



Lawrence Fay Director of Environmental Health

Site Name: Orgtega Park
SMU Site #: 760
Lead Caseworker: Steve Nailor

Environmental Health Services

225 Camino del Remedio ♦ Santa Barbara, CA 93110
805/681-4900 ♦ FAX 805/681-4901

2125 S. Centerpointe Pkwy. #333 ♦ Santa Maria, CA 93455-1340
805/346-8460 ♦ FAX 805/346-8485

Voluntary Remediation Oversight Program

REMEDIAL ACTION AGREEMENT

I. INTRODUCTION

A. Parties.

The Santa Barbara County Public Health Department (PHD), enters into this Remedial Action Agreement ("Agreement") with the City of Santa Barbara Responsible Party (RP).

B. Site.

The property that is the subject of this Agreement is located at:
Ortega Park, 604 E. Ortega Street, Santa Barbara, CA 93103

Assessor Parcel Number(s) 031-172-002

Legal Description(s) N/A

C. Authority.

PHD is authorized to enter into this Agreement by the provisions set forth in California Health and Safety Code (HSC) Section 101480 et seq. and Santa Barbara County Code Chapter 15 as the successor to the Santa Barbara County Fire Department and acting in the capacity of the "local officer" per HSC Section 101480.

II. BACKGROUND

A. Ownership.

1. The Site is owned by:

Name: City of Santa Barbara
Address: PO BOX 1990
Santa Barbara, CA 93102
Phone no.: (805) 564-5430
Email: jzachary@santabarbaraca.gov

2. The RP for the site and for the Remedial Action Agreement are:

Name: Jill Zachary, City of Santa Barbara Parks and Recreation Director
Address: PO BOX 1990
Santa Barbara, CA 93102
Phone no.: (805) 564-5430
Email: jzachary@santabarbaraca.gov

3. The RP's Project Coordinator (i.e., P.G., or P.E. Civil. See Sect. III.J.) for this project is:

Name: TBD
Address: TBD

Phone no.: TBD

Email: TBD

B. History of Site.

The site was previously used for the following land-uses: (list all known land-uses for the site). Please attach an electronic copy (PDF format) of any and all Phase I or II Environmental Site Assessments (ESA) completed for the subject parcel(s). Please refer to the Phase I or II ESA if they provide detailed information related to items II.C and II.D.

The site was a municipal waste dump from at least 1902 until at least 1927. Between 1927 and 1930, the site was developed to its current use as a City park. There are plans to renovate the park with new features including a skate park, swimming pool, artificial turf athletic fields, picnic areas, basketball court, and restrooms.

The Phase II Environmental Site Assessment Report: Ortega Park, City of Santa Barbara (6/13/2019) prepared by Rincon Consultants, Inc is attached.

C. Physical Description of the Site.

The Site consists of approximately 5.35 acres of flat lying urban park with a swimming pool, public restroom, community building, athletic fields, landscaping, basketball court, picnic areas, and a municipal drinking water supply well. (Explain the configuration of the land, i.e., flat lying; hilly; wetlands, etc., and what is currently on the property. For example: "The property is currently being developed and is graded with utilities installed. No buildings are currently present on the property.")

D. Contamination of Site – Type and Extent.

Identify reported or potential chemicals of concern based on history of site use, potential sources, and reported releases and/or completed analyses of environmental samples.

Refer to attached report:

Phase II Environmental Site Assessment Report

Rincon Consultants, Inc

June 13, 2019

III. AGREEMENT

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

A. Remedial Action and County Oversight.

The RP shall perform environmental assessment and remedial action with respect to the contamination of the Site and PHD shall oversee all related work and remedial action(s). All such assessment and remedial action shall be performed by the RP in compliance with all applicable statutes, ordinances, regulations and other provisions of law and in a manner consistent with current regulatory guidelines and industry standards. Regardless of the level of oversight from PHD, RP is responsible for the timely reporting, investigation, and cleanup of environmental pollution such that the beneficial uses of waters of the State, human health, and the environment are protected, and in compliance with appropriate laws, regulations and policies. RP is also responsible for compliance with any new laws or regulations that may be applicable during the term of this agreement.

B. Additional Activities.

Additional site characterization and remedial action may be performed by the RP and overseen by PHD under this Agreement upon mutual consent of both parties.

C. Agreement Managers.

The Director of Environmental Health is the Agreement Manager for this Agreement. Jill Zachary, Parks and Recreation Director, City of Santa Barbara, is the RP's Agreement Manager for this Agreement. Either party to this Agreement may, by giving at least 10 days advance written notice to the other party, change its Agreement Manager.

D. Notices and Submittals.

All notices, reports, and other communications required under this Agreement, unless otherwise specified herein, shall be in writing and delivered (via upload to the State's Geotracker database, the U.S. Mail, email, facsimile transmission, or other reliable means) to the respective parties at the following addresses:

1. To: The Director of Environmental Health Services, Public Health Department.

Attn: VROP Supervisor
2125 South Centerpointe Parkway, Room 333
Santa Maria, CA 93455
Phone: (805) 346-8359
Fax: (805) 346-8485
Email: paul.mccaw@sbcphd.org

2. To the RP:

Name: Jill Zachary
Address: PO Box 1990
Santa Barbara, CA 93102
Phone no: (805) 564-5431
Email: jzachary@santabarbaraca.gov

3. Property Owner:

Name: City of Santa Barbara
c/o Jill Zachary, Parks and Recreation Director
Address: PO Box 1990

Phone no.: (805) 564-5431
Email: jzachary@santabarbaraca.gov

E. Submission of Reports.

Consistent with California's regulations for electronic submittal of information (ESI) for all soil and groundwater cleanup cases to the State Water Resource Control Board's Geotracker database (Title 23, Division 3, Chapter 30, Articles 1 and 2; Title 27 Division 3, Subdivisions 1 and 2) all ESI shall be uploaded to Geotracker. ESI includes Portable Document Format (PDF) files of all reports (GEO_REPORT), electronic data files (EDFs) of all laboratory reports, boring logs (GEO_BORE), monitoring well data (GEO_WELL), and surveyed or Global Positioning System (GPS) locations (GEO_XY and GEO_Z) of all borings and wells drilled for the site. All reports shall be submitted electronically to PHD as PDF file via uploads to Geotracker, e-mail, or other means. PHD reserves the right to request hard copies of large format figures and other documentation as needed to facilitate review. Otherwise, no hard copy submittals to PHD are required.

F. Review and Revision of Reports.

If PHD determines that any report, plan, schedule or other communication submitted by the RP for approval pursuant to this Agreement fails to comply with this Agreement or is otherwise deficient, PHD shall notify the RP in writing of the deficiency and recommended changes. The RP shall then promptly correct the deficiency and resubmit to PHD.

G. Approvals of Reports.

All PHD approvals of reports, plans, schedules, or other communications submitted by the RP for approval pursuant to this Agreement, shall be signed by PHD Agreement Manager or her/his designee. No other communication from PHD (including any written or oral suggestions or comments by PHD respecting reports, plans, schedules and other communications from the RP) shall be construed as a PHD approval under this Agreement.

H. Endangerment During Implementation.

In the event PHD determines that any activity (whether or not pursued in compliance with the Agreement) may pose an imminent or substantial endangerment to the health and safety of people on the Site or in the surrounding area or to the environment, PHD may order the RP to stop further implementation of this Agreement for such period of time as may be needed to abate the endangerment.

I. Payment.

As allowed by Health & Safety Code Section 101490, and in consideration of the oversight services provided by PHD to the RP pursuant to this Agreement, the RP shall pay PHD a fee of \$206 per hour. The fee is set by the Board of Supervisors. If the fee is increased during the term of this Agreement, the new fee will be applicable to this Agreement, after the RP is provided notice of the increase. Additionally, the RP shall pay any costs incurred by PHD for professional consultant services necessary to oversee the site remediation. EHS will notify RP prior to engaging a consultant for professional services. Payment of charges shall be made as follows:

1. No more frequently than monthly or less frequently than quarterly, PHD shall bill the RP for services provided during the preceding period. The bill shall itemize the services provided, state the number of PHD person hours expended, and state the dollar amount due, and include an invoice of charges for professional consultant services incurred.
2. The RP shall make all such payments within 30 calendar days of the invoice date. If invoices are not paid as specified above, late penalties will be accrued as follows:
 - a. A 10% late penalty will be applied to all charges if not paid within 60 days.
 - b. An additional 15% penalty will be applied to all charges if not paid within 90 days.
3. For this case, approximately 0 hours have already been worked, and will be included in the first invoice.
4. The total amount to be paid under this agreement by the City of Santa Barbara shall be limited to:
 - (a) Under \$10,000 without prior written authorization from the City of Santa Barbara's City Administrator.
 - (b) Under \$35,000 without prior written authorization from the City of Santa Barbara.

J. Project Coordinator.

The remedial action performed by the RP pursuant to this Agreement shall be under the direction and supervision of a qualified project coordinator, with expertise in hazardous substance site clean-up. Prior to the commencement of such remedial action, the RP shall submit to PHD the name, address and resume demonstrating the requisite expertise of the project coordinator. The RP shall promptly notify PHD of any change in the identity of the project coordinator and provide the new name, address and resume. All engineering and geological work shall be conducted in conformance with applicable state law, including, but not limited to Business and Professions Code Sections 6735 and 7835.

K. Access to Site.

The RP shall provide access to the Site and offsite areas to which access is necessary to implement this Agreement. Such access shall be provided to PHD employees, contractors, and consultants at all reasonable times. Nothing in this Section is intended or shall be construed to limit in any way the right of entry or inspection that PHD or any other agency may otherwise have by operation of any law. PHD and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for the purposes including, but not limited to:

1. Inspecting records, operating logs, sampling and analytical data, health and safety plans, permits, and contracts relating to this Site;
2. Reviewing the progress of the RP in carrying out the terms of this Agreement;
3. Conducting or witnessing such sampling and tests as PHD may deem necessary; and
4. Verifying the data submitted by the RP.

L. Sampling, Data, and Document Availability.

When requested, the RP shall make available and provide copies of all data and information concerning contamination at the Site, including technical records and contractual documents, sampling and monitoring

information, permits, photographs and maps, whether or not such data and information was developed pursuant to this Agreement.

M. Notification of Field Activities.

The RP shall inform PHD at least three (3) days in advance of all field activities pursuant to this Agreement and shall allow PHD to take duplicates of any samples collected by the RP pursuant to this Agreement.

N. Notification of Environmental Condition.

The RP shall notify PHD immediately upon learning of any condition posing an immediate threat to public health or safety or to the environment. Within seven days of the onset of such a condition, the RP shall furnish a written report, signed by the RP's Agreement Manager, setting forth the events that occurred, and the measure(s) taken in the response thereto. This information shall be supplied verbally to PHD within 24 hours of its occurrence, and/or the RP's knowledge of it.

O. Termination of Agreement.

Except as otherwise provided in this Section, each party to this Agreement may unilaterally terminate this Agreement, except for Section III.T at any time for any reason. Termination may be accomplished by giving thirty (30) days advance written notice of the election to terminate this Agreement to the other party. In the event that this Agreement is terminated under this Section, the RP shall remain liable hereunder for payment pursuant to Section III.I up to the effective date of termination and any work necessary to transfer oversight responsibility to the appropriate state or federal agency. If the Agreement is terminated by either party prior to adequate completion of the Agreement, the case will be referred to the Department of Toxic Substance Control (DTSC) or Regional Water Quality Control Board (RWQCB) for issuance of a State Corrective Action Order, Cleanup and Abatement Order, or other order or enforceable agreement, as appropriate, for further remedial action directives.

P. Enforcement.

If, at any time, the RP is not in compliance with all applicable statutes, regulations, ordinances, permits or directives from PHD or otherwise fails to complete assessment or remedial actions that constitute a portion of this Agreement, PHD can, with adequate notice, terminate this Agreement and refer the case to DTSC, the RWQCB or the Santa Barbara County District Attorney's Office for enforcement.

Q. Time Periods.

Unless otherwise specified, time periods begin from the date this Agreement is fully executed, and "days" means calendar days. "Business days" means all calendar days that are not weekends or official State/Federal holidays.

R. RP's Liabilities.

Nothing in this Agreement shall constitute or be considered a satisfaction of, or release from, liability for any condition or claim arising as a result of RP's past, current, or future operations. Nothing in this Agreement is intended or shall be construed to limit the rights of any of the parties with respect to claims arising out of or relating to the deposit or disposal at any other location of substances removed from the Site.

S. County Liabilities.

PHD shall not be liable for any injuries or damages to persons or property resulting from acts or omissions of the RP in carrying out activities pursuant to this Agreement, nor shall PHD be deemed a party to any contract entered into by the RP or its agents in carrying out the activities pursuant to this Agreement.

T. Indemnification.

The RP shall defend and indemnify Santa Barbara County (and its agents, officers and employees) against any claims, demands, damages, liability (including strict liability under the Federal Comprehensive Environmental Response, Compensation and Liability Act or any other provisions of law) and costs (including attorney's fees) arising out of or in any way connected with either the contamination of the Site or the acts or omissions of either party (or their agents, officers - or employees) in the implementation of this Agreement, excepting only liability for loss or injury caused by the sole negligence or willful misconduct of Santa Barbara County (or its agents, officers or employees). The provisions of this Section III.T shall remain in effect notwithstanding any termination of this Agreement pursuant to Section III.O."

U. Reservation of Rights.

PHD and the RP reserve the following rights:

1. Nothing in this Agreement is intended or shall be construed to limit or preclude PHD from taking any action authorized by law or equity to protect public health and safety or the environment and recovering the costs thereof.
2. Nothing in this Agreement shall constitute or be construed as a waiver of the RP's rights, (including any covenant not to sue or release) with respect to any claim, cause of action, or demand in law or equity that the RP may have against any "person," as defined in Health and Safety Code Section 25319, that is not a signatory to this Agreement.
3. By entering into this Agreement, the RP does not admit to any fact, fault, or liability under any statute or regulation.

V. Compliance with Applicable Laws.

Nothing in this Agreement shall relieve the RP from the duty to comply with all applicable laws and regulations, and the RP shall perform all actions required by this Agreement and comply with all applicable federal, state and local laws and regulations.

W. California Law.

This Agreement shall be governed, performed, and interpreted under the laws of the State of California.

X. Severability.

If any portion of this Agreement is ultimately determined not to be enforceable, that portion will be severed from the Agreement and the severability shall not affect the enforceability of the remaining terms of the Agreement.

Y. Parties Bound.

This Agreement applies to and is binding, jointly and severally, upon each signatory and its officers, directors, agents, receivers, trustees, heirs, executors, administrators, successors, and assigns, and upon any successor agency of PHD that may have responsibility for and jurisdiction over the subject matter of this Agreement. No change in the ownership or corporate or business status of any signatory, or of the facility or Site shall alter any signatory's responsibilities under this Agreement.

Z. Effective Date.

The effective date of this Agreement is the date when this Agreement is fully executed.

AA. Representative Authority.

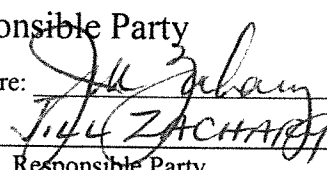
Each undersigned representative of the parties to this Agreement certifies that he/she is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind the parties to this Agreement.


The Santa Barbara County Public Health Department

Date: 12-19-19

By: Director of Environmental Health

Responsible Party

Signature: 

Date: 11/18/2019

Name: JILL ZACHARY

Title: PARKS AND RECREATION DIRECTOR

By: Responsible Party