall act upon SEED's written request for extension in a timely fashion. Ecology shall give SEED written notification of any extensions granted pursuant to this Decree. A requested extension shall not be effective until approved by Ecology or, if required, by the Court. Unless the extension is a substantial change, it shall not be necessary to amend this Decree pursuant to Section XIV (Amendment of Decree) when a schedule extension is granted.

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

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

B. Other circumstances deemed exceptional or extraordinary by Ecology.

C. Endangerment as described in Section XVI (Endangerment).

XVIII. ENDANGERMENT

1. In the event Ecology determines that any activity being performed at the Site under this Decree is creating or has the potential to create a danger to human health or the

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environment, Ecology may direct SEED to cease such activities for such period of time as it deems necessary to abate the danger. SEED shall immediately comply with such direction.

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

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

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

XIX. COVENANT NOT TO SUE

1. Covenant Not to Sue: In consideration of SEED's compliance with the terms and conditions of this Decree, Ecology covenants not to institute legal or administrative actions against SEED regarding the release or threatened release of hazardous substances at the Site defined in Section IV.1.A and as depicted in Exhibit A. This Covenant Not to Sue does not cover any other hazardous substance(s) or area. Ecology retains all of its authority relative to any hazardous substance(s) or area not covered by this Decree.

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

A. Criminal liability.

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B. Liability for damages to natural resources.

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

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

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

A. Upon SEED's failure to meet the requirements of this Decree.

B. Failure of the remedial action to meet the cleanup standards identified in the CAP.

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

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

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

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

XX. CONTRIBUTION PROTECTION

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

XXI. INDEMNIFICATION

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

XXII. COMPLIANCE WITH APPLICABLE LAWS

1. *Applicable Law.* All actions carried out by SEED pursuant to this Decree shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70A.305.090. At this time, no federal, state, or local requirements have been identified as being applicable to the actions required by this Decree. SEED has a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Decree, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or the SEED, Ecology will document in writing if they are applicable to actions carried out pursuant to this Decree, and SEED must implement those requirements.

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2. *Relevant and Appropriate Requirements.* All actions carried out by SEED pursuant to this Decree shall be done in accordance with relevant and appropriate requirements identified by Ecology. At this time, no relevant and appropriate requirements have been identified as being applicable to the actions required by this Decree. If additional relevant and appropriate requirements are identified by Ecology or SEED, Ecology will document in writing if they are applicable to actions carried out pursuant to this Decree and SEED must implement those requirements.

3. Pursuant to RCW 70A.305.090(1), SEED may be exempt from the procedural requirements of RCW 70A.15, 70A.205, 70A.300, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, SEED shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70A.305.090(1) that have been issued by local government, the Parties agree that Ecology has the non-exclusive ability under this Decree to enforce those local government permits and/or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this section.

4. SEED has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Decree. In the event either Ecology or SEED determines that additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Decree, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or SEED shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, SEED shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by SEED and on how SEED must meet those requirements. Ecology shall inform SEED

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in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Decree. SEED shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

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

XXIII. REMEDIAL ACTION COSTS

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

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

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XXIV. IMPLEMENTATION OF REMEDIAL ACTION

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

2. Except where necessary to abate an emergency or where required by law, SEED shall not perform any remedial actions at the Site outside those remedial actions required by this Decree to address the contamination that is the subject of this Decree, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section XIV (Amendment of Decree). In the event of an emergency, or where actions are taken as required by law, SEED must notify Ecology in writing of the event and remedial action(s) planned or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of the event.

XXV. PERIODIC REVIEW

1. So long as remedial action continues at the Site, the Parties agree to review the progress of remedial action at the Site, and to review the data accumulated as a result of monitoring the Site as often as is necessary and appropriate under the circumstances. Unless otherwise agreed to by Ecology, at least every five (5) years after the initiation of cleanup action at the Site the Parties shall confer regarding the status of the Site and the need, if any, for further remedial action at the Site. At least ninety (90) days prior to each periodic review, SEED shall submit a report to Ecology that documents whether human health and the environment are being protected based on the factors set forth in WAC 173-340-420(4). Under Section XVII (Covenant Not to Sue), Ecology reserves the right to require further remedial action at the Site under appropriate circumstances. This provision shall remain in effect for the duration of this Decree.

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XXVI. PUBLIC PARTICIPATION

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

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

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

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

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

Department Of Ecology Central Records NWRO
15700 Dayton Ave. N.
Shoreline WA 98133

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Columbia Branch
Seattle Public Library
4721 Rainier Ave. S.
Seattle, WA 98118

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

XXVII. DURATION OF DECREE

1. The remedial program required pursuant to this Decree shall be maintained and continued until SEED has received written notification from Ecology that the requirements of this Decree have been satisfactorily completed. This Decree shall remain in effect until dismissed by the Court. When dismissed, Section XI (Retention of Records), Section XVII (Covenant Not to Sue), Section XVIII (Contribution Protection), Section XIX (Indemnification), and Section XXVI (Claims Against the State) shall survive.

XXVIII. CLAIMS AGAINST THE STATE

1. SEED hereby agrees that it will not seek to recover any costs accrued in implementing the remedial action required by this Decree from the State of Washington or any of its agencies; and further, that SEED will make no claim against any MTCA account for any costs incurred in implementing this Decree. Except as provided above, however, SEED expressly reserves its right to seek to recover any costs incurred in implementing this Decree from any other PLP. This section does not limit or address funding that may be provided under RCW 70A.305.190(4) and/or WAC 173-322A.

XXIX. EFFECTIVE DATE

1. This Decree is effective only upon the date (Effective Date) that title to the Property vests in SEED, following entry of this Decree by the Court. If SEED does not purchase

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the Property by [insert date], this Decree shall be null and void, and SEED will be under no obligation to perform the work required by this Decree.

XXX. WITHDRAWAL OF CONSENT

1. If the Court withholds or withdraws its consent to this Decree, it shall be null and void at the option of any party and the accompanying Complaint shall be dismissed without costs and without prejudice. In such an event, no party shall be bound by the requirements of this Decree.

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: _____

SOUTHEAST EFFECTIVE DEVELOPMENT

Michael Seiwerath
Executive Director
206-760-4281

Date: _____

ENTERED this ____ day of _____ 20____.

JUDGE
King County Superior Court

Exhibit A

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GIS Path: c:\projects\SEED_500Rainier\AS240294\SEED_500Rainier\AS240294\Site Location Diagram | User: Mona Kocila | Print Date: 8/30/2024

Subject Property

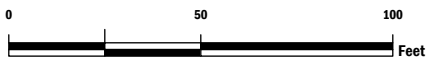
S HUDSON ST

RAINIER AVE S

5001 RAINIER AVE S
5649600135

5015 RAINIER AVE S
5649600133

5021 RAINIER AVE S
5649600130



Site Location Diagram

5001, 5015, and 5021 Rainier Avenue South
Seattle, Washington



AUG-2024

PROJECT NO.
AS240294

BY:
HRC / NLK

REVISED BY:
--- / ---

EXHIBIT

A

Exhibit B

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EXHIBIT B Property Legal Description

The Land referred to herein is situated in the County of King, State of Washington, and is described as follows:

Parcel A:

The South 71.37 feet of Tract 14, and the North 0.10 feet of Tract 30, Morningside Acre Tracts, according to the plat thereof recorded in Volume 9 of Plats, page 64, records of King County, Washington.

Parcel B:

The North 60 feet of the South 131.37 feet of Tract 14, Morningside Acre Tracts, according to the plat thereof recorded in Volume 9 of Plats, page 64, records of King County, Washington.

Parcel C:

The Easterly 38.33 feet of Tract 15 and the North 100 feet of Tract 14, all in Morningside Acre Tracts, according to the plat thereof recorded in Volume 9 of Plats, page 64, records of King County, Washington;

Except that portion thereof condemned in King County Superior Court Cause No. 87583 for the extending, widening, altering and establishing of Rainier Avenue, as provided for in Ordinance No. 29364 of the City of Seattle.

Abbreviated Legal: Ptns. Trs. 14, 15 & 30, Morningside Acre Tracts, in KING Cty., WA

Parcel No(s): 564960-0135-01, 564960-0133-03, and 564960-0130-06

Purported Address: 5001 Rainier Avenue South, Seattle, WA 98118
5015 Rainier Avenue South, Seattle, WA 98118
5021 Rainier Avenue South, Seattle, WA 98118

Exhibit C

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EXHIBIT C

SCOPE OF WORK AND SCHEDULE

Scope of Work

Pursuant to the Prospective Purchaser Consent Decree (PPCD), SouthEast Effective Development (SEED), a Washington not-for-profit corporation will engage in 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 remedial investigation and selection of a final cleanup alternative, SEED will implement the remedy.

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

- Task 1. Remedial Investigation Work Plan
- Task 2. Remedial Investigation and Feasibility Study
- Task 3. Public Participation
- Task 4. Draft Cleanup Action Plan
- Task 5. Implementation of Final Cleanup Action Plan

Task 1. Remedial Investigation Work Plan

SEED 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. 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.

RI Work Plan tasks and subtasks may include the following:

- Drilling, well installation, and sample collection at at 5021, 5015, and 5001 Rainier Avenue South and in City-owned rights-of-way; and
- Sampling and analysis of soil, groundwater, and soil gas at 5021, 5015, and 5001 Rainier Avenue South and adjacent City of Seattle rights-of-way (Rainier Ave S).

SEED 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

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not be implemented until approved by Ecology. Once approved by Ecology, SEED will implement the Final Work Plan according to the schedule contained in this Exhibit.

Task 2. Remedial Investigation and Feasibility Study

SEED shall complete an RI/FS that meets the requirements of WAC 173-340-350, WAC 173-204-550, and WAC 173-340-351 according to the Work Plan as approved by Ecology. The RI/FS will determine the nature and extent of contamination exceeding preliminary Model Toxics Control Act (MTCA) cleanup levels and other regulatory requirements, and develop and evaluate cleanup options for affected media at the Site.

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

- Further evaluate nature and extent of chlorinated solvents contamination and petroleum-based contamination in soil, soil gas, and groundwater on, beneath and originating from the Morningside Acres Site, including City of Seattle rights-of-way (Site).
- Delineate the lateral and vertical extent of chlorinated solvents and petroleum contamination in soil, groundwater and soil gas at and at 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.
- 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.

Task 3. Public Participation

SEED 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. SEED will

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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.

Task 4. Draft Cleanup Action Plan

Upon Ecology approval of the Public Review Draft Remedial Investigation Report and Feasibility Study (RI/FS), 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).

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

Task. 5 Implementation of Final Cleanup Action Plan

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

When SEED 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 SEED is currently only purchasing and redeveloping the 5021, 5015, and 5001 Rainier Avenue South properties within 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 SEED 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 SEED 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
Monthly Progress Reports	Due the 10th of every quarter, beginning after the first full quarter following the effective date of the PPCD but no sooner than 30 days after the effective date of a grant agreement
Agency Review Draft RI Work Plan	90 days after completion of PPCD
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/FS Report	90 calendar days following receipt of all validated laboratory data
Public Review Draft RI/FS Report	45 calendar days following receipt of Ecology comments on Agency Review Draft RI Report. The document will be considered completed for public review upon Ecology's approval.
Final RI/FS Report	30 calendar days following the end of the public comment period. This document will incorporate any changes resulting from public comments.

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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.
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.SEED.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;