



Jared Blumenfeld
Secretary for
Environmental Protection



Department of Toxic Substances Control

Meredith Williams, Ph.D., Director
8800 Cal Center Drive
Sacramento, California 95826-3200



Gavin Newsom
Governor

Site Name: 900 Innes
Address: 900 Innes Avenue,
San Francisco, CA 94124

GRANTEE/Applicant: San Francisco
Recreation and Parks Department

Name: Philip Ginsburg
Organization: SF Recreation and
Parks Department
Address: 501 Stanyan Street,
San Francisco, CA 94117

Grant No. **BRLF-2022-003**

**BROWNFIELD REVOLVING LOAN
FUND GRANT TERMS AND
CONDITIONS**

The Department of Toxic Substances Control (“GRANTOR” or “DTSC”) provides the following Brownfields Revolving Loan Fund (RLF) Grant Terms and Conditions (“Grant Terms and Conditions”) to the San Francisco Recreation and Parks Department (“GRANTEE”) for its 900 Innes Project (“Mitigation Project”).

RECITALS

- A.** DTSC is authorized to grant to entities who remediate and mitigate hazardous substances on brownfields.
- B.** The GRANTEE has title to that certain property commonly known as 900 Innes Avenue, in San Francisco, California (“Property”); the Property is described in the “Legal Description” and depicted on the “Map” which are attached hereto as “Exhibit A” and “Exhibit B”, respectively, and incorporated herein by this reference.
- C.** The GRANTEE proposes to remediate soil contaminated with elevated concentrations of metals, total petroleum hydrocarbons, polycyclic aromatic hydrocarbons, and polychlorinated biphenyls found in the soil and sediment at the Property (“Mitigation Project”).

- D.** GRANTEE is aware of certain hazardous substances in the soil on the Property that were deposited or released prior to the date GRANTEE originally acquired the Property.
- E.** Various assessments and investigations conducted between 2013 and 2019 found elevated concentrations of contaminants, including metals, total petroleum hydrocarbons (TPH), polycyclic aromatic hydrocarbons (PAHs), and polychlorinated biphenyls (PCBs), were measured in sediment and soil at the site. These investigations are summarized in the “Final Remedial Action Plan and Remedial Design Report (dated July 30, 2019 and hereby incorporated as “Exhibit C”), as approved by the San Francisco Bay Regional Water Quality Control Board in a letter dated December 18, 2019. The Property is a former maritime industrial site consisting of approximately 2.4 acres, of which 0.6 acres is submerged. The Property was used as a ship repair facility for over 120 years. A Phase I/II Investigation was conducted under United States Environmental Protection Agency’s Targeted Brownfields Assessment program in September 2013. The Grantee acquired the property in 2014.
- F.** GRANTEE, while willing to undertake the Mitigation Project, requested that DTSC provide a Brownfields RLF Grant (“Grant”) to do so.
- G.** The GRANTEE is a governmental entity and the Property is not listed, nor proposed to be listed, on the EPA’s National Priorities List; therefore, the GRANTEE is eligible to receive the Grant.
- H.** DTSC designated an environmental project manager to review the work to be performed using the Grant funds.

ATTESTATIONS

1. DTSC’s environmental project manager will review the GRANTEE’s mitigation planning and documents (the “Project Documents”) and review the activities as they are ongoing to ensure that the Mitigation Project is being completed in accordance with all applicable jurisdictional requirements pursuant to a lead agency approved cleanup plan and cost estimate.
2. The GRANTEE shall ensure that all public participation requirements are met. This includes public notifications, opportunities for public involvement, responses to comments and establishing a local information repository. The GRANTEE will provide copies of all public notices and response to comments to DTSC for the project file.
3. DTSC agrees to grant GRANTEE, via reimbursement, up to one million three hundred eighty-four thousand dollars (\$1,384,000) to implement the Mitigation Project at the Property. DTSC shall hold all Grant proceeds and disburse upon DTSC’s receipt of written invoices and documentation to DTSC’s reasonable satisfaction.

4. DTSC's obligations under these Grant Terms and Conditions are contingent upon and subject to the availability of funds.
5. The Grant term shall be from June 30, 2022 (Committee grant approval date) through June 29, 2023, or until the Mitigation Project is complete— whichever comes first.
6. The GRANTEE prepared an initial Mitigation Project cost estimate, attached hereto as "Exhibit D." The GRANTEE shall submit a more detailed cost estimate ("Project Budget") to DTSC to review and approve. The approved Project Budget will be incorporated into these Grant Terms and Conditions.
7. DTSC shall make checks payable to the GRANTEE to reimburse allowable invoice expenses GRANTEE incurred, based upon the work progress, and in accordance with the approved Project Budget.
8. The GRANTEE will carry out the Mitigation Project in accordance with CERCLA §104(k); Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments [40 Code of Federal Regulations (CFR), Part 31]; and all other applicable provisions of Federal, State, or local law.
9. The GRANTEE represents that none of the contractors or subcontractors undertaking the Mitigation Project is currently suspended, debarred, or otherwise declared ineligible for participation in this Federal program or from the receipt of proceeds of the subject funds (formerly Federal funds).
10. The GRANTEE shall comply with Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4 relating to Federally-assisted construction contracts.
11. The GRANTEE shall grant DTSC the right to enter the Property to oversee Mitigation Project implementation at any reasonable time. Whenever possible, DTSC shall provide advance notice to GRANTEE prior to entering the Property.
12. The GRANTEE shall provide copies of mitigation plans, permit application, engineering documents and copies of environmental permit(s) received to DTSC's designated environmental project manager.
13. The GRANTEE understands and agrees that all DTSC provided Grant funds shall only be used to mitigate hazardous conditions within the remediation boundaries depicted in "Exhibit B."

14. The GRANTEE further understands and agrees that receiving Grant funds is conditioned upon GRANTEE's Project Documents and Grant Terms and Conditions full compliance.
15. GRANTEE agrees to document and keep separate all Grant funds expenditures within the approved Project Budget. GRANTEE shall not exceed any costs shown in the approved Project Budget. It is the GRANTEE's responsibility to pay any costs of the Mitigation Project that exceeds the Grant amount. In addition, GRANTEE must report to DTSC, at least quarterly, the number and classification of all labor hours for the quarter associated with that quarter's expenditures.
16. All work on the Mitigation Project performed pursuant to these Grant Terms and Conditions and with Grant funds shall be performed in a good and workmanlike manner.
17. All changes or modification to the Mitigation Project shall be submitted to the lead agency, San Francisco Bay Regional Water Quality Control Board in writing, to approve prior to such change or modification becoming effective. All additional costs incurred as the result of any Change Orders shall be subject to prior written DTSC approval not to exceed the Grant total, if the Grant pays the costs. If unforeseen conditions are discovered during the Mitigation Project implementation that present an imminent or substantial endangerment to human health and environment, DTSC reserves the right to require the GRANTEE to revise the Project Documents working with the lead agency.
18. GRANTEE, at its sole cost and expense, and from sources other than Grant funds, shall be responsible to obtain all permits, licenses, approvals, certifications, and inspections Federal, State, or local law require, and to maintain such permits, licenses, approvals, certifications, and inspections in status during the term of this Grant.
19. GRANTEE must carry out the Mitigation Project in accordance with the Davis- Bacon Act of 1931, which requires paying Federal prevailing wages for all construction, alteration, and repair contracts and subcontracts awarded with Grant funds. Additional requirements include, complying with the Davis-Bacon Act of 1931 are set forth in the Exhibit E to these Grant Terms and Conditions (Davis- Bacon Terms and Conditions for Hazardous Waste Cleanup Grants to Governmental Entities). To the extent the Mitigation Project is also subject to prevailing wages under California Labor Code section 1720 *et seq.*, the contractor must apply the higher of the applicable State or Federal prevailing wage.

20. The GRANTEE shall:
 - a. Notify DTSC when the Mitigation Project is complete. The notice shall contain certification or documentation that the mitigation of hazardous conditions has been performed in accordance with the terms of these Grant Terms and Conditions. This closeout documentation shall summarize all actions taken, the resources committed, the problems encountered in completion of the Mitigation Project, if any, and document that the Mitigation Project is complete. The closeout documentation should also include before and after photos with the completed DTSC Success Story Form. In addition, this documentation must include a completed Property Profile Form, which the GRANTEE completes with the DTSC's environmental project manager. Finally, if the allowable costs for the Mitigation Project exceed the Grant amount, the closeout documentation should include additional remediation invoices for those costs that would have qualified for reimbursement under the Grant if additional funds had been awarded to the GRANTEE.
 - b. Submit copies of qualifying Mitigation Project invoices over the amount of this Grant. While not reimbursable, copies of these invoices assist DTSC with documenting "cost share" or "State match." This documentation shall be submitted to DTSC's project manager.
 - c. Perform all its obligations under these Grant Terms and Conditions, and any other agreements or instruments to which the GRANTEE is a party, and which relate to these Grant Terms and Conditions or to the Mitigation Project.
21. Any DTSC forbearance with respect to any of the Grant Terms and Conditions shall in no way constitute DTSC waiving rights or privileges granted hereunder.
22. In the event of GRANTEE Grant Terms and Conditions noncompliance, the GRANTEE shall forfeit use of the Grant funds not yet disbursed.
23. The GRANTEE agrees to maintain financial and programmatic records pertaining to all matters relative to these Grant Terms and Conditions in accordance with generally accepted accounting principles and procedures. DTSC or its representatives, upon request, shall inspect or audit all such records and supporting documents. The GRANTEE shall retain all its records and supporting documentation applicable to these Grant Terms and Conditions for a period of ten (10) years, after the Mitigation Project is complete, except records that are subject to audit findings, which shall be retained an additional three (3) years after such findings have been resolved, if three years would extend retention past the initial ten-year period.

24. GRANTEE does hereby attest, certify, warrant, and assure that no other sources of public funding (e.g., DTSC's Equitable Community Revitalization Grant, Site Cleanup Subaccount Program, etc.) reimburse items for which GRANTEE proposes to be reimbursed via this Grant.
25. The GRANTEE agrees to permit DTSC or its designated representative to inspect and/or audit its records and books relative to these Grant Terms and Conditions at any time during normal business hours and under reasonable circumstances and to copy therefrom any information that DTSC desires relevant to these Grant Terms and Conditions. DTSC shall provide written notice to the GRANTEE prior to implementing this provision. The GRANTEE agrees to deliver the records, or have the records delivered, to DTSC or its designated representative at an address designated by such party.
26. During the performance of these Grant Terms and Conditions, the GRANTEE, its contractors, and subcontractors will comply with Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §11135-11139.5) prohibiting discrimination based on sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation. In addition, the GRANTEE will undertake good faith efforts to give opportunities for qualified Small Business Enterprises (SBE) and Disabled Veteran Enterprises (DVE) to submit proposals, bids, provide services on contracts and subcontracts for services and supplies, and will assure the State that it complies with the American with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA (42 U.S.C. § 12101 et seq.).
27. The GRANTEE agrees to protect, indemnify, defend and hold harmless, DTSC, its officers, administrators, agents, servants, employees and all other persons or legal entities to whom the GRANTEE may be liable from, for or against any and all claims, demands, suits, losses, damages, judgments, costs and expenses, whether direct, indirect or consequential and including, but not limited to, all fees, expenses and charges of attorneys and other professionals, court costs, and other fees and expenses for bodily injury, including death, personal injury and property damage, arising out of or in connection with the performance of any work or any responsibility or obligation of the GRANTEE as provided herein and caused in whole or in part by any act, error, or omission of the GRANTEE, its agents, servants, employees or assigns.
28. The GRANTEE shall not assign or attempt to assign directly or indirectly, any of its rights under these Grant Terms and Conditions or under any instrument referred to herein without the prior written consent of DTSC.

29. These Grant Terms and Conditions is not intended to create or vest any rights in any third party or to create any third-party beneficiaries.
30. No amendments or variation of these Grant Terms and Conditions shall be valid unless DTSC approves in writing. No oral understanding or agreement not incorporated into these Grant Terms and Conditions is binding. GRANTEE may request a Grant extension, which DTSC can issue unilaterally if GRANTEE sufficiently justifies its extension needs.
31. It is expressly understood that GRANTEE'S failure to perform or delayed performance, in whole or in part, or any of the terms of these Grant Terms and Conditions, if such failure is attributable to an Act of God, fire, flood, riot, insurrection, embargo, emergency or governmental orders, regulations, priority, or other limitations or restrictions, or other similar unforeseen causes beyond the reasonable control of such party, shall not constitute Grant Terms and Conditions noncompliance; however, GRANTEE shall use its best effort to ensure that the Mitigation Project is completed in a reasonable time without unnecessary delay.
32. The Grant Terms and Conditions provisions shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
33. No failure of either party to exercise any power or right given it hereunder or to insist on strict compliance by the other party with its obligations hereunder shall constitute a waiver of the other party's right to demand at any time exact Terms and Conditions compliance hereof.
34. All notices, requests, instructions, or other documents to be given hereunder to either party by the other shall be in writing and delivered personally or sent by certified or registered mail, postage prepaid, to the addresses set forth in these Grant Terms and Conditions. Any such notice, request, instruction, OR other document shall be conclusively deemed to have been received and be effective on the date on which personally delivered or, if sent by certified or registered mail, on the day mailed to the parties as follows:

To the GRANTOR: Department of Toxic Substances Control:
Francesca Negri, Chief Deputy Director
1001 "I" Street, P.O. Box 806
Sacramento, CA 95812-0806

To the GRANTEE: S.F. Parks and Department
Philip Ginsburg
501 Stanyan Street,
San Francisco, CA 94117

or to such other address as a party may subsequently specify in writing to the other party.

35. Under the laws of the State of California, the GRANTEE shall not be:
 - a. In violation of any order or resolution not subject to review promulgated by the California Air Resources Board or an air pollution control district;
 - b. Subject to cease-and-desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or
 - c. Out of compliance with any applicable Federal, State, and local laws, ordinances, regulations, and permits.
36. If any provision or item of these Grant Terms and Conditions is held invalid, such invalidity shall not affect other provisions or items of these Grant Terms and Conditions which can be given effect without the invalid provisions or items, and to this end, the provisions of these Grant Terms and Conditions are hereby declared severable.
37. These Grant Terms and Conditions may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

IN THE WITNESS WHEREOF, THE DEPARTMENT OF TOXIC SUBSTANCES CONTROL AND THE GRANTEE EXECUTED THIS GRANT TERMS AND CONDITIONS AGREEMENT ON THE RESPECTIVE DATES SET FORTH BELOW.

“S.F. Parks and Recreation Department”
City and County of San Francisco

BY: _____
Philip Ginsburg
General Manager
S.F. Parks and Recreation Department’s Authorized Signatory

Date: _____

“Department of Toxic Substances Control”

BY: _____
Francesca Negri
Chief Deputy Director
DTSC’s Authorized Signatory

Date: _____

References:

Exhibit A – Legal Description

Exhibit B – Map

Exhibit C – Final Remedial Action Plan and Remedial Design Report

Exhibit D – Cost Estimate

Exhibit E – Davis- Bacon Terms and Conditions for Hazardous Waste Cleanup Grants
to Governmental Entities

Exhibit A – Legal Description.

900 Innes Remediation
San Francisco Recreation & Park Department
07/08/2022

Location: The Site is located on a portion of the property known as 900 Innes Avenue located in Hunters Point, San Francisco, California (Figure 1). The Shipwright's Cottage is located at the north corner of the intersection of Innes Avenue and Griffith Street.

The 900 Innes Avenue property is comprised of seven different City and County of San Francisco Assessor Parcel Numbers: Block No. 4360, Lot No. 002; Block Number 4629A, Lot No. 010; Block No. 4646, Lot No, 001; Block No. 4646, Lot No. 002; Block No. 4646, Lot No. 003 (Shipwrights Cottage), Block No. 4646, Lot No. 003A, and Block No. 4646, Lot No. 019

Project: The Project consists of implementing a voluntary cleanup at the 900 Innes property and offshore area. The proposed project consists of remediation of tidal and submerged (offshore) sediments and upland (onshore) soils to RWQCB and EPA approved clean-up targets. The soils and sediments proposed for remediation contain elevated concentrations of metals, total petroleum hydrocarbons (TPHs), polychlorinated biphenyls (PCBs), and polycyclic aromatic hydrocarbons (PAHs). This contamination is a result of former industrial uses on the property associated with boat building and vessel repair.

The offshore areas at the project site contain a significant amount of marine debris and remnants from abandoned and collapsed in-water structures such as piers, deckhouses, and docks. The proposed offshore remediation activities include the removal of this marine debris, followed by targeted dredging and placement of clean backfill sediment. The dredged sediments and excavated soils may be treated or stabilized, as required, to ensure proper disposal at an approved upland facility. The Department produced a Remedial Action Plan and Remedial Design Report (RAP/RDR) (Anchor QEA, 2019), which provides greater detail of the characterization and delineation of contamination, as well as the conceptual design for remediation.

DRAFT



SITE LAYOUT MAP

900 Innes Ave Site

Analysis of Brownfield Cleanup Alternatives

San Francisco, California



FIGURE 2

India Basin Shoreline Park

Hudson Ave

900 Innes Ave Site

APN 4629A-010

APN 4630-002

Storage Shed

APN 4646-001

Boat Launch

Equipment / Machinery Storage and Staging Area

Dilapidated Pier Structure

Boat Launch

Vacant Storage Yard

APN 4646-019

Equipment Storage Building

APN 4646-002

APN 4646-003A

APN 4646-003

Vacant Residential Structure

Innes Ave

Griffith St

Hudson Ave

Avenous Walker Dr



0 50 100 200 300 400 Feet

City & County of San Francisco, Recreation and Parks
Brownfields Grants Parcel 1 & 2 and 3A & 3B



K:\Projects\0153-City and County of SF\India Basin\Construction Plans\0153-PL-012 LANDFILL DISPOSAL.dwg LD-1

Dec 06, 2019 12:12pm mpratschner



NO.	NORTHING (FT)	EASTING (FT)
1	72335.2	178834.7
2	72414.3	178888.8
3	72459.9	178831.8
4	72538.3	178884.6
5	72569.8	178843.7
6	72793.6	179003.3
7	72779.3	179044.4
8	72748.8	179089.3
9	72639.8	179058.3
10	72610.4	179035.3
11	72611.2	179198.5
12	72517.3	179305.7
13	72351.6	179187.5
14	72337.9	179167.4
15	72373.8	179116.3
16	72215.9	179001.0
17	72248.0	178954.2
18	72282.3	178977.8
19	72299.5	178954.5
20	72296.3	178947.7
21	72283.9	178940.5
22	72278.9	178945.3
23	72272.1	178940.2
24	72272.7	178931.2
25	72270.1	178923.2
26	72375.6	178889.9
27	72389.6	178902.7
28	72439.4	178894.2
29	72486.9	178898.8
30	72550.2	178941.8
31	72534.2	178969.0
32	72523.1	178969.1
33	72467.1	179004.8
34	72559.6	179110.2
35	72463.6	179233.7
36	72386.4	179165.1
37	72474.9	179102.6
38	72335.5	178942.8
39	72383.1	179004.4
40	72467.1	179100.5
41	72462.6	179111.3
42	72457.1	179115.2
43	72373.4	179012.4
44	72521.5	178993.6
45	72502.2	179009.3
46	72467.6	179001.8
47	72467.8	178953.6
48	72519.8	178953.6
49	72561.2	178955.0
50	72584.5	178921.5
51	72625.3	178947.4
52	72603.9	178984.4

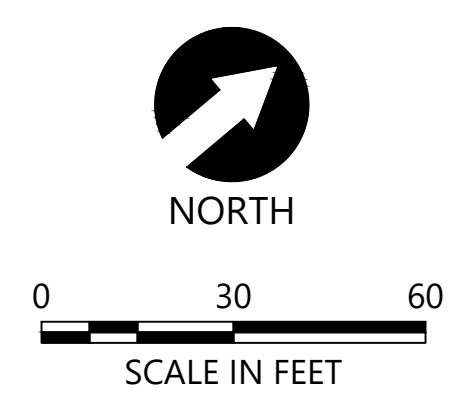
SEE SHEET G-1 FOR PROJECT DATUM AND SURVEY INFORMATION.

LEGEND:

- PROJECT LIMITS
- FENCE
- HAZARDOUS WASTE-BASED ON HISTORICAL DATA AND COORDINATION WITH THE EPA. SEE TSCA REMOVAL AREA ON SHEET E-1
- CALIFORNIA HAZARDOUS WASTE AREA-BASED ON HISTORICAL DATA. LEACHABILITY TESTING MAY BE REQUIRED BY THE OWNER OR OWNER'S REPRESENTATIVE DEPENDING ON THE CONDITIONS OF THE SOILS DURING CONSTRUCTION. CONTRACTOR SHALL COMPLY WITH ALL TESTING REQUIREMENTS AS STIPULATED IN THE TECHNICAL SPECIFICATIONS
- MUNICIPAL SOLID WASTE-BASED ON HISTORICAL DATA AND WASTE PROFILING WITH REPUBLIC SERVICES

TEMPORARY WATER BARRIER

PROJECT LIMITS



PLAN INTENDED TO BE VIEWED IN COLOR. ADJACENT BLOCK IS "BLUE" INCH SCALE ACCORDINGLY



REVISIONS				
REV	DATE	BY	APP'D	DESCRIPTION

DESIGNED BY: N. KENNEDY
 DRAWN BY: M. PRATSCHNER
 CHECKED BY: M. WHELAN
 APPROVED BY: S. CAPPELLINO
 SCALE: AS NOTED
 DATE: OCTOBER 2019

**INDIA BASIN - 900 INNES
VOLUNTARY CLEANUP PROJECT**

LANDFILL DISPOSAL SEQUENCING

LD-1

SHEET # **19** OF **23**

San Francisco Bay Regional Water Quality Control Board

December 18, 2019
File No. 38S0060 (mej)

San Francisco Recreation and Park Department
Attn: Charlene Angsucu, Project Manager
City & County of San Francisco
30 Van Ness Avenue, Third Floor, Suite 3000
San Francisco, CA | 94102
Sent via email only: charlene.angsuco@sfgov.org

Subject: Approval of Final Remedial Action Plan and Remedial Design Report, India Basin, 900 Innes Avenue, City and County of San Francisco

Dear Ms. Angsucu:

This letter responds to your July 30, 2019, [Final Remedial Action Plan and Remedial Design Report](#) (RAP/RDR), prepared on behalf of the San Francisco Recreation and Park Department (City) by Anchor QEA. As explained below, I approve the RAP/RDR.

Background

The City has voluntarily investigated and developed the RAP/RDR for the 900 Innes property and adjacent in-water sediments to address pollutant impacts and prepare the Site for redevelopment into a public park. The RAP/RDR sets forth a remedy and remedial design to address on-shore and off-shore areas by soil and sediment removal, followed by capping with clean soil/sediment, effectively severing the pathway of exposure to future site users and ecological receptors.

A draft of the RAP/RDR was presented to the public during a 30-day public comment period from March 29, 2019 to April 30, 2019. During this time a [fact sheet printed in English, Spanish and Chinese](#) was distributed and a public meeting was held to present the draft of the RAP/RDR, answer questions and take public comment. The [public comments](#) were divided into six categories, with historic preservation being the most common concern. A Public Comment Summary (attached) was prepared which describes how the comments on the draft RAP/RDR were addressed.

Approval of Report

The RAP/RDR presents an appropriate remedy for the Site and I hereby approve it.

Next Steps

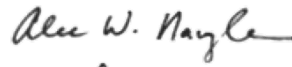
The City will now move through the necessary permitting and contracting process in order to implement the RAP/RDR. Field activities are expected to begin in the second quarter of 2020. The City also intends to hold another community meeting prior to beginning construction to discuss schedule, sequencing of activities, road

(case #38S0060)

closure/detours and noise impacts. Following completion of remedial activities, a completion report, land use control and a site management plan will be submitted to the Regional Water Board.

If you have any questions, please contact Mark Johnson of my staff at (510) 622-2493 or mark.johnson@waterboards.ca.gov.

Sincerely,



for

Michael Montgomery
Executive Officer

Attachment: Public Comment Summary

Copy by email with attachment:

S.F. DPH, Stephanie Cushing Stephanie.cushing@SFDPH.org

S.F. Recreation and Parks, Philip Ginsburg Philip.Ginsburg@sfgov.org

S.F. Recreation and Parks, Toks Ajike Toks.Ajike@sfgov.org

USEPA, Nova Blazej blazej.nova@epa.gov

USEPA, Luisa Valiela Valiela.luisa@epa.gov

Public Comment Summary - Draft Remedial Action Plan and Remedial Design Report

India Basin, 900 Innes Avenue

No.	Date Received	Commenter	Organization	Comment (Oral or Written)	Comment Category							
					Structures/ Historic Preservation	Backfill/ Clean Cover	Public Access During Construction	Kettleman & Buttonwillow Landfill Disposal	Truck Transport	dRAP/RDR Meeting & Publication Comment Process	Other Questions/ Comments	
1	4/26/19	Jill Fox, Chair	India Basin Neighborhood Association	written	X						X	
2	4/29/19	Michael Hamman	N/A	written	X							
3	4/29/19	Michael Hamman	N/A	written			X					
4	4/29/19	Michael Hamman	N/A	written					X			
5	4/29/19	Michael Hamman	N/A	written		X						
6	4/29/19	Michael Hamman	N/A	written					X			
7	4/9/19	Bradley Angel	Greenaction for Health and Environmental Justice	written						X		
8	4/9/19	Bradley Angel	Greenaction for Health and Environmental Justice	written				X				
9	4/10/19	Bradley Angel	Greenaction for Health and Environmental Justice	written						X		
10	4/16/2019	Bradley Angel	Greenaction for Health and Environmental Justice	oral								X
11	4/29/19	J.R. Eppler, President	Potrero Boosters Neighborhood Association	written	X							
12	4/29/19	Dan Dodt, President	Bayview Historical Society	written	X							
13	4/16/19	Sean D. Karlin	N/A	written	X							
14	4/30/19	David A. Gavrich, President and CEO	San Francisco Bay Railroad	written	X							
15	4/30/19	Shirley Bruton	N/A	written	X							
16	4/22/19	Dan Leininger, Executive Director	America True, Inc.	written	X							
17	4/30/19	Al Williams, President	S.F. African American Historical & Cultural Society	written	X							
17	4/30/19	Alex Lantsberg	N/A	written	X							
18	4/16/19	Pauline Peele and Greg Freeman	N/A	oral	X							

Public Comment Summary - Draft Remedial Action Plan and Remedial Design Report

India Basin, 900 Innes Avenue

Comment Category 1, Structure/Historic Preservation - Summary: The City should make a greater attempt to restore rather than demolish the existing structures beyond the Shipwright's Cottage.

Response: We understand the communities concerns about preserving the historical character of the site, as expressed in the comments by the India Basin Neighborhood Association, the Potrero Boosters neighborhood Association, the Bayview historical Society, the San Francisco Bay Railroad, America True, Inc., the S.F. African American Historical and Cultural Society, and numerous individual citizens. The Water Board is working with the City/County of San Francisco, Recreation and Park Department and the prime design team Gustafson Guthrie and Nichol (GGN) to evaluate potential options for preserving other aspects of the historical structures, besides the Shipwright's Cottage, in order to maintain the cultural heritage associated with the historical shipyard use at the site. There are, however, several challenges which need to be addressed. First, and foremost, are safety requirements associated with the new park. There are life and safety design requirements associated with the California and San Francisco Building Code requirements associated with new parks and the renovation of existing park sites. The boatyard will become a public park and will be required to meet life and safety, as well as performance requirements of the City. These requirements are related to seismic performance, access, structural conditions, and performance in a seismic event. The Department has hired structural and marine engineers to inspect all the structures (buildings, concrete piers, and docks) for integrity and feasibility for repair. These assessments have determined that the structures are beyond their useful life and/or pose a risk to human health and safety. Secondly, there are contaminants in the soils and sediments in the uplands area and along the shoreline at concentrations that pose a significant risk to people (human health) and the environment (ecological health), and where present, this material must be removed or isolated in such a way that it cannot continue to pose a threat.

The most reliable approach for achieving this goal is to excavate and remove the affected material and replace it with new, clean fill, but that cannot be accomplished in many locations unless the structures in the upland areas and along the shoreline are removed. The City will also be working with a testing firm to collect samples from each of the structures to test the materials for the presence of known adverse products like lead and asbestos which would also need to be remediated. Until these analyses are completed, the Water Board and the City cannot commit to feasibly preserving additional structures besides the Shipwright's Cottage and Marine Rail 2 (Concrete Ladder). The portion of the site where the Shipwright's Cottage is located, does not appear to be affected by the same contaminant levels so preserving that structure in place is a feasible option.

Comment Category 2, Backfill/Clean Cover - Summary: Is it possible to import less backfill material for the waterside portion of the site so that after excavation along the shoreline there will be deeper water which would benefit boating activities?

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India Basin, 900 Innes Avenue

Response: We recognize the interest in having greater water depths for public use, but the project design will face limitations on attaining usable depths because the placed backfill will need to be sufficiently thick to provide long-term environmental protection (Palermo et al., 1998). The cover layer needs to be thick enough to meet three functions: isolating the underlying materials from the overlying water; protecting against erosion/scour from waves and currents so that underlying materials are not exposed; and remaining thick enough to withstand the burrowing of marine organisms which can transport underlying material to the surface. A further amount of thickness is typically applied as a 'safety factor', for additional protection. As an example, regulatory agencies which oversee site remediation projects across the San Francisco Bay and nationally (USACE 1998) expect a minimum of three feet of clean cover material over contaminated sediment removal projects, and designed covers can be even thicker depending on future site uses and the potential for wind/wave scour during storm events.

It is also important to note that the basin's entire offshore area has completely filled in (accreted) with sediment to depths too shallow for boating. If a deeper area was left along the shoreline it would be cut off from the rest of the bay and basin during low tide events, rendering it virtually useless from a navigation standpoint. See attached example showing the India Basin cove at low tide. Previous coastal process studies prepared for the basin note the depositional rate is 0-2 inches. Attempting to create navigational channels would be infeasible from a cost and maintenance perspective.

Comment Category 3, Public Access During Construction - Summary: Can portions of the site remain open during construction to allow for bike traffic from the open space area to the Shoreline Park?

Response: India Basin Shoreline Park will remain open to the public. Public safety will remain paramount throughout the construction work, resulting in temporary limitations on access. Remediation activities at the site will include the use of heavy machinery such as excavators, rollers, cranes and large dump trucks operating near each other. There will be no way to allow access to the site during active construction without the potential for injuries to occur. As such, the project site will be completely enclosed in fencing and access will be controlled by the contractor. Members of the public that want to view the cleanup work should be able to view portions of the work from the existing India Basin Shoreline Park and the India Basin Open Space properties. The Water Board and the City apologize for the inconvenience that this may cause, but it is for public safety purposes only.

Comment Category 4, Kettleman and Buttonwillow Landfill Disposal - Summary: The Water Board should find an alternate disposal location besides Button Willow or Kettleman Hills, as these hazardous waste landfills are operating under expired permits that were issued with racially discriminatory processes.

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Response: Both landfills are currently certified to receive waste materials in the State of California, so if these, or other, disposal facilities are officially permitted to receive the types of waste being disposed, the Water Board and the City will not prohibit their use. The construction contract will instead specify the classification of the material (along with its full waste profile report) and that it must be managed at a licensed facility in California or elsewhere. It will be up to the bidders to locate one or more appropriate facilities that are licensed to manage the material.

Comment Category 5, Truck Transport - Summary: The Water Board needs to find an alternate means for transporting waste material offsite and importing clean fill to the site that trucks which would cause significant impacts to the local residents. Options suggested include barge or rail transport.

Response: The Water Board, the Department, and the engineering team are currently evaluating the potential for rail transport to an inland landfill. A rail option would include transporting the material from the site by truck to the Pier 96 rail spur and waste loading/recycling facility located less than a mile north of the site, where it would be loaded onto rails cars and delivered to a landfill. This process would likely be reversed with clean imported fill materials brought to the site by rail and then truck. The operators of the rail line have been contacted to see if this option is feasible and how much it would cost.

Transporting the material via barge is not an option due to the shallow water depths in the bay. Previous dredging conducted at the site created a channel leading up to the docks, but this channel has since filled in (see attached photo). Dredging a new channel to the site would not be feasible as there is contaminated sediment buried throughout the site that is now covered with clean material. Dredging would bring this material back to the surface and cause more environmental damage to the site and surrounding ecosystem.

Comment Category 6, Questions Received Regarding dRAP/RDR Review and Comment Process: The following questions were received related to the dRAP/RDR review and comment process.

- A. **Question (received and answered prior to the meeting):** We would like to know how you plan to present the draft cleanup plan, answer questions AND receive comments all in one hour?

Response: The meeting will begin with a meet/greet and manned poster boards. Spanish and Chinese translators will also be there to help with any translation during this time. This will allow community members to meet us individually. It also allows those who are reluctant to speak in public the opportunity to ask questions and get answers. We expect this to run about 20 minutes. The second portion of the meeting will be a 10-minute formal presentation of the draft plan. The draft plan is

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straight forward and should not take long to present. Following the presentation, the remainder of the meeting will be time for discussion, questions, and answers. To accept comments, we will have cards available. Once the discussion breaks, we will also have staff available to orally receive comments for those who prefer it. Should the meeting extend past an hour, we will remain until everyone is able to have their questions answered and receive their comments.

- B. **Question (received and answered prior to the meeting):** We would also like to know what languages other than English, if any, this notice was published in and how it was publicized?

Response: The meeting notices were produced in English, Spanish, and Chinese. They were hard mailed to a quarter mile radius list along with interested stakeholders (1,494 mailings) and we also used the City's e-mail list of 315 interested parties.

- C. **Question (received and answered prior to the meeting):** We would like to know why you chose a meeting at 5:30 PM which is when many people are just leaving work or eating dinner?

Response: The City has held numerous meetings regarding the proposed development of this property, and the adjacent property. These meetings regularly started at 5:30 and were well attended. We believe it will be important to keep our meeting regarding the cleanup consistent with this schedule.

- D. **Question:** Will the residents be allowed to review and comment on the contractor's work plan for construction before the work is started?

Response: The City will hold another meeting with residents before construction starts to go over the planned schedule and sequence of activities, including such items as potential road closures or detours and noise impacts.

Comment Category 7 Summary, Other Questions/Comments:

- A. **Question:** Will the City evaluate the site for possible radiation contamination?

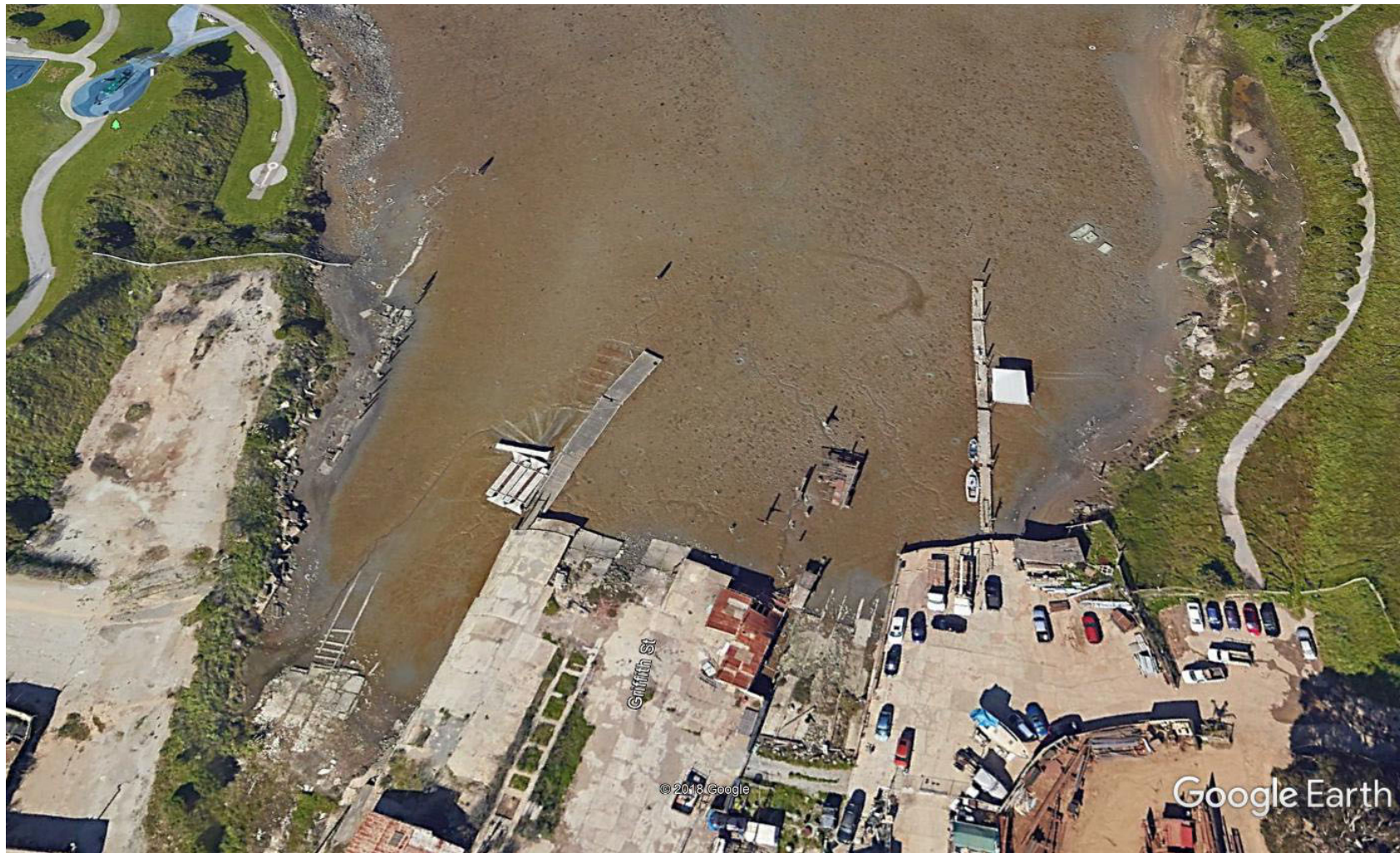
Response: Yes. The City will conduct a supplemental assessment to evaluate the site for potential radiation contamination.

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References Cited:

Guidance for Subaqueous Dredged Material Capping. U.S. Army Corps of Engineers Waterways Experiment Station Technical Report DOER-1. Prepared by Michael R. Palermo, James E. Clausner, Marian P. Rollings, Gregory L. Williams, Tommy E. Myers, WES; Thomas J. Fredette, New England District; and Robert E. Randall, Texas A&M University. June 1998.



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Low Tide at India Basin (Source Google Earth, Image dated March 2018)

Davis Bacon Term and Condition
For
Hazardous Waste Cleanup Cooperative Agreements to Governmental Entities

DAVIS BACON PREVAILING WAGE TERM AND CONDITION

The following terms and conditions specify how Cooperative Agreement Recipients (CARs) will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under CERCLA 104(g) and any other statute which makes DB applicable to EPA financial assistance. If a CAR has questions regarding when DB applies, obtaining the correct DB wage determinations, DB contract provisions, or DB compliance monitoring, they should contact the regional Brownfields Coordinator or Project Officer.

1. Applicability of the Davis Bacon Prevailing Wage Requirements

For the purposes of this term and condition, EPA has determined that all construction, alteration and repair activity involving the remediation of hazardous substances, including excavation and removal of hazardous substances, construction of caps, barriers, structures which house treatment equipment, and abatement of contamination in buildings, is subject to DB. If CAR encounters a unique situation at a site that presents uncertainties regarding DB applicability, the CAR must discuss the situation with EPA before authorizing work on that site.

2. Obtaining Wage Determinations

- (a) Unless otherwise instructed by EPA on a project specific basis, the CAR shall use the following DOL General Wage Classifications for the locality in which the construction activity subject to DB will take place. CARs must obtain wage determinations for specific localities at www.wdol.gov.
 - (i) When soliciting competitive contracts or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments) for, the excavation and removal of hazardous substances, construction of caps, barriers, and similar activities that do not involve construction of buildings CAR shall use the “Heavy Construction” Classification.
 - (ii) When soliciting competitive contracts or issuing ordering instruments for the construction of structures which house treatment equipment, and abatement of contamination in buildings (other than residential structures less than 4 stories in height) CAR shall use “Building Construction” classification.
 - (iii) When soliciting competitive contracts or issuing ordering instruments for the abatement of contamination in residential structures less than 4 stories in height the CAR shall use “Residential Construction” classification.

Note: CARs must discuss unique situations that may not be covered by the General Wage Classifications described above with EPA. If, based on discussions with a CAR, EPA determines that DB applies to a unique situation the Agency will advise the CAR which

General Wage Classification to use based on the nature of the construction activity at the site.

(b) CARs shall obtain the wage determination for the locality in which a Brownfields cleanup activity subject to DB will take place *prior* to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

- (i) While the solicitation remains open, the CAR shall monitor www.wdol.gov on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The CAR shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the CAR may request a finding from EPA that there is not a reasonable time to notify interested contractors of the modification of the wage determination. EPA will provide a report of the Agency's finding to the CAR.
- (ii) If the CAR does not award the contract within 90 days of the closure of the solicitation, any modifications or determination contained in the solicitation shall be effective unless EPA, at the request of the CAR, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The CAR shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.
- (iii) If the CAR carries out Brownfield cleanup activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the CAR shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

(c) CARs shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a CAR's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the CAR has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the CAR shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The CAR's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract Provisions

(a) The CAR shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to DB, the following labor standards provisions.

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the applicable wage determination of the Secretary of Labor which the CAR obtained under the procedures specified in Item 2, above, and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. CARs shall require that the contractor and subcontractors include the name of the CAR employee or official responsible for monitoring compliance with DB on the poster.

(ii)(A) The CAR, on behalf of EPA, shall require that contracts and subcontracts entered into under this agreement provide that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The EPA Award Official shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the CAR agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the CAR to the EPA Award Official. The Award Official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the award official or will notify the award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the CAR do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the questions, including the views of all interested parties and the recommendation of the award official, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the Award Official within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(1) Withholding. The CAR, upon written request of the Award Official or an authorized representative of the Department of Labor, shall withhold or cause to withhold from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, EPA may, after written notice to the contractor, or CAR take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(2) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the CAR who will maintain the records on behalf of EPA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/whd/programs/dbra/wh347.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the CAR for transmission to the EPA, if requested by EPA, the contractor, or the Wage and Hour Division of

the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the CAR.

(B) Each payroll submitted to the CAR shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR Part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR Part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, EPA may, after written notice to the contractor, CAR, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and Trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona

vide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of

work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this term and condition.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors), the CAR, borrower or subrecipient and EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provisions for Contracts in Excess of \$100,000

(a) Contract Work Hours and Safety Standards Act. The **CAR** shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The **CAR**, upon written request of the Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the CAR shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the CAR shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The CAR shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The CAR must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The CAR shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the CAR must conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. CARs must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. CARs shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The CAR shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The CAR shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the CAR must spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. CARs must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the CAR shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The CAR shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) CARs must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <https://www.dol.gov/whd/america2.htm>.