

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

AGREED ORDER

City Investors IX L.L.C.
505 5th Avenue South, Suite 900
Seattle, WA 98104

No. DE 17963

TO:
City Investors IX L.L.C.
505 5th Avenue South, Suite 900
Seattle, WA 98104

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I. INTRODUCTION

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

II. JURISDICTION

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

III. PARTIES BOUND

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

IV. DEFINITIONS

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

A. Site: The Site is referred to as Block 38 West. The Site constitutes a facility under RCW 70.105D.020(8). The Site is defined by where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located. Based upon factors currently known to Ecology, the Site is generally located at

500 – 536 Westlake Avenue North in Seattle, Washington. The Site consists of multiple parcels, as shown in the Location Diagram (Exhibit A).

B. Parties: Refers to the State of Washington, Department of Ecology and City Investors IX L.L.C.

C. Potentially Liable Persons (PLP(s)): Refers to City Investors IX L.L.C.

D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order.

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by City Investors IX L.L.C.:

A. Based upon factors currently known to Ecology, the Site is generally located at 500 – 536 Westlake Avenue North (King County parcels 1983200170, 1983200180, and 1983200196) in Seattle, Washington in the South Lake Union area, as shown in the Location Diagram (Exhibit A).

B. Historic uses of Block 38 West include commercial and retail activities starting in the early 1900s. Commercial activities until the early 1920s included lumber storage, a wagon shop, wagon storage, blacksmith shop, stable buildings, and veterinary hospital. The current buildings were constructed between 1920 and 1964, cover the entirety of the Block 38 West property, and were used for commercial and retail activities through 2019.

C. A former heating oil underground storage tank was decommissioned on the southern portion of the Block 38 West property in or about 1989, no releases were reported during the decommissioning.

D. Investigations at Block 38 West have documented the release of hazardous substances into soil and groundwater at concentrations exceeding applicable cleanup levels under MTCA. Specific hazardous substances confirmed at the Site are heavy oil, carcinogenic polyaromatic hydrocarbons (cPAHs), and total naphthalenes in the soil, and diesel, total

naphthalenes, and benzene in the groundwater. Cis-1,2-dichloroethene is also present in the groundwater at concentrations below applicable cleanup levels under MTCA.

VI. ECOLOGY DETERMINATIONS

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by City Investors IX L.L.C.

A. City Investors IX L.L.C. is an “owner” as defined in RCW 70.105D.020(22) of a “facility” as defined in RCW 70.105D.020(8).

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

C. Based upon credible evidence, Ecology issued a PLP status letter to City Investors IX L.L.C. dated August 14, 2019, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that City Investors IX L.L.C. is a PLP under RCW 70.105D.040 and notified City Investors IX L.L.C. of this determination by letter dated September 5, 2019.

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

E. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study, or design of a cleanup action plan. Either party may propose an

interim action under this Order. If the Parties are in agreement concerning the interim action, the Parties will follow the process in Section VII.D. If the Parties are not in agreement, Ecology reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70.105D, or to undertake the interim action itself.

F. City Investors IX L.L.C. has informed Ecology that it intends to commence an independent interim action at the Site. This independent interim action will consist of remedial investigation and contaminated soil removal activities, including dewatering and treatment of contaminated groundwater. As an independent interim action, City Investors IX L.L.C. is conducting the activities without Ecology oversight or approval. City Investors IX L.L.C. believes that the planned independent interim actions do not foreclose or preempt the remedial actions necessary at the Site and do not foreclose the selection of a final cleanup action for the Site, and will promptly identify and review with Ecology any changed or unanticipated conditions that might impact final remedy selection. Upon the effective date of this Order, any work remaining necessary to complete the independent remedial actions must be performed under the auspices of this Order pursuant to Section VII (Work to Be Performed). Ecology reserves its right to require additional remedial actions or pursue any subsequent action it deems appropriate as authorized by law, if it determines there is a risk to human health and the environment or a violation of this Order. City Investors IX L.L.C. agrees to conduct the independent remedial action in accordance with MTCA and provide Ecology with all necessary reports and notice, as required by WAC 173-340-515, for the independent interim action.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that City Investors IX L.L.C. take the following remedial actions at the Site. These remedial actions must be conducted in accordance with WAC 173-340:

A. City Investors IX L.L.C. will complete and submit a Remedial Investigation and a Feasibility Study, and complete and submit a preliminary draft Cleanup Action Plan (dCAP) for the Site. These requirements must be in accordance with the Scope of Work and Schedule of

Deliverables, Exhibits B and C, and all other requirements of this Order. The following naming conventions shall be used for applicable documents: Agency Review Draft (designation for the first time Ecology receives a document); Public Review Draft (designates a document ready for public comment); Final (designation for a document after public comment and/or after Ecology approval); and the preliminary Draft Cleanup Action Plan (designation for the City Investors IX L.L.C. version of the dCAP).

B. If City Investors IX L.L.C. learns of a significant change in conditions at the Site, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in soil or groundwater, City Investors IX L.L.C., 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.

C. City Investors IX L.L.C. shall submit to Ecology written monthly Progress Reports that describe the actions taken during the previous month to implement the requirements of this Order. Additionally, the Progress Reports shall include information relating to any independent interim actions being done at the Site. All Progress Reports shall be submitted by the fifteenth (15th) day of the month in which they are due after the effective date of this Order. City Investors IX L.L.C. may request a change to the Progress Report schedule in accordance with Section VIII.I (Extension of Schedule) below or as otherwise agreed by Ecology. Unless otherwise specified by Ecology, Progress Reports and any other documents submitted pursuant to this Order shall be sent by email or by certified mail, return receipt requested, to Ecology's project coordinator. The Progress Reports shall include the following:

1. A list of on-site activities that have taken place during the month.
2. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests.

3. Description of all deviations from the Scope of Work and Schedule of Deliverables (Exhibits B and C) during the current month and any planned deviations in the upcoming month.

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

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

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

D. All plans or other deliverables submitted by City Investors IX L.L.C. for Ecology's review and approval under the Scope of Work and Schedule of Deliverables (Exhibits B and C) shall, upon Ecology's approval, become integral and enforceable parts of this Order.

E. If the Parties agree on a formal interim action conducted with Ecology oversight and approval under Section VI.E, City Investors IX L.L.C. 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). City Investors IX L.L.C. shall not conduct a formal 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 City Investors IX LLC is required to conduct the interim action in accordance with the approved Interim Action Work Plan.

F. If Ecology determines that City Investors IX L.L.C. has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to City Investors IX L.L.C., perform any or all portions of the remedial action or at Ecology's discretion allow the City Investors IX L.L.C. opportunity to correct. In an emergency, Ecology is not required to provide notice to City Investors IX L.L.C., or an opportunity for dispute resolution. City Investors IX L.L.C. shall reimburse Ecology for the costs of doing such work in accordance

with Section VIII.A (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

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

VIII. TERMS AND CONDITIONS

A. Payment of Remedial Action Costs

City Investors IX L.L.C. shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under RCW 70.105D, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Ecology has accumulated \$6,199.63 in remedial action costs related to this Site as of December 31, 2019. For all Ecology costs incurred, City Investors IX L.L.C. 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.

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

B. Designated Project Coordinators

The project coordinator for Ecology is:

Tena Seeds
Department of Ecology
Toxics Cleanup Program
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008
425-649-7008
tsee461@ecy.wa.gov

The project coordinator for City Investors IX L.L.C. is:

Jim Broadlick
City Investors IX L.L.C.
505 5th Avenue South, Suite 900
Seattle, WA 98104
206-342-2000
JimBr@vulcan.com

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

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

C. Performance

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist or hydrogeologist licensed by the State of Washington or

under the direct supervision of an engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43 and 18.220.

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

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

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

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

D. Access

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that City Investors IX L.L.C. either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing City Investors IX L.L.C.'s progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary-type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by City Investors IX L.L.C. City Investors IX L.L.C. shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by City Investors IX L.L.C. where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by City Investors IX

L.L.C. unless an emergency prevents such notice. All persons who access the Site pursuant to this section shall comply with any applicable health and safety plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

E. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, City Investors IX L.L.C. shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to Be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

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

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

F. Public Participation

Ecology shall maintain the responsibility for public participation at the Site. However, City Investors IX L.L.C. shall cooperate with Ecology, and shall:

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

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

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

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

- a. Seattle Public Library
Central District
1000 4th Avenue
Seattle, WA 98104
- b. Ecology's Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Site

shall be maintained in the repository at Ecology's Northwest Regional Office in Bellevue, Washington.

G. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, City Investors IX L.L.C. shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, City Investors IX L.L.C. shall make all records available to Ecology and allow access for review within a reasonable time.

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

H. Resolution of Disputes

1. In the event that City Investors IX L.L.C. elects to invoke dispute resolution City Investors IX L.L.C. 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), City Investors IX L.L.C. has fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute (Informal Dispute Notice).

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar days Ecology's project coordinator shall issue a written decision (Informal Dispute Decision) stating: the

nature of the dispute; City Investors IX L.L.C.'s position with regard to the dispute; Ecology's position with regard to the dispute; and the extent of resolution reached by informal discussion.

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

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

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

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

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

I. Extension of Schedule

1. City Investors IX L.L.C. 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 City Investors IX L.L.C. 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 City Investors IX L.L.C. including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by City Investors IX L.L.C.
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty.
- c. Endangerment as described in Section VIII.K (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of City Investors IX L.L.C.

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

4. At City Investors IX L.L.C.'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 VIII.K (Endangerment).

J. Amendment of Order

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

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

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

K. Endangerment

In the event Ecology determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct City Investors IX L.L.C. to cease such activities for such

period of time as it deems necessary to abate the danger. City Investors IX L.L.C. shall immediately comply with such direction.

In the event City Investors IX L.L.C. determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment, City Investors IX L.L.C. may cease such activities. City Investors IX L.L.C. 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, City Investors IX L.L.C. shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with City Investors IX L.L.C.'s cessation of activities, it may direct City Investors IX L.L.C. to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, City Investors IX L.L.C.'s 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 VIII.I (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

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

L. Reservation of Rights

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

Ecology nevertheless reserves its rights under RCW 70.105D, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect

human health or the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

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

M. Transfer of Interest in Property

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

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

N. Compliance with Applicable Laws

1. *Applicable Laws.* All actions carried out by City Investors IX L.L.C. pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits or approvals, except as provided in RCW 70.105D.090. At this time, no federal, state, or local requirements have been identified as being applicable to the actions required by this Order. City Investors IX L.L.C. has a continuing obligation to identify additional applicable federal, state, and local requirements which apply to

actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or City Investors IX L.L.C., Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and City Investors IX L.L.C. must implement those requirements.

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

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

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

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

O. Periodic Review

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. 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 Order.

P. Indemnification

City Investors IX L.L.C. 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 City Investors IX L.L.C., its officers, employees, agents, or contractors in

entering into and implementing this Order. However, City Investors IX L.L.C. shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

IX. SATISFACTION OF ORDER

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

X. ENFORCEMENT

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

- A. The Attorney General may bring an action to enforce this Order in a state or federal court.
- B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
- C. A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:
 - 1. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply.
 - 2. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.
- D. This Order is not appealable to the Washington Pollution Control Hearings Board.

This Order may be reviewed only as provided under RCW 70.105D.060.

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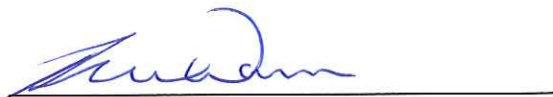
Effective date of this Order: APRIL 20, 2020

CITY INVESTORS IX L.L.C.



Ada Healey
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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



Robert W. Warren
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EXHIBIT A – LOCATION DIAGRAM

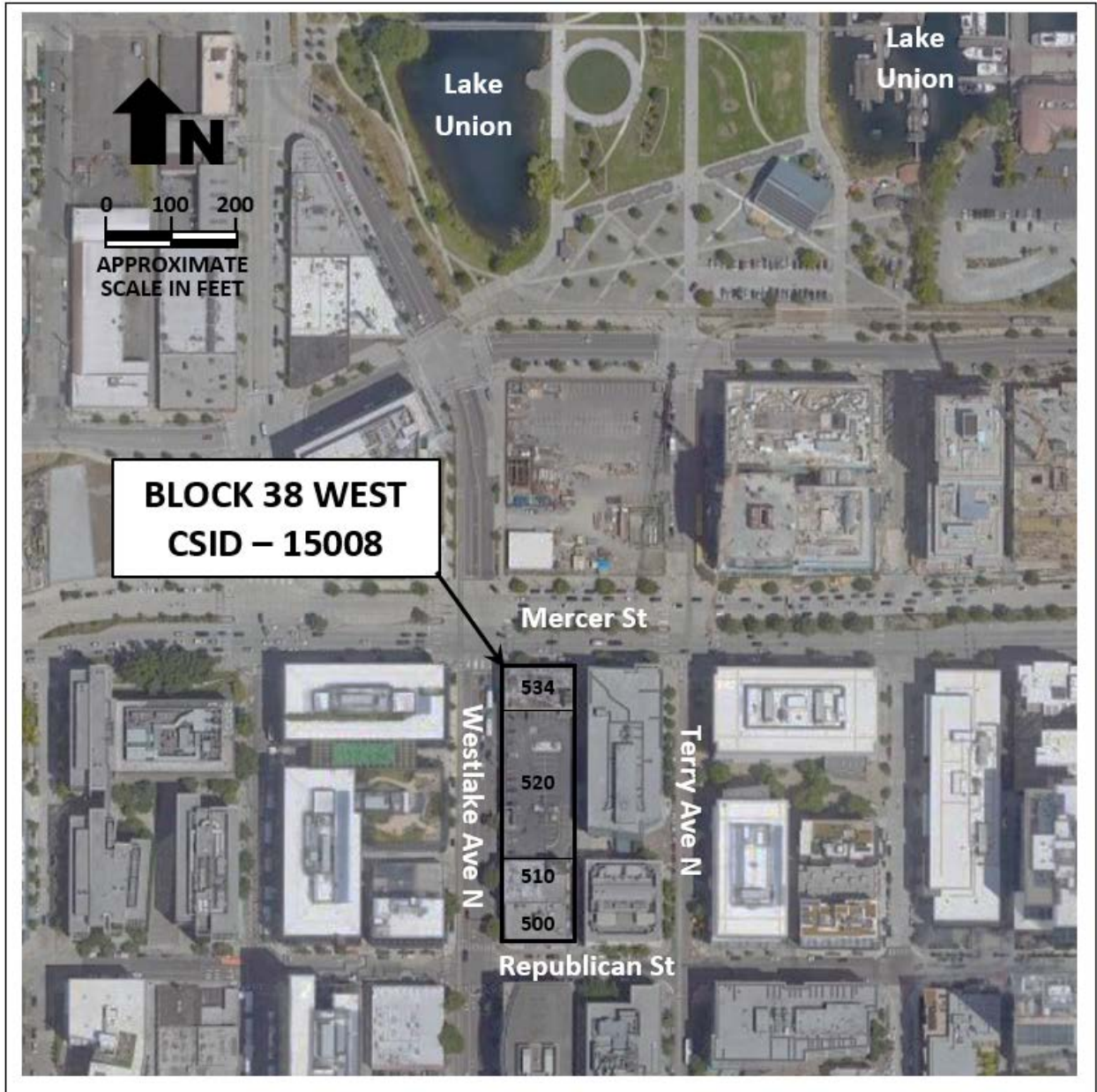


EXHIBIT B – SCOPE OF WORK

Block 38 West

PURPOSE

The work under this Agreed Order (AO) involves conducting a Remedial Investigation (RI) and Feasibility Study (FS), and preparing a preliminary Draft Cleanup Action Plan (DCAP) to select a cleanup alternative. The purpose of the RI, FS, and preliminary DCAP for the Block 38 West site (the Site) is to provide sufficient data, analysis, and evaluations to enable Ecology to select a cleanup alternative for the Site.

City Investors IX L.L.C. shall coordinate with Ecology throughout the work under this AO, and will keep Ecology informed of any changes, issues, or problems as they develop. Ecology recognizes that City Investors IX L.L.C. intends to begin an independent interim action prior to the effective date of this AO. Once the AO is effective, all remedial activities, including the independent interim action, being conducted at the Site shall be included in the RI Work Plan and Progress Reports.

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

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

To assist with preparation of these documents, Ecology's Toxics Cleanup Program (TCP) has developed checklists, which City Investors IX L.L.C. shall use for the following remedial action reports and plans.

- [Remedial Investigation Report Checklist](#)
- [Feasibility Study Report Checklist](#)
- [Cleanup Action Plan Checklist](#)

City Investors IX L.L.C. can download the checklists directly from the following website: <http://www.ecy.wa.gov/programs/tcp/policies/checklists.html>.

Policy 840 Environmental Information Management System (EIM):

Ecology has updated Policy 840 related to data submittal requirements for TCP sites. Policy 840 requires environmental monitoring data collected at TCP sites as part of site investigations and cleanups to be

submitted into EIM at the time of submittal for Ecology review of any report containing this data.

TASK 1. RI WORK PLAN

City Investors IX L.L.C. shall prepare a Remedial Investigation Work Plan (Work Plan). The Work Plan shall include an overall description and schedule of all RI activities; including work remaining in the independent interim action started prior to the effective date of the AO. 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 RI Planning Meeting is to review requirements for the Work Plan and RI field work, the status of the independent interim action and a description of any remaining remedial activities planned, discuss the preliminary Conceptual Site Model (CSM), and identify project data needs.

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, surface water, stormwater, catch basin solids and sediments; a CSM 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; and hazardous substances and their sources, in compliance with Washington Administrative Code (WAC) 173-340-350 and WAC 173-204-560.

As part of the project background, existing environmental data, including data collected during any previous investigations, independent actions, and interim actions, on site soil, groundwater, surface water, stormwater, and/or catch basin solids will be compiled and evaluated for data gaps. The data gaps will be used as the basis for conducting additional site investigations, if necessary. The Work Plan will also identify specific data collection procedures in a Sampling and Analysis Plan (SAP) and Quality Assurance Project Plan (QAPP) as part of the Work Plan in compliance with WAC 173-340-820 and WAC 173-204-600 for defining the nature and extent of contamination. City Investors IX L.L.C. will also submit a copy of the Health and Safety Plan (HASP) for the project and an Inadvertent Discovery Plan, if applicable.

The SAP will identify the proposed number and location of all environmental samples and methods, including soil borings, groundwater monitoring wells, soil, groundwater, stormwater, and catch basin samples, approximate sampling depths and corresponding elevations relative to the North American Vertical Datum of 1988 (NAVD88), and will also include a QAPP. The SAP will describe the sampling objectives, the rationale for the sampling approach (based upon the identified data gaps), and plans for data use, and shall provide a detailed description of sampling tasks. The SAP shall describe specifications for sample identifiers; sampling equipment; the type, number, and location of samples to be

collected; the analyses to be performed; descriptions of sampling equipment and methods to be used; sample documentation; sample containers, collection and handling; management of investigation-derived waste; data and records management; and schedule.

The Quality Assurance Project Plan (QAPP) will be prepared in accordance with the Guidance for Quality Assurance Project Plans, QA/R-5 and requirements of the EPA Contract Laboratory Program. The QAPP will also follow Ecology's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies (Revised December 2016)¹ and Sediment Cleanup User's Manual (Revised December 2017)². Laboratories must meet the accreditation standards established in WAC 173-50.

The SAP, including the QAPP, will be submitted to Ecology for review and approval. As with all environmental work at the Site, with the exception of certain independent actions such as the one proposed for this 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.

City Investors IX L.L.C. or their contractors shall submit to Ecology all new sampling data generated under this SAP and any other previous data collected at the Site. Data must be submitted in table format and also entered into the Environmental Information Management System (EIM) in accordance with WAC 173-340-840(5) and Ecology's Toxics Cleanup Program Policy 840: Data Submittal Requirements. Only validated data will be entered into the EIM database within 30 days of submittal; provided, however, that all validated data with respect to the Site existing as of the effective date of the AO shall be entered into the EIM database not more than 90 days after such effective date.

RI Work Plan tasks and subtasks may include, but are not limited to soil, groundwater, stormwater, and catch basin sampling and analysis, as necessary to address data gaps identified in the Work Plan.

City Investors IX L.L.C. will provide Ecology with an Agency Review Draft RI Work Plan. Once Ecology reviews and approves the Work Plan, it will be considered the Final Work Plan. The Work Plan shall not be implemented until approved by Ecology. Once approved by Ecology, City Investors IX L.L.C. will implement the Final Work Plan according to the schedule contained in this AO. Except as set forth in the AO, including but not limited to the provisions of Section VI.F, the independent interim action performed by City Investors IX L.L.C. is being conducted independently and is not subject to Ecology approval.

City Investors IX L.L.C. shall prepare one hard copy of the Agency Review Draft RI Work Plan and submit it, along with one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and comment. Ecology reserves its right to provide comments on any remaining activities planned under the independent interim action. After

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

² <https://fortress.wa.gov/ecy/publications/summarypages/1209057.html>

incorporating Ecology's comments on the Agency Review Draft RI Work Plan and after Ecology approval, the City Investors IX L.L.C. shall prepare three (3) hard copies of the Final Work Plan and submit them, along with one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology.

TASK 2. REMEDIAL INVESTIGATION

City Investors IX L.L.C. shall conduct an RI that meets the requirements of WAC 173-340-350(7) and WAC 173-204-560, if applicable, 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.

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.

City Investors IX L.L.C. 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 RI Pre-Report Check-In, Ecology and City Investors IX L.L.C. will review available data and an updated CSM and discuss the content and organization of the Draft RI Report.

City Investors IX L.L.C. shall compile the results of the Site investigation into an Agency Review Draft RI Report. City Investors IX L.L.C. shall prepare one (1) hard copy of the Agency Review Draft RI Report and submit it, along with one electronic copy each 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, City Investors IX L.L.C. shall prepare three (3) hard copies of a Public Review Draft RI Report and submit them, along with one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution and public comment. Electronic data files, including survey data for monitoring locations, laboratory analytical data, and maps of contaminant distribution, shall also be provided to Ecology for both the Agency Review Draft RI Report and Public Review Draft RI Reports. 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 alternative, an additional phase of investigation shall be conducted to define the extent of contamination.

TASK 3. FEASIBILITY STUDY

City Investors IX L.L.C. shall use the information obtained in the RI to prepare an Agency Review Draft FS that meets the applicable requirements of WAC 173-340-350(8) according to the schedule in this AO. The Agency Review Draft FS will evaluate remedial alternatives for Site cleanup, consistent with MTCA requirements to ensure protection of human health and the environment by eliminating, reducing, or otherwise controlling risk posed through each exposure pathway and migration route.

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

The Agency Review Draft FS will provide a detailed analysis of each remedial alternative according to the applicable requirements of WAC 173-340-350, MTCA Remedial Investigation and Feasibility Study and WAC 173-204-560, SMS Cleanup Study (if applicable). The remedial alternatives will be evaluated for compliance with the applicable requirements of WAC 173-340-360, Selection of Cleanup Actions, and WAC 173-204-560(4), if applicable, including a detailed evaluation of remedial alternatives relative to the following criteria:

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

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

City Investors IX L.L.C. shall prepare one (1) hard copy of the Agency Review Draft FS and submit it, along with one electronic copy in Word (.doc) and Adobe (.pdf) formats, to Ecology for review. After addressing Ecology's comments on the Agency Review Draft FS, City Investors IX L.L.C. shall prepare three (3) hard copies of the Public Review Draft FS and submit them, along with one electronic copy each in Word (.doc) and Adobe (.pdf)

formats, to Ecology for distribution and public comment. The FS will not be considered Final until after a public review and comment period.

TASK 4. INTERIM ACTION(S)

Interim actions are remedial actions that partially address the cleanup of a site and that may occur at any time during the cleanup process. Interim actions are conducted because:

- they 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;
- they correct a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed; or
- they are needed to provide for completion of the remedial investigation/feasibility study or design of the cleanup action

Interim actions, if proposed, will be implemented in accordance with WAC 173-340-430 and the AO, and will be designed in a manner that will not foreclose reasonable alternatives for any final cleanup action that may be required.

If formal interim actions, in addition to the independent interim action (as described in the AO), are to be performed, then the following provisions shall apply. City Investors IX L.L.C. 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 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.

City Investors IX L.L.C. will also submit a copy of the Health and Safety Plan for the project. City Investors IX L.L.C. 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.

City Investors IX L.L.C. shall prepare one (1) hard copy of the Agency Review Draft IAWP and submit it, along with one electronic copy each in Word (.doc) and Adobe (.pdf)

formats, to Ecology for review. City Investors IX L.L.C. shall incorporate Ecology's comments and then prepare two (2) hard copies of the Public Review Draft IAWP and submit them, along with one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology. After a public notice and comment period for the Public Review Draft IAWP (and SEPA determination), Ecology will approve the IAWP (if appropriate) and the document will be considered Final. City Investors IX L.L.C. shall prepare two (2) hard copies of the Final IAWP and submit them, along with one electronic copy each in Word (.doc) and Adobe (.pdf) formats. Once approved by Ecology, City Investors IX L.L.C. will implement the interim action according to the approved schedule.

Upon successful completion of the work, an Agency Review Draft Interim Action Report will be prepared as a separate deliverable. City Investors IX L.L.C. shall prepare one (1) hard copy of the Agency Review Draft Interim Action Report and submit it, along with one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and approval. After incorporating Ecology's comments on the Agency Review Draft Interim Action Report and after Ecology approval, City Investors IX L.L.C. shall prepare two (2) hard copies of the Final Interim Action Report and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology.

TASK 5. SEPA COMPLIANCE

City Investors IX L.L.C. shall be responsible for complying with the SEPA Rules including preparing and submitting an environmental checklist, if required. If the result of the threshold determination is a determination of significance (DS), City Investors IX L.L.C. shall be responsible for the preparation of draft and final environmental impact statements. City Investors IX L.L.C. 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, if required.

TASK 6. PUBLIC PARTICIPATION

City Investors IX L.L.C. shall support Ecology in presenting the Public Review Draft RI Report and the Public Review Draft FS Report and SEPA evaluations at one public meeting or hearing, if necessary. City Investors IX L.L.C. 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, City Investors IX L.L.C. shall prepare an Agency Review Draft Responsiveness Summary that addresses public comments, if applicable. City Investors IX L.L.C. shall prepare two (2) hard copies of the Agency Review Draft Responsiveness Summary and submit them, along with one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review, approval, and distribution.

After addressing Ecology's comments and after Ecology approval, City Investors IX L.L.C. shall prepare five (5) hard copies of the Final Responsiveness Summary and submit

them, along with one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution.

TASK 7. PRELIMINARY DRAFT CLEANUP ACTION PLAN

Upon Ecology approval of the Public Review Draft RI Report and Public Review Draft 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).

City Investors IX L.L.C. 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 action and rationale for its selection, 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 remedial action.

City Investors IX L.L.C. 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. City Investors IX L.L.C. shall prepare one (1) hard copy of the Agency Review preliminary DCAP and submit it, along with one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and approval.

After receiving Ecology's comments on the Agency Review preliminary DCAP, if any, City Investors IX L.L.C. shall revise the preliminary DCAP to address Ecology's comments and submit five (5) hard copies of the Public Review DCAP, along with one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution and public comment.

TASK 8. PROGRESS REPORTS

City Investors IX L.L.C. will submit Progress Reports on a monthly basis to Ecology; this submittal frequency will be revisited after completion of the RI until satisfaction of the AO, in accordance with Section VII.(E) of the AO. Progress Reports will be submitted to the Ecology project coordinator by the 15th of the month following the reporting period. If this day is a weekend or holiday, Progress Reports will be submitted to Ecology on the next business day. At a minimum, Progress Reports will contain the following information regarding the preceding reporting period:

- A description of the actions which have been taken to comply with the AO;
- Summaries of sampling and testing reports and other data reports received by City Investors IX L.L.C.;
- Summaries of deviations from approved Work Plans;

- Summaries of contacts with representatives of the local community, public interest groups, press, and federal, state, or tribal governments;
- Summaries of problems or anticipated problems in meeting the schedule or objectives set forth in the SOW and Work Plan;
- Summaries of solutions developed and implemented or planned to address any actual or anticipated problems or delays;
- Changes in key personnel; and
- A description of work planned for the next reporting period.

EXHIBIT C: SCHEDULE OF DELIVERABLES

Deliverable	Due Date
Monthly Progress Reports	Due on the 15 th each month, beginning after the first full month following the effective date of this Agreed Order (AO)
Agency Review Draft Remedial Investigation Work Plan and existing data submittal into EIM	No later than 90 days (3 months) after the effective date of this AO
Final Remedial Investigation Work Plan	30 days after receipt of Ecology comments
Complete Independent Interim Action	Complete Independent Interim Action within 365 days after the effective date of this AO
Validated data for Independent Interim Action Finalized	60 days after completion of Independent Interim Action field activities
Agency Review Interim Action Report (Independent Interim Action)	90 days after completion of Independent Interim Action field activities
Final Interim Action Report (Independent Interim Action)	30 days after receipt of Ecology's comments on Agency Review Interim Action Report
Remedial Investigation field investigations completed	180 days (6 months) after completion of the Independent Interim Action
Submittal of remedial investigation validated data	No later than 60 days after completion of remedial investigation field activities
Agency Review Draft Remedial Investigation Report	90 days (3 months) following receipt of remedial investigation validated data
Public Review Draft Remedial Investigation Report	45 days after receipt of Ecology comments on Agency Review Draft Remedial Investigation Report
Agency Review Draft Feasibility Study Report	90 days (3 months) following Ecology's letter to proceed with the feasibility study
Public Review Draft Feasibility Study Report	45 days following Ecology's comments on the Agency Review Draft Feasibility Study Report
Final Remedial Investigation Report	30 days after receipt of Ecology comments, subsequent to public comment
Final Feasibility Study Report	30 days after receipt of Ecology comments, subsequent to public comment
Agency Review preliminary Draft Cleanup Action Plan (DCAP)	90 days (3 months) following approval of Final Feasibility Study