

File No. 220143

Committee Item No. 7

Board Item No. 17

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date March 16, 2022

Board of Supervisors Meeting Date March 22, 2022

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
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OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Port Commission Resolution No. 22-04 - 1/11/22</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Exhibit A - Cost Reimbursement Area</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Exhibit B - Plant Site</u> |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Port Presentation - 3/16/2022</u> |
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Completed by: Brent Jalipa Date March 8, 2022

Completed by: Brent Jalipa Date March 18, 2022

1 [Cost Reimbursement Agreement - Pacific Gas and Electric Company - Management of
2 Residual Petroleum Hydrocarbons - Pier 70]

2

3 **Resolution approving the Cost Reimbursement Agreement between the Port and**
4 **Pacific Gas and Electric Company for management of residual petroleum hydrocarbons**
5 **on Port property within the shoreline and submerged land near the former Potrero**
6 **Power Plant Site and Pier 70, for a 20-year term or reimbursement of \$5,000,000**
7 **whichever comes first, to commence upon Board approval.**

8

9 WHEREAS, Charter, Section B3.581 empowers the Port Commission with the power
10 and duty to use, conduct, operate, maintain, manage, regulate and control Port area of the
11 City and County of San Francisco; and

12 WHEREAS, The California Regional Water Quality Control Board, San Francisco Bay
13 Region (“Water Board”) has regulatory authority to oversee environmental site investigation
14 and remedial action within the Port area of the City and County of San Francisco; and

15 WHEREAS, Between 2006 and 2019, Pacific Gas and Electric Company (PG&E),
16 under a voluntary cleanup agreement with the Water Board, completed site investigation,
17 remedial action planning, and execution of remedial action to treat and remove polycyclic
18 aromatic hydrocarbon contamination in upland and intertidal soil and subtidal sediment in the
19 vicinity of the former Potrero Power Plant and Pier 70; and

20 WHEREAS, PG&E has assessed the potential human health and environmental risk
21 and demonstrated to the satisfaction of the Port and the Water Board that any remaining
22 residual hydrocarbons can be safely managed through implementation of long-term risk
23 management measures specified by an approved Risk Management Plan (“RMP”) and Risk
24 Monitoring and Management Plan (“RMMP”); and

25

1 WHEREAS, A recorded Land Use Covenant is required to ensure that the remediation
2 remains effective and the RMP and RMMP remain in place; and

3 WHEREAS, The Port and other users may incur additional costs to construct new or
4 maintain existing improvements to comply with the Land Use Covenant, RMP and RMMP;
5 and

6 WHEREAS, The proposed Cost Reimbursement Agreement (“Agreement”) provides a
7 process for obtaining reimbursement from PG&E for costs incurred to comply with the RMP
8 and RMMP for a term of 20 years or reimbursement of up to \$5,000,000 (increased annually
9 by 2.5%) whichever comes first; and

10 WHEREAS, The Agreement does not release PG&E from any liability for residual
11 contamination or otherwise; and

12 WHEREAS, On January 11, 2022, the San Francisco Port Commission, by its
13 Resolution No. 22-04, approved the Agreement; and

14 WHEREAS, A copy of the Agreement is on file with the Clerk of the Board of
15 Supervisors in File No. 220143; and

16 WHEREAS, Charter, Section 9.118 requires Board of Supervisors approval for
17 contracts with a term of ten or more years; now, therefore, be it

18 RESOLVED, That the San Francisco Board of Supervisors hereby approves the
19 Agreement between the Port and PG&E in the form approved by the City Attorney’s Office;
20 and, be it

21 FURTHER RESOLVED, That the Port Commission authorizes the Executive Director
22 or her designee to enter into any additions, amendments or other modifications to the
23 Agreement that the Executive Director, in consultation with the City Attorney determines are in
24 the best interest of the Port, do not materially increase the obligations or liabilities of the City
25 or Port or materially decrease the benefits to the City or Port, and are necessary or advisable

1 to complete the transactions which the Agreement contemplates and effectuate the purpose
2 and intent of this Resolution, such determination to be conclusively evidenced by the
3 execution and delivery by the Executive Director or her designee of the Agreement, and any
4 such amendments thereto; and, be it

5 FURTHER RESOLVED, That within thirty (30) days of the Agreement being fully
6 executed by all parties, the Port Executive Director shall provide the final agreement to the
7 Clerk of the Board of Supervisors for inclusion into the official file.

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Cost Reimbursement Agreement between City and County of San Francisco, acting by and through the San Francisco Port Commission (“Port”) and Pacific Gas and Electric Company, a California corporation (“PG&E”)

for

Management of Residual Contamination on Port Property in certain areas east of the Former Potrero Power Plant

This Cost Reimbursement Agreement (“**Agreement**”), dated for reference purposes as of _____, 2021 is between City and County of San Francisco, acting by and through the San Francisco Port Commission (“**Port**”) and Pacific Gas and Electric Company, a California corporation (“**PG&E**”). The Port and PG&E are sometimes hereinafter be referred to individually as a “**Party**” and collectively as the “**Parties**”.

RECITALS

A. Since approximately 2006, PG&E, under designated lead oversight by the California Regional Water Quality Control Board for the San Francisco Bay Region (the “**Water Board**”), has voluntarily investigated contamination of the shoreline and the offshore sediments along the former Potrero Power Plant in the vicinity of Pier 70 in San Francisco. PG&E has completed multiple investigations of the Offshore Sediment Area as defined and documented in a *Remedial Investigation Report* (RI Report; Haley & Aldrich, 2014), which was approved by the Water Board in 2014. Investigations of the Shoreline Area as defined and documented in the *Summary of Investigation and Remedial Activities, Port of San Francisco-Owned Areas* (Shoreline Report, Haley and Aldrich, 2019) which was approved by the Water Board in 2020. Investigations found elevated concentrations of petroleum hydrocarbons; volatile organic compounds (“**VOCs**”), including benzene, toluene, ethylbenzene, and xylenes (“**BTEX**”), and polycyclic aromatic hydrocarbons (“**PAH**”), likely resulting from the historical operation of a manufactured gas plant (“**MGP**”), power plant, and other industrial operations, in nearby surface and subsurface sediments. The findings of previous investigations, analysis of and basis for selection of the Offshore Sediment Area final remedy for the contamination, and design of the remedy, which consists of various combinations of dredging, placement of an engineered sediment cap, in-situ treatment with activated carbon, and monitored natural attenuation, are described in the *Remedial Action Plan, Offshore Sediment Area, Potrero Power Plant Site* (Offshore Sediment Area RAP; Haley & Aldrich, 2017), which was approved by the Water Board in 2018. The Shoreline Area final remedy, which consists of in-situ soil solidification and placement of a Durable Cover Cap, is described in the *Remedial Action Plan, Northeast Area of the Potrero Power Plant Site and a Portion of the Southeast Area of Pier 70, Potrero Power Plant Site* (NE Area RAP; Hailey & Aldrich, 2016), which was approved by the Water Board in 2016. The Water Board approved remedial action plans that allowed some PAH to be managed in place on Port Property (“**Residual PAH**”).

B. Between 2017 and 2019, PG&E completed active remediation of both the Shoreline Area and the Offshore Sediment Area as described in the Remedial Action Completion Report Northeast Area of the Potrero Power Plant Site and a Portion of the Southeast Area of Pier 70 (NE RACR, Hailey & Aldrich 2019), and the *Remedial Action Completion Report, Offshore Sediment Area* (“Offshore Sediment **RACR**,” Terra Pacific Group, 2020). As further described in the *Risk Management and Monitoring Plan, Offshore Sediment Area, Potrero Power Plant Site*, Haley & Aldrich, 2020 (“**RMMP**”) and the *Risk Management Plan Port-Owned Shoreline Areas Potrero Power Plant San Francisco, California*, Terra Pacific Group, 2021 (“**RMP**”), the Offshore Sediment Area remedy for each portion of the Offshore Sediment Area, includes one of the following: (1) dredging and removal of sediments with highest concentrations of COCs and installation of an Engineered Cap; (2) in-situ treatment with a carbon amendment, plus a Natural Cap; or (3) a Natural Cap. For each portion of the Shoreline Area other than the southern portion, the Shoreline Area remedy includes one of the following:

(1) dredging and removal of sediments with highest concentrations of COCs and installation of an Engineered Cap; or (2) in-situ soil solidification (to treat COCs in soil and groundwater) and installation of a Durable Cover. The southern portion of the Shoreline Area and the Extended Area were not remediated. The Shoreline Area, Offshore Sediment Area and Extended Area are collectively “the RMP/RMMP Area” under this Agreement. All remedial measures described in the RMMP and RMP and summarized above are individually and collectively referred to herein as the “Cap”). All capitalized terms not defined in this Agreement are defined in the respective RMMP or RMP [attached to this Agreement as *Exhibit A* or put the web address].

C. The RMMP describes monitoring that will be conducted for five years after remediation and other long-term management measures to be implemented beyond the 5-year active monitoring period. The RMP describes monitoring and maintenance requirements for the Durable Cover and other long-term risk management measures.

D. PG&E retains exclusive responsibility in perpetuity for any costs incurred by the Port or authorized users of Port property related to the presence of Residual PAH and the Cap that would not be incurred in the absence of the Residual PAH and/or the Cap. Such costs include, but are not limited to, costs incurred to manage or dispose of contaminated soils or sediments containing Residual PAH, to design and complete construction in a manner that avoids disturbance of soil or sediment and protects or restores the integrity of the Cap, and for maintenance or repair of the Cap should it fail due to design or construction flaws or acts of nature exceeding the basis of design for the Water Board-approved remedial action described in the RACR.

E. This Agreement provides for a process for the Port, its tenants, licensees and other authorized users of Port property (each, as the context requires, a “Project Proponent”) to seek cost reimbursement from PG&E in the event that they incur additional operational, emergency response, or development costs related to the presence of Residual PAH and/or the Cap.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES CONTAINED HEREIN, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.
2. **Residual PAH and Cap.** By entering into this Agreement, the Parties intend to allocate future known and unknown costs related to the management of the Residual PAH and Cap to PG&E.
3. **Reimbursable Costs.** PG&E shall be responsible for reimbursing the Port or the Port's designated agent or contractor (collectively, “Port”) and Port's tenants, licensees or other authorized users of Port Property or their agents or contractors (each a “Port Tenant”) for Reasonable Increased Costs and Expenses (as defined below) incurred by Port or Port's Tenants related to management of the Residual PAH and Cap that: (1) would not be incurred in the absence of the Residual PAH being left on Port property and/or the Cap being installed on Port property; and (2) are incurred when undertaking (A) any activity that triggers compliance with the RMP or RMMP including, without limitation, the following: notice, approval and permitting processes with the Bay Conservation and Development Commission (BCDC), Water Board, and PG&E; sampling and analysis; removal of structures or piles; design and implementation of Cap repair or replacement; cost of supplemental materials that would not have been required if the soil and/or sediment had not contained Residual PAH and otherwise could have been reused; design and implementation of vapor intrusion mitigation systems; environmental monitoring, compliance and oversight during construction; design and implementation of a temporary cover; repair or replace Cap damaged by the intrusive activity; manage any potentially impacted materials encountered; storage, treatment and disposal measures for soil, sediment or groundwater that would not be required but for the presence of Residual PAH; preparation and

implementation of environmental health and safety plans; worker safety training, monitoring; protective equipment dust, asbestos, vapor and odor control plans and measures; preparation and implementation of project-specific risk management plans; post-construction monitoring; response to unknown conditions related to Residual PAH; costs required to comply with institutional controls; and other requirements set forth in the RMP and RMMP (“**RMP/RMMP Activities**”); (B) annual inspection, reporting and measures needed to correct inconsistencies with the RMP or RMMP caused through no fault of Port; (C) routine maintenance and repair activities on Port Property, including dredging; and (D) regulatory agency oversight costs and reasonable administrative expenses, including overhead and staff costs, including legal staff, necessary to comply with the RMP/RMMP and to process requests for reimbursement under this Agreement (“**Reimbursable Costs**”). For purposes of determining whether a cost is a Reimbursable Cost under this Agreement, “**Reasonable Increased Costs and Expenses**” shall mean increased costs and expenses that are reasonable for all parties and that were incurred after the Project Proponent (i) contacted PG&E’s Director of Environmental Remediation to discuss project scope and directives, (ii) worked with PG&E to minimize the impacts of the project on the cap and sediments in the Offshore Sediment Area, and (iii) avoided, minimized, and mitigated potential pollution to San Francisco Bay.

4. RMP/RMMP Compliance. Port will implement the RMP/RMMP measures, as applicable to any particular activity. Port's obligation to implement the RMP/RMMP measures are enforceable by the Water Board. Nothing in this Agreement shall give rise to any claim against Port by PG&E or any other person for any alleged failure of Port to implement the RMP/RMMP measures. The Reimbursable Costs shall not include any increase in costs caused by a failure of Port to implement the RMP/RMMP measures (including, without limitation, the “Cost Recovery” language from p. 3 of the RMMP, quoted at the end of this Section), but a Port failure to fully implement RMP/RMMP measures shall not be a basis to deny reimbursement of costs not resulting from such failure and that would otherwise qualify for reimbursement under this Agreement.

Port will require compliance with the requirements of the RMP/RMMP (including, without limitation, the “Cost Recovery” language from p. 3 of the RMMP, quoted at the end of this Section) and any recorded institutional controls as a condition of entering into a lease or other agreement allowing the use of real property in the RMP/RMMP Area and/or issuing a building or encroachment permit to a Port Tenant for activities that could trigger the RMP/RMMP. Port will advise Port Tenants of this Agreement and the ability for reimbursement of Reimbursable Costs as provided under Section 14. As specified by the RMP/RMMP, the Project Proponent and PG&E will consider overall cost-effectiveness for all parties in determining actions that will result in increased costs and expenses.

Cost Recovery

The Project Proponent shall contact PG&E’s Director of Environmental Remediation to discuss project scope and directives. The Project Proponent and PG&E shall work together to minimize the impacts of the project on the cap and sediments in the Offshore Sediment Area. At the request of the Project Proponent, PG&E will cooperate and provide a CRA in which PG&E will reimburse the Project Proponent for increased costs resulting from management and handling of sediments impacted by MGP-residuals and/or increased project costs caused by the Engineered Cap. Projects in the Offshore Sediment Area subject to the LUC and this RMMP are required to avoid, minimize, and mitigate potential pollution to San Francisco Bay, and consider overall cost-effectiveness for all parties. In all circumstances, for projects that breach the sediment cap within the Nearshore Zone, the Project Proponent will be responsible for the restoration of the disturbed cap in accordance with the Water Board-approved RAP or other cap design approved by the Water Board, and cap restoration costs will be included in the CRA.

5. **Notice.** Except for emergencies, Port will provide a notice to PG&E at least sixty (60) calendar days in advance of any activities for which Port intends to seek reimbursement under this Agreement. Where Port is required to perform work on an emergency basis (for example, but not limited to, such incidents as a water line or sewer line leak, fire or natural disaster, or discovery of a health, public safety or environmental hazard that requires work in the RMP/RMMP Area), Port will provide a notice to PG&E as soon as possible after commencement of the emergency work. In either case, failure of Port to provide notice under this Section does not relieve PG&E of responsibility for payment of Reimbursable Costs.

6. **On-site Representative.** For any activity for which Port intends to seek reimbursement under this Agreement, PG&E may have a representative (“**Representative**”) on-site during any work undertaken by Port for the purpose of observing such work.

(a) PG&E agrees that its Representative shall not interfere with activities of Port, shall follow all instructions of Port, and shall comply with all applicable laws, including worker safety requirements, and observe all safety procedures of Port. Further, Port may exercise its reasonable discretion in consideration of the nature of the site and activities to limit the areas of the site that the Representative may access, limit the number of Representatives that are allowed on site at any one time, and to require advance notice from PG&E of its intent to have Representatives on site.

(b) PG&E agrees to indemnify, hold harmless and defend Port, without cost to the Port, its officers, agents and employees, from and against any and all claims, judgments, losses, costs, damages, penalties, fines or liabilities including, without limitation, interest and reasonable attorneys’ fees of whatever kind to the extent arising in any manner out of (i) any injury to or death of any person or damage to or destruction of any property occurring in, on, under or about the Port Property, or any part thereof, whether to the person or property of PG&E or its Representative, resulting from the Representative’s access and/or observation on the Port Property; (ii) any failure by the Representative or PG&E to observe or perform any of the terms, covenants or conditions of Section 6(a), above; or (iii) the unauthorized access on or interference with any activities on the Port Property by PG&E’s Representative.

Failure of PG&E to have a Representative does not relieve PG&E of responsibility for payment of Reimbursable Costs.

7. **Contracting Procedure.** With respect to activities for which Port may seek reimbursement under this Agreement, Port shall award contracts for work (including work to be performed by City employees) in accordance with the applicable procedures set forth in Chapter 6 of the City’s Administrative Code or such successor code that may be adopted by the City, including provisions for prevailing wages. Port will be deemed to have complied with this Section 7 if (i) Port has awarded a contract in accordance with the applicable procedures as set forth in Chapter 6 of the City’s Administrative Code or successor code or (ii) Port has incurred expenses itself as a result of work performed by Port employees in accordance with the applicable procedures as set forth in Chapter 6 of the City’s Administrative Code or successor code.

8. **Reimbursement.** PG&E is responsible for any costs and expenses incurred by Port for which Port seeks reimbursement that are Reimbursable Costs, that do not exceed the scope of work required by the RMP/RMMP, that are incurred by Port in accordance with the terms of this Agreement, and that were not disputed by PG&E in accordance with this Agreement with said dispute resolved or adjudicated in favor of PG&E. Costs and expenses incurred by Port to implement the RMP/RMMP, and pursuant to a contract awarded by Port or performed by Port in accordance with Section 7, above, are rebuttably presumed to be Reimbursable Costs. PG&E may dispute or mediate costs and expenses for which Port seeks reimbursement only on the basis that the work performed exceeds the scope of work required by the RMP/RMMP and/or are not Reimbursable Costs as defined in Sections 3 and 4 and/or for the reasons articulated during the process provided for in Section 9 regarding pre-authorization.

9. Pre-authorization. Except for emergency work, Port agrees to request pre-authorization of Reimbursable Costs from PG&E prior to commencing activities that Port reasonably believes will result in a Reimbursable Cost of between ten thousand dollars (\$10,000) and fifty thousand dollars (\$50,000) in accordance with the following procedures: Port shall submit a scope of work and cost estimate to PG&E. Within thirty (30) calendar days, PG&E shall approve or disapprove the request in writing. In the event that PG&E disapproves the request in whole or part, PG&E shall specify in writing the basis for disapproving the request and shall provide detailed recommendations to Port as to how Port could modify its request to qualify as a Reimbursable Cost. Port may at its option, submit a revised pre-authorization request, in accordance with the procedure specified above, in the event that PG&E disapproves all or any portion of a pre-authorization request. Within thirty (30) calendar days, PG&E shall approve or disapprove the revised pre-authorization request in writing specifying in detail the basis for any disapproval of the request. Failure of PG&E to respond in writing or to specify in detail the basis for any disapproval of a pre-authorization request, within thirty (30) calendar days of receipt of a pre-authorization request or revised pre-authorization request shall be deemed approval of the pre-authorization request.

For activities that Port reasonably believes will result in a Reimbursable Cost in excess of fifty thousand dollars (\$50,000), the pre-authorization process outlined in this section will apply but with a sixty (60) calendar day notice and response period by PG&E.

For activities that Port reasonably believes will result in a Reimbursable Cost of less than ten thousand dollars (\$10,000), no pre-authorization is needed.

10. Reimbursement Process. To obtain reimbursement from PG&E for Reimbursable Costs, Port will provide PG&E with an itemized invoice and all supporting documentation for any costs and expenses for which Port seeks reimbursement (a “**Reimbursement Request**”) and the name and address of Port’s designated representative for receipt of any reimbursement check. PG&E shall review the Reimbursement Request and within sixty (60) calendar days from the date of receipt approve or disapprove, in whole or part, the Reimbursement Request and, to the extent approved, forward a reimbursement check to the designated representative. In the event PG&E disapproves any portion of the Reimbursement Request, PG&E shall provide Port with a notice of dispute in writing containing a reasonably detailed rationale for disapproving any disputed portion of the Reimbursement Request. A Reimbursement Request that is consistent with an approved pre-authorization request and supported by an itemized invoice, and, as applicable, supporting documentation, shall not be subject to dispute on any grounds other than those asserted by PG&E during the pre-authorization process, if any, as described in Section 9. All undisputed portions of a Reimbursement Request are due and payable within 60 calendar (60) days of receipt by PG&E. Port may charge PG&E interest on late payments on undisputed invoices at the rate of six percent (6%) per annum.

11. Recourse. If PG&E fails to pay the full amount of any invoice (including any interest owed) within sixty (60) calendar days of receipt of the invoice by PG&E (unless disputed pursuant to Section 12), Port shall have the right to seek immediate judicial relief, without obligation for further notice to PG&E.

12. Disputes. In the event of a dispute over an invoice, the Parties will first attempt to resolve disputes informally. If the dispute cannot be resolved informally within thirty (30) calendar days of the notice of dispute, any party may submit the dispute to mediation, pursuant to the following procedures: the Party seeking mediation shall provide the other Party with a notice of demand for mediation. Within thirty (30) calendar days of notice of demand for mediation, the Port and PG&E shall jointly designate a mediator and the expenses of said mediation shall be borne fifty percent (50%) Port and fifty percent (50%) by PG&E. In the event the Parties fail to agree on a mediator, the Parties are not bound to mediate the matter and may seek judicial relief. The mediation shall be conducted within sixty (60) calendar days of the demand, unless

otherwise agreed by the Parties. Any Party may commence a lawsuit over the dispute after one (1) calendar day of mediation, unless otherwise agreed by the Parties.

13. Term. This Agreement shall commence on the Effective Date and shall expire on the earlier of: (i) the date twenty (20) years from the Effective Date or (ii) the date when PG&E has reimbursed Port or Port's Tenants for an amount exceeding the Reimbursement Cap (the "Expiration Date"). For purposes of this Agreement, the Reimbursement Cap means five million dollars (\$5,000,000) in costs reimbursed pursuant to this Agreement, as adjusted herein ("Reimbursement Cap"). Commencing on the first anniversary of the Effective Date of this Agreement, or if that date is not the first day of the month, then on the first day of the month following that date, and on each anniversary of such date thereafter (the "Anniversary Date"), the Reimbursement Cap shall automatically be increased by two and one half percent (2.5%).

If the Expiration Date is determined under (i) above, Port may submit Reimbursement Requests in accordance with the procedures set forth in this Agreement for costs incurred during the term until the date six (6) months after the Expiration Date.

Upon expiration of this Agreement, the Parties will negotiate in good faith to extend this Agreement or enter a new agreement which fulfills the purposes of this Agreement and the long-term management measures specified in the RMP/RMMP and the institutional controls.

The Parties agree that the running of any statute of limitations with respect to claims by Port in connection with respect to any claimed costs or expenses arising from the contamination of the shoreline and the offshore sediments along the former Potrero Power Plant in the vicinity of Pier 70 in San Francisco shall be tolled as of the Effective Date of this Agreement until the Expiration Date and the Parties agree that the tolling period shall not be included in calculating the application of any statute of limitations or in the consideration of any defense or avoidance based on laches, estoppel, or any other principle concerning the timeliness of commencing a civil action applicable to a claim for cost recovery or contribution. Further, in the event that Port makes a claim for costs after the expiration of this Agreement that would otherwise have been covered by this Agreement, PG&E hereby agrees that it will not raise as a defense to such claim a defense based on the doctrine of laches or the expiration of a statute of limitations; provided however that any applicable statute of limitations tolled during the term of the Agreement will begin to run again upon the expiration of this Agreement. This Section 13 will survive the expiration or earlier termination of this Agreement.

In the event that Port makes a claim for costs after the expiration of this Agreement that would otherwise have been covered by this Agreement, PG&E hereby agrees that it will not raise as a defense to such claim a defense based on the doctrine of laches or the expiration of a statute of limitations; provided however that this waiver shall not serve to revive any claim that has expired as of the Effective Date due to the running of any statute of limitations, and any applicable statute of limitations tolled during the term of the Agreement will begin to run again upon the termination of this Agreement. This Section 13 will survive the expiration or earlier termination of this Agreement.

14. Port Tenants. Port Tenants may seek reimbursement for Reimbursable Costs using the same process and procedures and subject to the same conditions and limitations specified in this Agreement, except that, Port Tenants must obtain pre-authorization for all work under the procedures described in Section 9 without regard to the amount of Reimbursable Costs. In cases where work is required on an emergency basis, Port Tenants must seek authorization as soon possible after commencement of the emergency work.

15. Recordation. Upon full execution of this Agreement, PG&E shall record in the Official Records of the City and County of San Francisco a Memorandum of Agreement in the form attached hereto as *Exhibit B* and incorporated herein by this reference.

16. Notice. Any notice or other communication required or permitted to be given under this Agreement shall be in writing, and may be served by personal delivery, by sending the notice by

overnight courier service, addressed to the party to be notified, or by depositing the notice in the United States mail, addressed to the party to be notified, postage prepaid, and registered or certified with a return receipt requested. Any notice or other communication served in the manner described shall be deemed to have been given and received upon the date of delivery to the addressee or refusal by the addressee to accept delivery. For purposes of notice, the addresses numbers of the Parties shall be as follows:

To: PG&E: Pacific Gas and Electric Company
3401 Crow Canyon Road
San Ramon, California 94583
Attention: Director, Environmental Remediation

With a copy to: Pacific Gas and Electric Company
Law Department, B30A
77 Beale Street
San Francisco, California 94105
Attention: Greg Ritter, Esq.

To: Port Port of San Francisco
Chief Harbor Engineer
Pier 1
San Francisco, CA 94111
Phone: (415) 274-0400
Fax: (415) 274-0528

With a copy to: Port General Counsel at the same address

The Parties may modify the addresses and/or names of representatives set forth in this Section 16 by providing notice thereof in accordance with the provisions hereof.

17. Admissions. Each Party agrees that this Agreement shall not constitute or be deemed to be an admission of any liability or responsibility whatsoever on the part of any Party. This Agreement shall not be admissible as evidence in any action except an action to interpret or enforce this Agreement, including any amendments and modifications thereto.

18. Prior Agreements. This Agreement supersedes any and all other prior agreements and understandings, either oral or in writing, between the Parties with respect to the subject matter of this Agreement, and no other prior agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid and binding; and (ii) each Party acknowledges and agrees that upon execution of this Agreement, this Agreement shall constitute the entire agreement between Port and PG&E concerning the subject matter of this Agreement.

19. Counterparts. This Agreement may be executed in multiple originals or counterparts, each of which shall be deemed an original for all purposes, but all such multiple originals or counterparts together shall constitute one and the same instrument.

20. Governing Law. This Agreement shall be governed by, interpreted, construed, and enforced in accordance with the laws of the State of California without regard to the principles of conflicts of law thereof.

21. Interpretation. The Parties acknowledge and agree that this Agreement is the result of negotiations, that they have each been represented by legal counsel in such negotiations, and

each Party and its legal counsel have participated fully in the review and revision of this Agreement. The Parties further acknowledge and agree that the provisions of this Agreement shall be construed and enforced in accordance with their fair meaning, and any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in interpreting this Agreement. The captions and headings contained herein are for convenience only, and shall not affect the meaning or interpretation of this Agreement.

22. Severability. The Parties acknowledge and agree that if any agreement, covenant, provision, term or condition in this Agreement is invalid, illegal or incapable of being enforced under any applicable rule or law of either the State of California or the United States of America by a court of competent jurisdiction, such agreement, covenant, provision, term or condition shall be ineffective only to the extent of such invalidity, illegality or unenforceability and all other agreements, covenants, provisions, terms and conditions in this Agreement shall nevertheless remain in full force and effect; provided that the elimination or invalidity of such agreement, covenant, provision, term or condition does not materially alter the intent of the Agreement or the consideration received by any Party.

23. Cooperation Clause. The Parties shall reasonably cooperate to effectuate the purposes and intent of this Agreement.

24. Third Party Beneficiaries. Except as explicitly provided herein for Port Tenants, nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the Parties and their respective successors and assigns, if any, nor shall any agreements, covenants, provisions, terms or conditions in this Agreement give any third parties any right of subrogation or action against the Parties.

25. Voluntary Execution of Agreement. Each Party represents and warrants that it consulted with and was represented by legal counsel throughout all aspects of this Agreement, that it has read the Agreement and understands the terms and conditions thereof, and that it has executed this Agreement voluntarily and without fraud, duress, and undue influence.

26. Authority. Each person signing this Agreement represents that he or she has the authority to do so on behalf of the Party for whom he or she is signing.

27. No Release of Claims. Nothing in this Agreement shall be deemed either a specific or general release of claims that any Party may have against any other Party, including without limitation, claims by Port that are determined not to be Reimbursable Costs or Reasonable Increased Costs and Expenses under this Agreement for any reason.

28. Successors and Assigns. This Agreement is binding upon and will inure to the benefit of the successors and assigns of Port and PG&E. Where the term “Port” or “PG&E” is used in this Agreement, it means and includes their respective successors and assigns.

29. Effective Date. The Effective Date of this Agreement is the date of Port’s execution as shown below (“Effective Date”). Notwithstanding anything to the contrary contained in this Agreement, no officer or employee of City has authority to commit City to this Agreement unless and until the Port Commission and the City’s Board of Supervisors shall have each duly adopted a resolution approving this Agreement, each in its sole discretion.

IN WITNESS WHEREOF, PORT and PG&E execute this Agreement as of the last date set forth below.

PORT: CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____
Rebecca Benassini
Deputy Director, Real Estate and Development

Date Signed: _____

PG&E:

PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION

By: _____
Name: _____
Title: _____

Date Signed: _____

By: _____
Name: _____
Title: _____

Date Signed: _____

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Name: Rona H. Sandler
Deputy City Attorney

Agreement Prepared By: Carol Bach, initial

Port Commission Resolution No. _____

Board of Supervisors Resolution No. _____

EXHIBIT A
RMP/RMMP AREA
[See Attachment]

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EXHIBIT B

FORM MEMORANDUM OF AGREEMENT


[See Attachment]



MEMORANDUM

January 7, 2022

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Willie Adams, Vice President
Hon. John Burton
Hon. Gail Gilman
Hon. Doreen Woo Ho

FROM: Elaine Forbes
Executive Director 

SUBJECT: Approval of Cost Reimbursement Agreement between the Port and Pacific Gas and Electric Company for Management of Residual Petroleum Hydrocarbons on Port Property within the shoreline and submerged land near the former Potrero Power Plant Site and Pier 70 in San Francisco

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution No. 22-04

EXECUTIVE SUMMARY

Beginning over 100 years ago, predecessors of Pacific Gas and Electric Company (PG&E) operated a coal-powered manufactured gas plant (MGP) at the former Potrero Power Plant site. PG&E and its predecessors' operations contaminated soil and sediment with polycyclic aromatic hydrocarbons (PAH), a byproduct of the combustion of petroleum. This contamination impacted the Port-owned shoreline east of the former power plant property from the southern end of the power plant property northward into the southeastern corner of the Port's Pier 70 area. The contamination also impacted the sediment in submerged lands along the shoreline, from the southern end of the former power plant property to the northern boundary of Pier 70 (see Exhibit A).

Under a voluntary cleanup agreement with the San Francisco Bay Regional Water Quality Control Board ("Water Board"), PG&E has completed site investigation, risk assessment and remediation of PAH contamination. The Water Board has determined that contamination has been substantially treated or removed and that remaining residual contamination can be safely managed on-site by implementing appropriate land use restrictions and risk management measures. These risk management measures,

THIS PRINT COVERS CALENDAR ITEM NO. 11A

documented in an approved Risk Management Plan (RMP) and Risk Management and Monitoring Plan (RMMP; collectively, Risk Management Plans), include controls such as additional project-specific agency review, worker health and safety measures, soil management measures, and monitoring and reporting requirements for new construction and on-going operation and maintenance of improvements.

When disturbing soils and sediments in the areas with residual contamination the Port, its tenants, licensees, development partners, or their agents (collectively, Port and Port-authorized users) are required to implement the risk management measures. PG&E and Port staff have negotiated a Cost Reimbursement Agreement through which PG&E would reimburse the Port and Port-authorized users for additional costs incurred to implement risk management measures or other costs attributable to residual contamination. The Cost Reimbursement Agreement establishes conditions and procedures under which PG&E would reimburse up to \$5 Million of costs, during a term of up to 20 years, after which time the Port and PG&E agree to extend the agreement or negotiate a new one that serves the same purpose. Port will not waive any claims under the Cost Reimbursement Agreement. Port staff recommends that the Port Commission approve the proposed Cost Reimbursement Agreement, subject to Board of Supervisors' approval.

Strategic Objectives

Execution of the Cost Reimbursement Agreement would support the following objectives of the Port's 2021-2025 Strategic Plan:

- **Sustainability: Protect the Bay and its ecosystems.** PG&E has remediated contamination beneath the Port-owned shoreline and in sediment along the shoreline of Pier 70 and the former Potrero Power Plant site. This remediation will protect water quality and prevent impacts to aquatic life and people using the bay and shoreline. Management of the residual contamination will ensure long term effectiveness of the remediation.
- **Economic Recovery: Identify and implement expenditure reductions, revenue enhancements, operational efficiencies, and external funding sources.** The Cost Reimbursement Agreement provides an external funding source to offset any Port expenditures required to implement long term management measures by establishing a mechanism for the Port, its tenants, licensees, or other authorized users of Port property to seek reimbursement from PG&E. By establishing a process for Port and other users to be reimbursed for any operational, emergency response, or development costs related to the presence, remediation, and/or management of contamination from PG&E's historic operations, the Cost Reimbursement Agreement ensures that PG&E retains financial responsibility for remediation.

History and Current Land Uses/Development

The Potrero Power Plant Site (Potrero Site) is located on privately-owned land bordered by San Francisco Bay to the east, 23rd Street to the south, Illinois Street to the west,

and the Port's Pier 70 Area to the north (Exhibit B). The Potrero Site was occupied for industrial use beginning in the mid-1800s. Historic uses included ship building and repair, metal foundries, sugar refining, barrel manufacturing, gas manufacturing, and power generation by a steam electric plant. Beginning in the 1870s, City Gas Company operated an MGP, which burned coal and oil to produce a form of natural gas, in the northern portion of the property, where the Potrero Site abuts Port property. PG&E acquired the MGP in 1906 and operated it until 1930. PG&E dismantled the MGP in the early 1960s but continued to operate a natural gas-powered electricity generating plant until power generation at the Potrero Site ceased permanently in 2011. PG&E sold the Potrero Site to Southern Energy, a predecessor to NRG Potrero, LLC, in 1999. California Barrel Company LLC (CBC) acquired the property in 2016. It is currently being redeveloped by CBC as a mixed-use development, including construction of open space on Port-owned lands.

The Port's Pier 70 Area (Pier 70) comprises approximately 65-acres bounded by Mariposa Street to the north, Illinois Street to the east, 23rd Street and the Potrero Site to the south, and San Francisco Bay to the east and north (Exhibit B). Since the 1890s, Pier 70 was occupied for industrial use by companies including Union Iron Works, Bethlehem Steel, Todd Shipyards, Risdien Iron Works, Southwest Marine, SF Drydock, and the United States Navy. Industrial activities included manufacture, maintenance, and repair of vessels, and supporting operations such as administration and engineering offices, metal foundries, galvanizing shops, warehouses, paint shops, plating shops, small power generating units such as boilers and transformers, dry docks, and lumber and steel lay down yards.

In 2010, after a multi-year planning process, the Port issued the *Pier 70 Preferred Master Plan*, which envisioned continued ship repair in the former BAE San Francisco Ship repair facility and redevelopment of the rest of Pier 70 for mixed commercial, light industrial, residential, and recreational use. Rehabilitation and reuse of historic buildings by Orton Development, the Port's construction of Crane Cove Park, and ongoing construction of the 22-acre "Pier 70 SF" mixed use development by Brookfield Properties Development have realized much of the vision for Pier 70.

Regulatory Background and Site Cleanup

Between 2009 and 2013, under regulatory oversight by the Water Board and the City and County of San Francisco Department of Public Health (SFDPH), the Port investigated hazardous materials in soil, groundwater, and soil gas throughout the upland area of Pier 70. That investigation found that soil at Pier 70 is contaminated with metals, naturally occurring asbestos, and petroleum hydrocarbons at concentrations typical of the fill that comprises much of the Port's shoreline. These materials tend to bind to soil, are not very soluble or volatile, and were not found dissolved in groundwater or present in soil vapor at concentrations that warranted active remediation. The Water Board approved a remedy to address contaminants at Pier 70 that consists of capping soil and managing the site with long-term risk management measures specified in an approved "*Pier 70 Risk Management Plan*".

Between 2006 and 2019, PG&E, under regulatory oversight by the Water Board and, for upland parcels, SFDPH, investigated and remediated contamination at the Potrero site, the southeastern portion of Pier 70 contaminated by the adjacent Potrero Site, and the shoreline and submerged sediment along the Potrero Site and Pier 70. Investigations found all of these areas to be impacted by contaminants related to historic MGP operations, primarily PAHs. PAH are complex hydrocarbon compounds that are less likely than lighter weight hydrocarbons such as those found in diesel fuel or gasoline to be in a vapor phase or released to air, and they are not prone to dissolve in water, particularly if already bound to carbon-based compounds in soil. Consequently, they can be, and, under appropriate conditions, often are treated and/or managed in place without posing on-going risk to human health or the environment.

PG&E's investigation of the upland and intertidal soil, and subtidal (submerged) sediment along the shoreline of the Potrero Site and Pier 70 found PAH contamination in the following three areas (see Exhibit A), which are identified based on tidal location, degree of contamination, remediation status, and land use:

- **Shoreline Area:** Approximately 1.1 acres of Port-owned upland (above Mean High Tide Line) along the shoreline east of the Potrero Site, from the south end of the Potrero Site northward into the southeastern corner of Pier 70. It includes a North Shoreline Area and a South Shoreline Area, separated by private property, all of which will be developed for public access and outdoor recreation. Investigation of the Shoreline Area found that PAH-contaminated soil could be safely remediated and managed in place. Remediation consisted of soil solidification and placement of protective cap over remediated soil. This remediation sequesters PAHs in soil, prevent people from having contact with PAH-impacted soil, and prevent PAHs from being released to water or air, either as dust or by migrating into indoor air¹².
- **Offshore Sediment Area:** Approximately 27.5 acres of intertidal and submerged land extending from the eastern edge of the Shoreline Area eastward into San Francisco Bay. Investigation of the Offshore Sediment Area found that PAH concentrations decreased with distance from the shoreline, and the Water Board approved appropriate remedial approach based on degree of contamination nearshore (from the shoreline east approximately 50 to 75 feet) and in a transition zone (extending another 100 to 150 feet east into the bay), east of which concentrations of PAHs in sediment are consistent with ambient concentrations in Central San Francisco Bay³. PG&E completed remediation consisting of various combinations of dredging, in-situ treatment, and placement of a sediment cap.⁴

¹ *Summary of Investigation and Remedial Activities, Port of San Francisco-Owned Areas*, Haley and Aldrich, 2019.

² *Remedial Action Completion Report Northeast Area of the Potrero Power Plant Site and a Portion of the Southeast Area of Pier 70*, Haley & Aldrich 2019.

³ *Remedial Action Plan, Offshore Sediment Area, Potrero Power Plant Site*, Haley & Aldrich, 2017.

⁴ *Remedial Action Completion Report, Offshore Sediment Area*, Terra Pacific Group, 2020.

- **Extended Area:** Approximately 1.7 acres of submerged land north of the Offshore Sediment Area. Sediment in the Extended Area contains PAHs at concentrations consistent with those found in sediment throughout central San Francisco Bay and does not require remediation. It is included with the other areas subject to long-term management requirements to ensure that project-specific activities that may be proposed in the future are evaluated for potential to change the current determination that remediation is not warranted.

The Water Board approved remediation of the Potrero Site in phases between 2016-2020, the impacted portion of Pier 70 in 2020, and intertidal soil and subtidal (submerged) areas in 2020. Remediation substantially removed or sequestered PAH contamination and virtually eliminated risk that any remaining PAHs could migrate. However, some residual contamination will remain in soil and sediment in the shoreline and offshore sediment areas described above. The Water Board approved PG&E's human health and environmental risk assessment and found that management of residual contamination remaining after remediation has been completed does not pose a significant risk to Bay water quality or aquatic life or to current or future occupants or visitors provided that long-term land use restrictions and risk management measures are implemented.

Land Use Restriction and Risk Management Measures

The Water Board requires Port to enter a Land Use Covenant for the portions of Port-owned shoreline and offshore sediment described above to ensure that the remediation remains effective over time. Land Use Covenants are commonly-used regulatory tools to provide notice and impose restrictions and long-term management measures. The prohibitions and restrictions in the Land Use Covenant for this site have been reviewed by Port and CBC and are compatible with anticipated development plans. The land use restrictions are specified in a recorded Land Use Covenant binding on the Port and users and occupants of the affected property that:

- Prohibit extracting groundwater for any use, growing edible items for human consumption in native soil, or constructing or placing an enclosed building in direct contact with soil.
- Require compliance with risk management plans.
- Prohibit any action that may affect the integrity of the cap, increase exposure to residual contamination, or exacerbate existing contamination.
- Require advance notification to and approval from environmental regulatory agencies prior to undertaking soil- or sediment-disturbing activities or change in land use.

The Port or Port-authorized party may request project-specific variance from the Land Use Covenant or termination of certain restrictions or other terms of the Land Use Covenant. Otherwise, the Land Use Covenant will remain in effect in perpetuity.

Required risk management measures vary between the subject areas and are described in detail in the Risk Management Plans for the shoreline⁵ offshore sediment⁶. They include, for example:

- Implementation of measures to prevent workers' or public exposure to soil, soil vapor and groundwater during construction or maintenance.
- Inspection and maintenance of cap or durable cover over site soil to ensure that such cover remains effective at preventing exposure or disturbance of soil or sediment.
- Procedures for addressing unanticipated conditions that might be discovered during future construction or redevelopment.
- Port, PG&E, and regulatory agency review of any proposed soil- or sediment disturbing activity within the impacted areas to evaluate whether the proposed work may be affected by soil or sediment conditions and how the project will implement appropriate risk management measures.

The Port or Port-authorized users of the shoreline and offshore sediment along the Potrero Site and Pier 70 are required to implement the risk management measures that apply to those areas. On the adjacent Potrero Site, CBC has executed a similar Land Use Covenant with similar restrictions and requirements.

Potential Future Costs of Contamination

The Port or Port-authorized users may incur additional costs to construct new or maintain existing improvements to comply with the Land Use Covenant and Risk Management Plans. Such costs include but are not limited to:

- Costs associated with additional notice, permitting and agency approval that would not be required in the absence of residual contamination remaining on Port property.
- Soil or sediment sampling and analysis that may be required to evaluate projects' potential impacts on residual contamination.
- Cost of supplemental materials that would not have been required if soil or sediment impacted by residual contamination was not contaminated and could be reused.
- Additional training, protective equipment, personnel monitoring, or other measures to protect workers' health and safety.
- Regulatory agency oversight fees and Port or its agents' administrative and professional services costs, including legal services, necessary to comply with the risk management plans.

Cost Reimbursement Agreement

Port staff, in consultation with the City Attorney's Office, has negotiated the proposed Cost Reimbursement Agreement ("Agreement") to establish a process for PG&E to reimburse Port and Port-authorized users for costs incurred to implement required risk

⁵ *Risk Management Plan Port-Owned Shoreline Areas Potrero Power Plant*, Terra Pacific Group, 2021.

⁶ *Risk Management and Monitoring Plan, Offshore Sediment Area, Potrero Power Plant Site*, Haley & Aldrich, 2020.

management measures in the Shoreline Areas and Offshore Sediment and Extended Areas as shown in Exhibit A. The Agreement applies to up to \$5 Million in reimbursements over a term of up to 20 years. If reimbursements reach \$5 Million before 20 years have passed or at the end of the 20-year term, the Agreement requires the parties to negotiate in good faith for an extension or replacement of the Agreement that would serve the same purpose.

Additional costs attributable to the presence of residual contamination that may be incurred by project proponents, such as the examples listed above, are likely to be in the tens of thousands of dollars for any single project or activity. The \$5 Million amount for the proposed Agreement is based on a conservative assessment of costs to implement the risk management measures considering anticipated development and on-going use of the shoreline and offshore areas and is intended to cover numerous projects or activities that might occur over the 20-year term. It also considers that the Agreement documents the Port and PG&E's intent to extend the Agreement or negotiate a similar agreement if such additional costs reach \$5 Million.

The Port has several similar existing agreements for other areas where residual contamination remains in place after an approved clean up. In 2006, the City executed a similar agreement with four oil companies who had formerly operated fuel terminals in the Mission Bay area to reimburse the City for costs incurred due to the presence of residual petroleum hydrocarbons left in place beneath approximately 12.4 acres of land in Mission Bay. In 2016, the Port executed a similar agreement with ExxonMobil regarding residual petroleum hydrocarbons left in place beneath approximately 130 feet of shoreline in Fisherman's Wharf in the vicinity of Wharf J10. To date, the Port has not incurred costs related to presence of residual contamination in either of those areas that qualify for reimbursement and therefore has not had reason to seek reimbursement under either agreement.

Following are the primary terms of the proposed Agreement:

Parties	The Agreement establishes a process through which the Port or its tenants, licensees, or other authorized user of Port property may seek reimbursement from PG&E for costs incurred to comply with the RMP or RMMP or other reimbursable costs as defined by the Agreement.
Term	The term is the earlier of 20 years or when PG&E has reimbursed a total of \$5 Million (automatically increased annually by two and one half percent (2.5%). The Agreement specifies that upon its expiration, the Port and PG&E will negotiate in good faith to extend the Agreement or enter into a new one that fulfills the same purpose of providing for PG&E's ongoing financial responsibility for long term management measures specified by the RMP and RMMP.

Reimbursable Costs	Reimbursable Costs are increased costs and expenses incurred by the Port or authorized user of Port property related to implementation of risk management measures and other costs that would not be incurred in absence of residual contamination remaining on Port property.
Pre-Authorization of Work	Except for emergency work, the Port or Port-authorized user proposing work that will disturb soil or sediment within the areas subject to the RMP or RMMP must request pre-authorization of reimbursable costs greater than \$10,000 by submitting a scope of work and cost estimate to PG&E.
Reimbursement	The Agreement sets forth a process for pre-authorization of proposed work and for reimbursement of costs by PG&E.
Dispute Resolution	The Agreement provides for mediation of disputes by a jointly designated mediator and with mediation costs split equally between the Port or Port-authorized Party and PG&E.
No Release	The Agreement does not release PG&E from any claims or liability or preclude the Port from seeking judicial remedies with respect to residual contaminants on Port property.

Board of Supervisors and City Approvals

The Agreement will require approval from the Board of Supervisors because the term is 20 years. City Charter Section 9.118 requires Board of Supervisors’ approval of agreements having a term of ten years or more.

Recommendation

Port staff recommends approval of the Cost Reimbursement Agreement between the Port and PG&E for Management of Residual Contamination on Port Property within certain areas east of Pier 70 and the former Potrero Power Plant.

Prepared by: Carol Bach, Environmental & Regulatory Affairs Manager
 Planning & Environment

For: Ming Yeung, Acting Deputy Director
 Planning & Environment

Attachments

- Exhibit A: Shoreline and Offshore Areas Subject to Cost Recovery Agreement
- Exhibit B: Pier 70 and Potrero Power Plant Site

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 22-04

WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control Port area of the City and County of San Francisco; and

WHEREAS, the California Regional Water Quality Control Board, San Francisco Bay Region (“Water Board”) has regulatory authority to oversee environmental site investigation and remedial action within the Port area of the City and County of San Francisco; and

WHEREAS, Between 2006 and 2019 Pacific Gas and Electric Company (PG&E), under a voluntary cleanup agreement with the Water Board, completed site investigation, remedial action planning, and execution of remedial action to treat and remove polycyclic aromatic hydrocarbon contamination in upland and intertidal soil and subtidal sediment in the vicinity of the former Potrero Power Plant and Pier 70; and

WHEREAS, PG&E has assessed the potential human health and environmental risk and demonstrated to the satisfaction of the Port and the Water Board that any remaining residual hydrocarbons can be safely managed through implementation of long-term risk management measures specified by an approved Risk Management Plan (“RMP”) and Risk Monitoring and Management Plan (RMMP); and

WHEREAS, A recorded Land Use Covenant is required to ensure that the remediation remains effective and the RMP and RMMP remain in place;

WHEREAS, The Port and other users may incur additional costs to construct new or maintain existing improvements to comply with the Land Use Covenant and RMP and RMMP; and

WHEREAS, Port staff and PG&E have negotiated a proposed 20-year Cost Reimbursement Agreement (“Agreement”), as described in the Memorandum to the Port Commission dated January 7, 2022, that sets forth a process for the reimbursement of costs in an amount of up to \$5 Million that would not be incurred in the absence of the residual contamination within the areas covered by the RMP and RMMP;

WHEREAS, The Agreement does not release PG&E from any liability for residual contamination or otherwise; and now, therefore be it

RESOLVED that the Port Commission hereby approves the Agreement as described in the Memorandum dated January 7, 2022, and, subject to approval by the

Board of Supervisors, authorizes the Executive Director or her designee to take such actions (including the execution of the agreement) as she deems necessary and advisable, in consultation with the City Attorney, to effectuate this approval and the purpose and intent of this Resolution; and, be it further

RESOLVED, that the Port Commission authorizes the Executive Director or her designee to enter into any additions, amendments or other modifications to the Agreement that the Executive Director, in consultation with the City Attorney determines are in the best interest of the Port, do not materially increase the obligations or liabilities of the City or Port or materially decrease the benefits to the City or Port, and are necessary or advisable to complete the transactions which the Agreement contemplates and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director or her designee of the Agreement, and any such amendments thereto.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of January 11, 2022.

DocuSigned by:

Secretary
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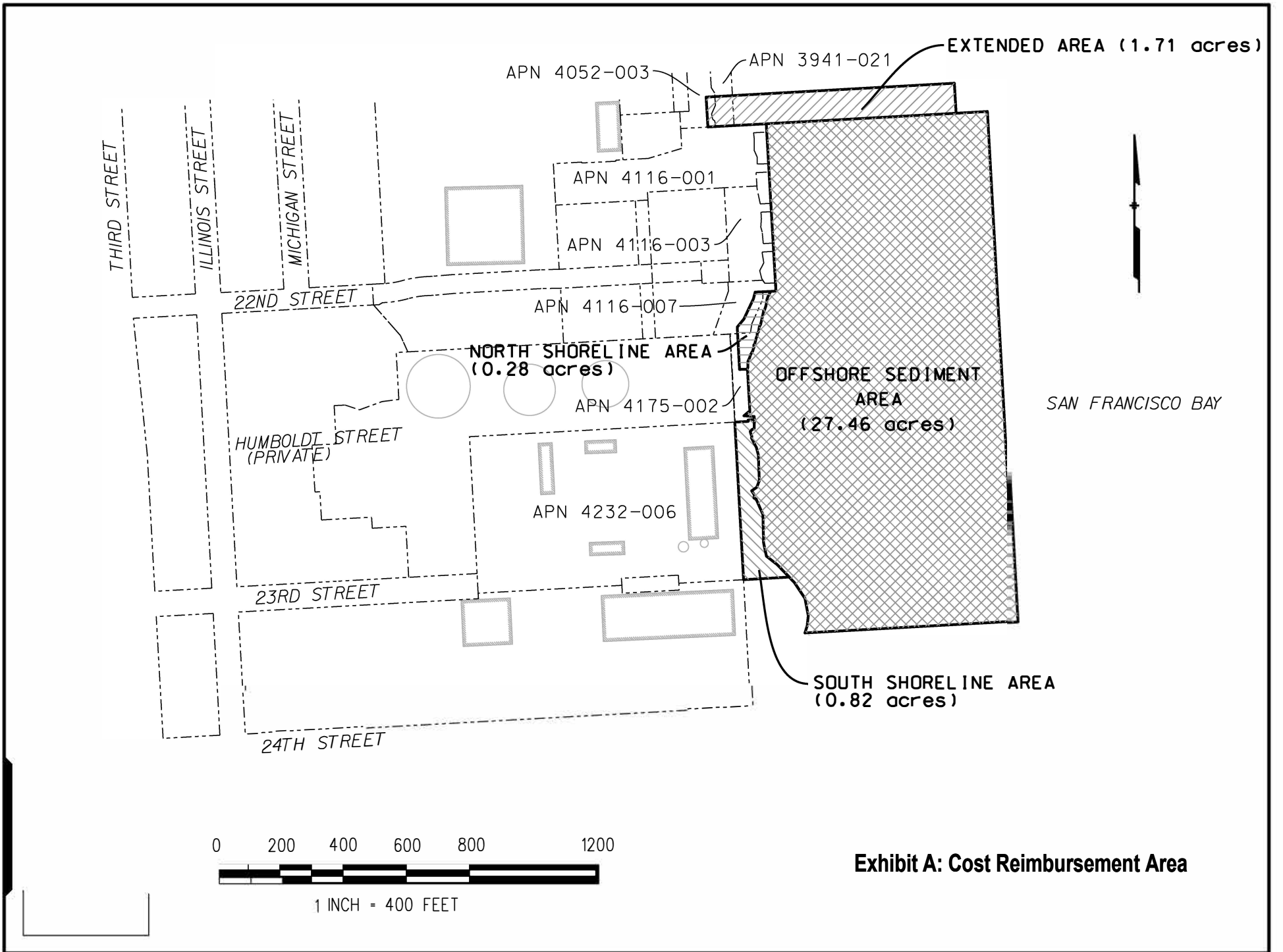


Exhibit A: Cost Reimbursement Area

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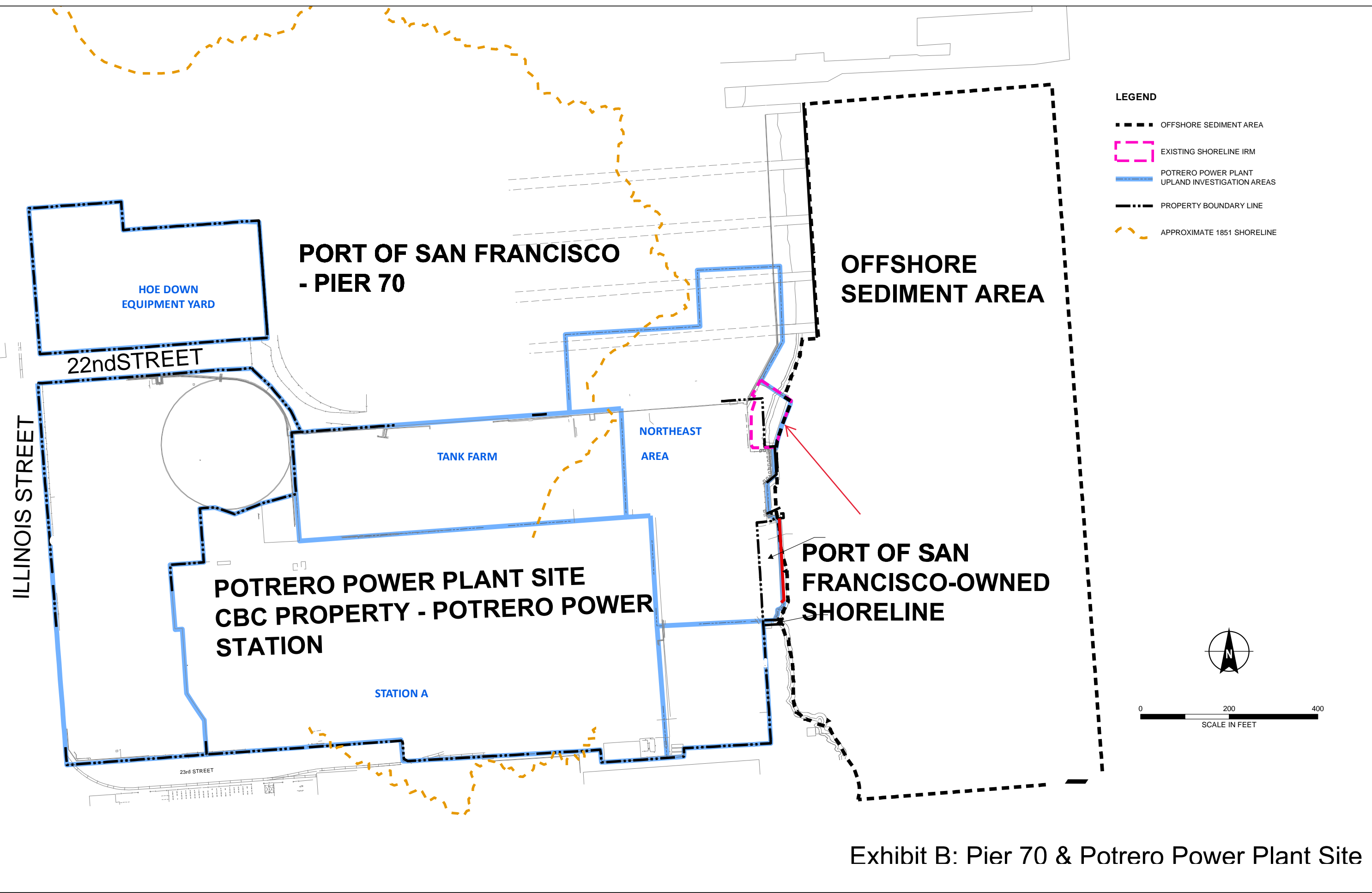


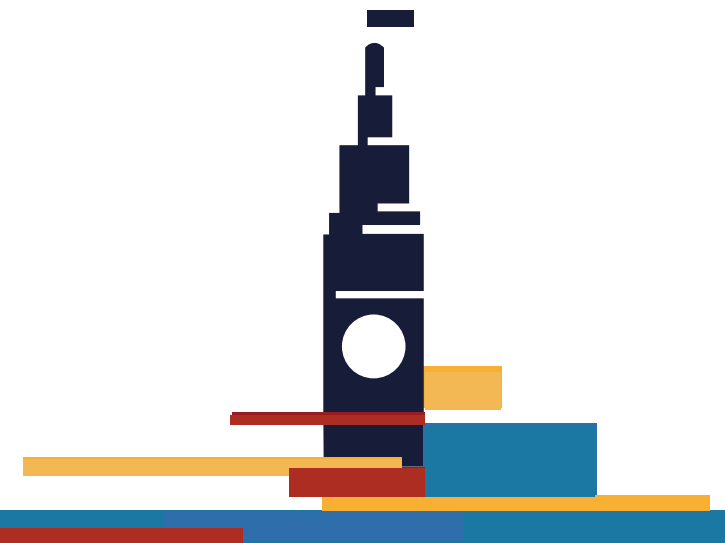
Exhibit B: Pier 70 & Potrero Power Plant Site

Potrero Power Plant - Pier 70 Shoreline and Sediment Cost Reimbursement Agreement with PG&E

Item 7 - Requesting Approval of Cost Reimbursement Agreement between the Port and Pacific Gas and Electric Company for Management of Residual Petroleum Hydrocarbons on Port Property within the shoreline and submerged land near the former Potrero Power Plant Site and Pier 70 in San Francisco

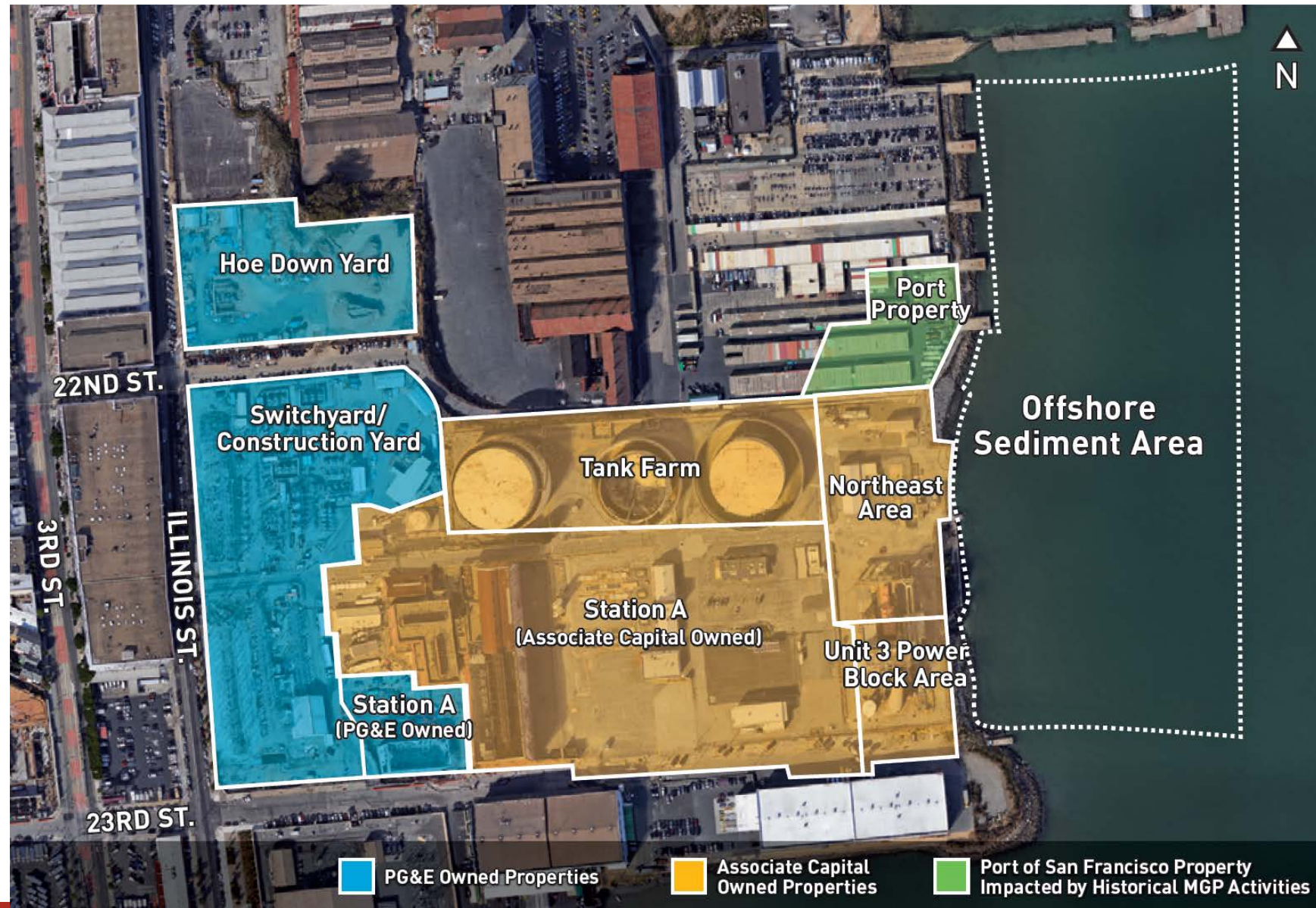
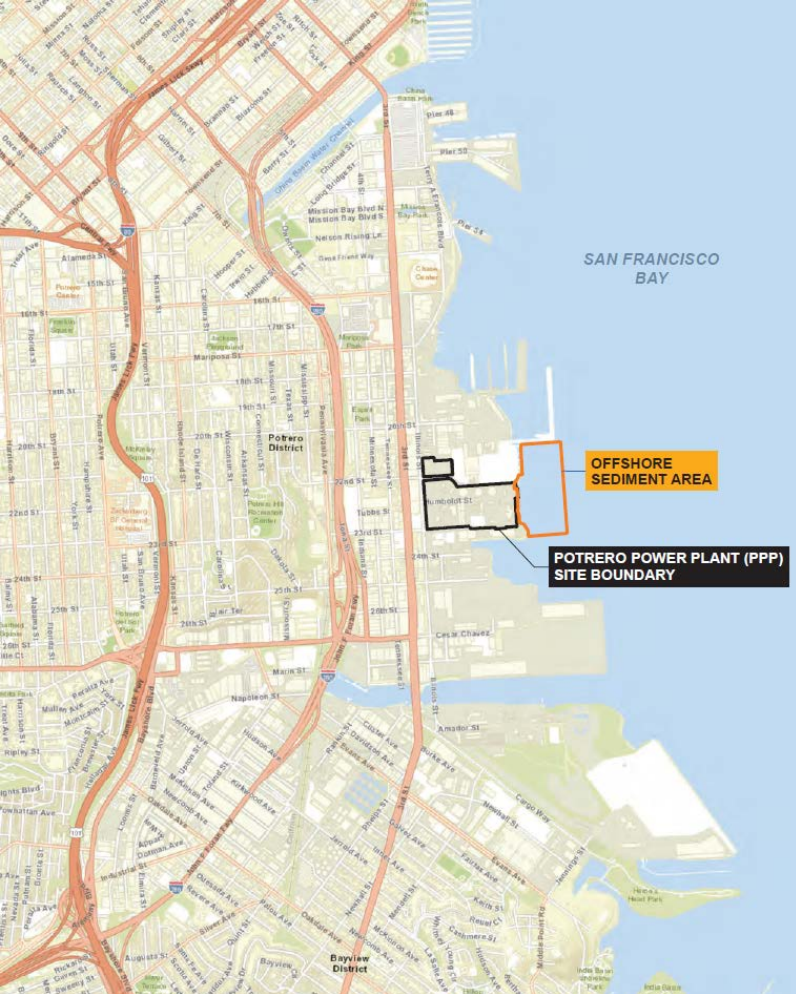
March 16, 2022

Presented By: Carol Bach, Environmental Affairs Manager



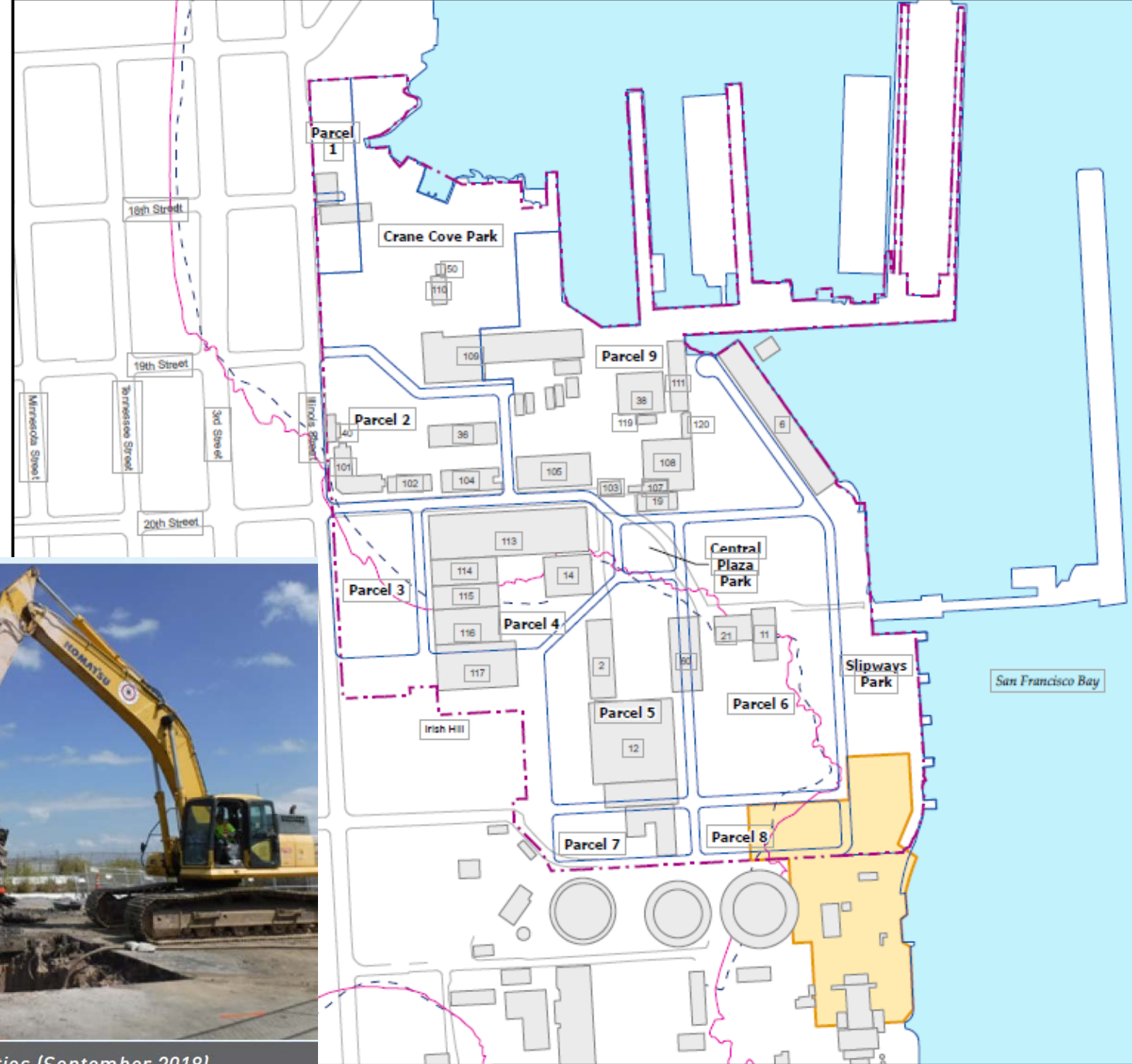
Potrero Power Plant Site

Privately owned property adjacent to Port's Pier 70 Area



Historic MGP Operations contaminated soil throughout the Potrero Site and the southeast portion of Pier 70.

Contamination in Pier 70 was excavated and removed in 2019. No significant residual remains.



Pier 70 excavation activities (September 2018)

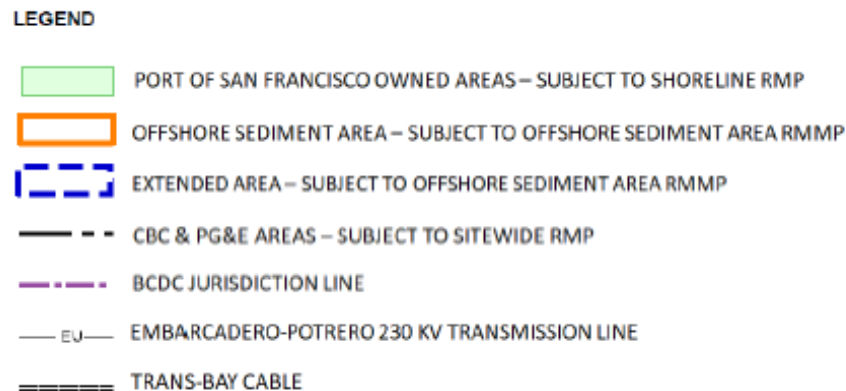
Potrero Power Plant Site

- Remediated in phases 2016-2020
- Sediment remediated by dredging to remove, treatment in place to sequester, and capping to prevent disturbance.
- Remediation removed or sequestered PAH, eliminated risk of exposure or migration.
- Shoreline soil treated to sequester PAH, capped to prevent exposure or migration.



Shoreline and Sediment Remediation

- Residual contamination remains beneath portions of the shoreline and offshore sediment.
- Shoreline and sediment are subject to land use restrictions and risk management measures.



REFERENCE: HALEY & ALDRICH, 2019

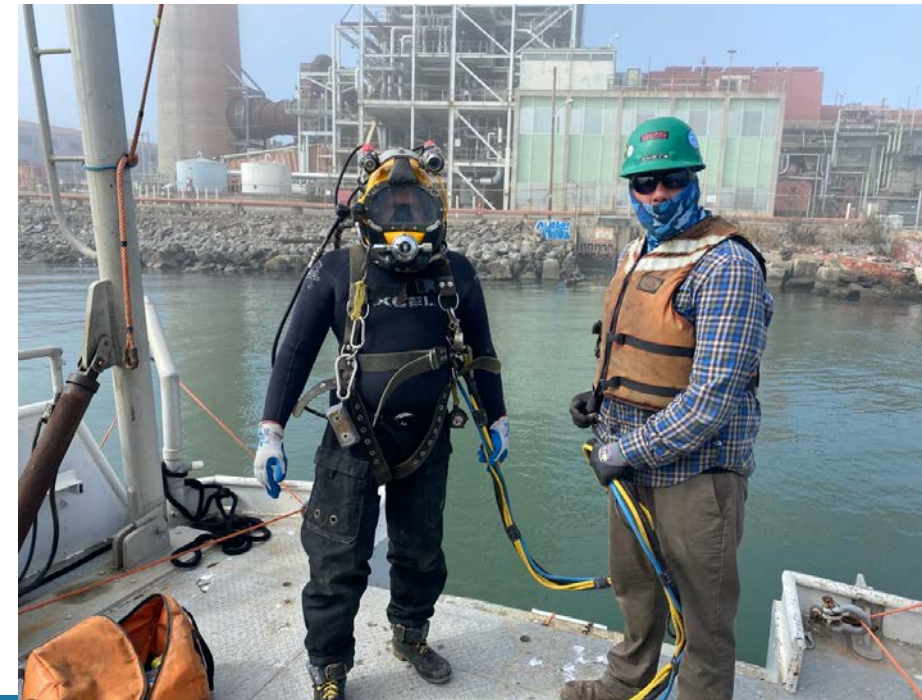
Risk Management Measures may result in Increased Costs

To Port, tenants, development partners, their agents, or other authorized user of Port property:

- Increased disposal if excavated soil is contaminated
- More extensive worker health & safety protective measures
- Mitigate sediment disturbance during in-water construction
- Notice, reporting, other administrative or professional services

Cost Reimbursement Agreement

- Process for PG&E to reimburse increased costs attributable to the presence of residual contamination.
- Ensures PG&E's financial responsibility for effectiveness of the remedy and long-term management measures specified by risk management plans.



Cost Reimbursement Agreement - Key Terms

Parties	Process for Port or its tenants, licensees, development partners, their agents or contractors, or other authorized user of Port property
Term	\$5 Million reimbursement amount and 20-year term, to be extended or renegotiated when either is reached.
Reimbursable Costs	Increased costs and expenses related to implementation of risk management measures and other costs that would not be incurred in absence of residual contamination on Port property
Pre-Authorization	Requires Port or other party to propose work and related costs to PG&E except for emergency work. Protection of SF Bay environment and cost-effectiveness will be considered in determining reasonable increased cost.
Disputes	Will be resolved by jointly designated mediator, mediation costs split equally between the Port or party and PG&E.
No Release	The Agreement does not release PG&E from any claims or liability or preclude the Port from seeking judicial remedies with respect to residual contaminants on Port property



February 7, 2022

Angela Calvillo, Clerk of the Board
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

Dear Ms. Calvillo:

Attached please find an electronic copy a proposed Resolution for Board of Supervisors consideration, to approve a cost reimbursement agreement between the Port of San Francisco and Pacific Gas and Electric Company ("PG&E") for management of residual petroleum hydrocarbons on Port property.

The following is a list of accompanying documents

- Resolution approving the cost reimbursement agreement
- Draft reimbursement agreement between the Port and PG&E
- Port Commission staff report and resolution approving the cost reimbursement agreement between the Port and PG&E

The following person may be contacted regarding this matter:

Boris Delepine, Legislative Affairs Manager
415-571-6626
Boris.Delepine@sfport.com