DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

February 19, 2020

The Honorable Christy Goldsmith Romero
Special Inspector General
for the Troubled Asset Relief Program
1801 L Street NW, 4th Floor
Washington, DC 20036

Re: SIGTARP Recommendations Regarding the Hardest Hit Fund

Dear Ms. Romero:

I write in response to recent recommendations that the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) has made regarding Treasury's administration of the Hardest Hit Fund (HHF). This letter serves as an update on Treasury's efforts to respond to SIGTARP's recommendations in (1) its July 2, 2019 Evaluation Report (Report) concerning environmental risks from blight elimination activities in South Carolina, and (2) its letter of August 13, 2019 (Letter) concerning fraud and waste prevention in mortgage payment assistance programs.

Status of the Hardest Hit Fund

Treasury established the HHF in February 2010 to help prevent foreclosures and stabilize housing markets in areas hardest hit by the housing crisis. State housing finance agencies (together with certain designated entities, the Housing Finance Agencies (HFAs)) in 18 states and the District of Columbia use these funds to design and implement programs tailored to the specific needs and conditions of their respective communities. Each of these states implemented mortgage payment assistance programs to assist homeowners with their monthly mortgage payment, provided that the homeowners meet criteria that may include unemployment or underemployment. Some states have implemented additional program types, including principal reduction, transition assistance, down payment assistance, and blight elimination. Eight states have chosen to create blight elimination programs, which have used HHF funds to demolish and green more than 40,000 blighted properties as of December 31, 2019.[1]

Today, the HHF program is nearly concluded. As of September 30, 2019, states have drawn approximately $9.4 billion (98 percent) of the $9.6 billion allocated to the program, and they have disbursed $9.3 billion (97 percent) in program and administrative funds. One of the states with the largest HHF allocations (Florida) has already closed its entire program, and we currently expect that up to four additional states will shutter their entire programs by the end of the fiscal year. All states must finalize any decisions with respect to underwriting homeowner assistance or blight elimination projects by December 31, 2020, and must conclude any disbursements on

[1] According to estimated, self-reported data.

behalf of homeowners or blighted properties by December 31, 2021. Accordingly, all of the remaining HFAs have begun implementing wind-down plans.

All states have nearly concluded their mortgage payment assistance programs. Only one state (Arizona) continues to review new applicants under its mortgage payment assistance program; every other state has already closed its application portal to mortgage payment assistance applicants.

Blight elimination programs are also winding down. Of the eight states that opened blight elimination programs, three states (Alabama, Illinois, and South Carolina) have fully closed their programs. To date, approximately 40,000 blighted properties have been demolished, greened, and funded through HHF; another 4,000–5,000 properties have been demolished and greened with funding pending. In addition, based upon our communications with state HFAs, we estimate that fewer than 3,000 additional properties are expected to be demolished under the program. Put another way, demolition has already been completed for more than 93 percent of properties that will be funded with HHF.

Since the inception of the HHF program, Treasury's participation agreements with the HFAs have required the HFAs and their contractors to comply with "all Federal, state and local laws, regulations, regulatory guidance, statutes, ordinances, codes, and requirements." This, of course, includes environmental laws and regulations. Treasury has also required the states to implement a system of internal controls designed to ensure compliance with applicable laws, and to provide regular, independent verification that such internal controls are effective. Treasury conducts regular, on-site compliance reviews of each of the HFAs to confirm the presence of internal controls and that the HFAs are following their own policies and procedures. Treasury has further enhanced its sample-based testing during these reviews to address areas at higher risk of noncompliance as needed.

SIGTARP's Report Regarding Blight Elimination in South Carolina

We enclose a copy of Treasury's official response to a draft version of the Report. As we noted in that response, the Report is based in large part on a review of the documentation associated with the demolition of one property in South Carolina and an in-person observation of the demolition of a second property in South Carolina. However, South Carolina closed its blight elimination program on April 30, 2019—a full two months before the Report was issued. Nonetheless, SIGTARP extrapolated the results of its limited review of two demolitions in a closed program to make eight recommendations that it intended to apply to all of the unique blight elimination programs. We also noted the likelihood that the Report could contain inaccurate facts and conclusions, because a prior SIGTARP Report evaluating blight elimination in Flint, Michigan had contained such inaccuracies.

Upon publication of the Report, Treasury requested that South Carolina conduct a review and analysis of SIGTARP's findings. South Carolina reviewed the documentation, procedures, and controls relating to the Report, and it also considered possible program-wide implications of implementing the Report's recommendations. South Carolina ultimately concluded that some of the documents cited as missing by SIGTARP were in fact available and that many of the best

practices and inspection protocols recommended by SIGTARP had already been administered by the South Carolina Department of Health and Environmental Control. Treasury has provided SIGTARP with South Carolina's comments on the Report under separate cover.

Treasury agrees with SIGTARP that it is important to minimize health and environmental risks within the program. Accordingly, we have implemented planned corrective actions with respect to recommendations 1-7. These actions have included: (1) meeting with all HFAs administering HHF blight elimination programs to assess the current status of the program, obtain estimates of current and remaining production, and affirm that all relevant blight elimination activities must be accounted in the context of an HFA's wind down planning; (2) discussing with HFAs best practices and protocols for abatement surveying; demolition and abatement licensing; air monitoring controls; clean dirt, pre-demolition, open-hole, and final inspection procedures, among other environmental best practices; and (3) conducting detailed calls focusing on the health and environmental impact of blight elimination programs with those HFAs that conduct the overwhelming majority of total blight elimination activities under HHF. Treasury has also confirmed that each state requires documentation, licensing, and permitting that address each of SIGTARP's recommendations.

Recommendation 8 called for Treasury to review $13,750 of expenses charged to HHF by South Carolina to determine if the costs were necessary or allocable to the Troubled Asset Relief Program (TARP). Treasury requested and reviewed invoices and documentation supporting these expenses from South Carolina, and we ultimately determined that these expenses were allowable.

* * *

Treasury notes that, on June 4, 2019, SIGTARP initiated a new evaluation of environmental risks associated with blight elimination in Detroit, Michigan, for which it has been conducting field work for the last eight months.[2] We understand that this evaluation is similar in many respects to SIGTARP's South Carolina and Flint, Michigan blight elimination evaluations. In both of those prior evaluations, SIGTARP did not communicate any information regarding its findings prior to issuing the draft report and recommendations. In addition, it has been SIGTARP's practice to prohibit Treasury from communicating with the state agency about the report until it has been published, and to require Treasury to respond to the draft reports within ten business days (or less).

In light of the issues we have documented with respect to those evaluations, Treasury requests that it be permitted to share any draft report regarding the new evaluation with the Michigan HFA, and that it be provided with more than ten business days to respond. Treasury also requests that SIGTARP communicate its findings on an iterative and ongoing basis, to allow

[2] Engagement Memorandum from Special Inspector General Romero, June 4, 2019, available at: https://www.sigtarp.gov/Audit%20Reports/Engagement_Memo__Evaluation_HHF_Blight_Elimination_Program_6.4.2019.pdf.

Treasury to address potential areas of concern efficiently and effectively as HHF programs are rapidly concluding.[3]

SIGTARP's Letter Regarding Mortgage Payment Assistance Programs

SIGTARP's Letter, dated August 13, 2019, was not associated with any formal audit or evaluation, and focused primarily on California, a state that had closed its mortgage payment assistance program to new applicants more than one year before the Letter was sent and has now completed its final disbursements on behalf of homeowners. SIGTARP proposed that Treasury require all states to implement a specific control for fraud and waste prevention in their mortgage assistance programs, in which homeowners receiving assistance would be required to regularly recertify that they continued to meet program requirements. Most states already require this from homeowners receiving assistance; others, including California, have implemented different controls to address the same issue.

The Letter noted that California did not require such a certification, and that SIGTARP believed that California homeowners had received an aggregate $438,000 in mortgage assistance payments for which they were no longer eligible.[4] Notably, in lieu of collecting homeowner attestations to employment status (among other criteria), the California HFA performed the verification themselves by obtaining regular reports from California's Employment Development Department to determine employment status prior to authorizing the next mortgage assistance payment. In instances where mortgage assistance had been provided and the homeowner was no longer eligible, the California HFA stopped making payments on behalf of the homeowner and worked to obtain repayment where appropriate. In addition, the California HFA referred instances of suspected fraud to SIGTARP for further investigation. California closed its mortgage payment assistance program to new applicants in June 2018 and has already completed its final mortgage assistance payments on behalf of homeowners.

For new applicants to mortgage assistance programs, Treasury agrees that state HHF programs should require regular recertifications of program eligibility by participants. Treasury has confirmed that the one remaining state HFA that continues to offer mortgage payment assistance to new, eligible applicants already requires program participants to regularly recertify that they remain eligible for assistance. In light of the operational constraints among participating states (including limited staff and administrative resources given the wind down of HHF programs), the number of states already closed, and the potential confusion on the part of participants, Treasury determined that it would not be advisable to implement additional requirements for homeowners already receiving assistance.

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[3] To date, SIGTARP has not shared any findings or areas of concern identified through this evaluation.
[4] To put this number into perspective, California provided approximately $1.1 billion in mortgage assistance payments. If SIGTARP's numbers are accurate, it would compute to an error rate of 0.04%.

Even as TARP programs wind down and close, we continue to work with our state partners to implement any necessary changes to their programs. Please feel free to contact Treasury's Office of Financial Stability at (202) 622-4421 if you have any questions about this letter.

Sincerely,

Gavin Beske
Deputy Assistant Secretary for Community and Economic Development

Enclosures

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

June 26, 2019

The Honorable Christy Goldsmith Romero
Special Inspector General
for the Troubled Asset Relief Program
1801 L Street, NW, 4th Floor
Washington, DC 20036

Dear Ms. Romero:

I write in response to your draft evaluation report of June 12, 2019 (the Draft), regarding blight elimination in South Carolina under Treasury's Hardest Hit Fund (HHF). We continue to wind down the remaining programs funded through the Troubled Asset Relief Program (TARP), including HHF, and we note that South Carolina's blight elimination program, the Neighborhood Initiative Program (NIP), is substantively closed as of April 30, 2019.[1] Treasury takes seriously the environmental issues presented by the removal of blighted properties, and we appreciate the work conducted by the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) and the Army Corps of Engineers. This letter provides Treasury's official response to the Draft.

Background

Treasury established the Hardest Hit Fund (HHF) in February 2010, to help prevent foreclosures and stabilize housing markets in areas hardest hit by the housing crisis. State housing finance agencies (together with certain designated entities, the HFAs) in 18 states and the District of Columbia have used these funds to design and implement more than 90 programs tailored to the specific needs and conditions of their respective communities. Today, the HHF program is nearly concluded. HFAs have until December 31, 2020, to make any final decisions with regard to homeowner applications and blighted property reimbursements, and they must make final program disbursements no later than December 31, 2021. States have drawn approximately $9.3 billion (97.1 percent)[2] of the $9.6 billion allocated to the program, and they have disbursed $9.0 billion (93.7 percent).[3] At this late stage of the program, and with less than $300 million (2.9 percent) remaining, all of the HFAs have begun implementing wind-down plans. Treasury remains focused on monitoring HFAs' compliance with program requirements as they implement their respective plans.

There is no single "HHF blight elimination program"; eight HFAs chose to create individual blight elimination programs, tailored to the specific economic needs and infrastructural support

[1] On April 30, 2019, South Carolina made the final disbursement for completed blight elimination projects, and does not anticipate conducting further blight elimination activities. There remains a possibility that a court could order South Carolina to fund additional blight elimination projects that have been placed on hold due to ongoing litigation.
[2] Figures are as of May 31, 2019.
[3] Figures are as of March 31, 2019

available within their respective states. Treasury requires all properties in HHF blight elimination programs to be both demolished and greened. Greening involves general improvement of the lot to allow for its repurposing, as a step to prevent the empty lot from remaining vacant and abandoned. As of March 31, 2019, these eight blight elimination programs have demolished and greened more than 34,000[4] blighted properties and disbursed over $526 million.

Three of the eight states (Alabama, Illinois, and South Carolina) have closed their blight elimination programs,[5] with a fourth (Indiana) scheduled to complete all remaining demolition and greening activity by this fall. The four remaining states – Michigan, Mississippi, Ohio, and Tennessee – have indicated to Treasury that they have sufficient funds to keep their programs open through the end of 2020, although demolitions continue to be extremely limited in Mississippi and Tennessee. As noted above, all blight elimination activity – including all demolition, greening, and related invoicing – must be completed and approved for reimbursement by the HFAs within the next year and a half, by December 31, 2020. Some reimbursements on already-completed and approved activities will then trail into early 2021. Treasury estimates that less than $200 million remains to be disbursed under all HHF blight elimination programs.[6]

Since the inception of HHF, Treasury has required the HFAs and their contractors to comply with "all Federal, state and local laws, regulations, regulatory guidance, statutes, ordinances, codes and requirements." This, of course, includes environmental laws and regulations. Treasury also requires the HFAs to implement a system of internal controls designed to ensure compliance with applicable laws, and to provide regular, independent verification that such internal controls are effective. Treasury conducts regular, on-site compliance reviews of each of the HFAs to confirm the presence of internal controls and that the HFAs are following their policies and procedures.

Since 2016, Treasury has conducted three compliance reviews involving South Carolina's blight elimination program, NIP.[7] These reviews have tested, among other things, South Carolina's internal controls, guidelines, policies, and procedures to ensure that they include the supervision and management of program partners, underwriter and contractor performance and compliance, changes to policies and procedures designed to verify that program partners and their respective contractors comply with program requirements, and samples of both denied and approved application reviews to determine whether the reviews were completed in accordance with South Carolina's quality assurance controls, policies, and procedures. Treasury has not found any

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[4] As of March 31, 2019, also included in Q1 data provided to SIGTARP in its quarterly data call.

[5] Both Alabama and South Carolina's programs have made final disbursements. In Illinois, all demolition and greening activity has been completed, and only a residual pipeline of delayed invoices remains. As a result, disbursements will continue in Illinois until these invoices have been approved by the Illinois HFA.

[6] While the Draft states that $259 million remains to be spent by blight elimination programs over the next two-and-a-half years, this estimate does not account for the programs that have already closed, the current and anticipated levels of program activity in the open programs, and the limited time remaining for all these programs to complete all blight elimination activities.

[7] Treasury conducted a program-specific compliance review of NIP, South Carolina's blight elimination program, on January 20-21, 2016; a full compliance review of all of South Carolina's HHF programs, including NIP, on February 13-17, 2017; and another full compliance review of all of South Carolina's HHF programs, including NIP, on February 11-15, 2019.

significant observations or concerns with respect to NIP, either as part of this compliance review process or outside of it.

SIGTARP's Draft

The Draft is based in large part on a review of the documentation associated with the demolition of one property in South Carolina and an in-person observation of the demolition of a second property in South Carolina. As a result of this South Carolina-specific review, SIGTARP makes eight recommendations, seven of which it applies to all of the unique HHF blight elimination programs.

SIGTARP's on-site fieldwork for this review was conducted in May 2018, and SIGTARP completed its evaluation on January 4, 2019. SIGTARP did not transmit the Draft to Treasury until June 12, 2019, five months after the evaluation had been completed.[8] SIGTARP's transmittal of the Draft also marks the first communication Treasury has received from SIGTARP with respect to this evaluation since it received SIGTARP's engagement letter on April 18, 2018, and participated in an entrance conference on July 9, 2018 – *after* on-site field work had been completed. Prior to our receipt of the Draft, Treasury had no visibility into any anticipated findings or recommendations.[9]

SIGTARP allotted us ten business days to conduct an exit conference, provide a management response to the Draft, and provide any technical comments on the Draft. Immediately upon receipt of the Draft, Treasury requested SIGTARP's authorization to share or discuss the Draft with the South Carolina HFA, but our request was denied. SIGTARP also previously denied our request to share or discuss a draft of SIGTARP's 2017 evaluation report regarding blight elimination in Flint, Michigan (Flint Report) prior to publication.[10] SIGTARP's denial of these requests is significant, particularly because the Flint Report had inaccurately concluded that significant risks were present in Michigan's blight elimination program. We did not discover these inaccuracies until after publication and after speaking with the Michigan HFA. In a follow-up response letter to SIGTARP on July 6, 2018, we noted these inaccuracies and provided a fulsome response to SIGTARP's recommendations including our efforts at implementing those recommendations.[11] We attach the letter for your reference as Exhibit A.

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[8] Draft, Appendix C, at 51 ("SIGTARP conducted this evaluation from April 18, 2018 - January 4, 2019, with on-site field work completed on May 29-31, 2018 in South Carolina.").

[9] *Compare*, *e.g.*, CIGIE Quality Standards for Inspection and Evaluation at 15 ("During an inspection, it may be appropriate to provide interim reporting of significant matters to appropriate officials. Such reporting is not a substitute for a final report, but it does serve to alert the appropriate officials to matters needing immediate attention, so corrective action may be initiated."), 19 ("With limited exceptions, primarily related to investigative-type work, the OIG should keep the Department/Agency advised of its work and its findings on a timely basis and strive to provide information helpful to the Department/Agency at the earliest possible stage. Surprises are to be avoided."), 20 ("During an inspection, inspectors should appropriately communicate information about the process and the nature of the inspection to the various parties involved to help them understand such things as the inspection objective(s), time frames, data needs, and reporting process. Inspectors should use their professional judgment and comply with their respective organizations' policies and procedures to determine the form, content, and frequency of communication. Communication should be appropriately documented in the associated inspection records.").

[10] Evaluation Report, "Risk of Asbestos Exposure, Illegal Dumping, and Contaminated Soil from Demolitions in Flint, Michigan and Other Cities," November 21, 2017.

[11] We note further that this Draft mistakenly states that Treasury has not implemented any of SIGTARP's recommendations from the Flint Report, and it also does not reference our July 6, 2018 letter. *Compare* CIGIE

Treasury has identified similar weaknesses in this Draft based on publicly available resources, including program guidelines and requirements for South Carolina's NIP,[12] and the South Carolina Department of Health and Environmental Control (SCDHEC) website. Treasury has identified approximately 100 technical comments, requests for supporting documentation or clarification, and potential misstatements of fact within the Draft. Those comments and requests are being transmitted separately today. Treasury is unable to confirm whether the Draft's factual findings regarding the specific property reviews (e.g., missing documentation) are accurate until it consults with South Carolina and receives the requested supporting documentation from SIGTARP.

Recommendations 1 through 7

Recommendations 1 through 7, which are applicable to all HHF blight elimination programs, go towards implementation of best practices in blight elimination to be in compliance with all applicable environmental laws and regulations. They call for state HFAs to increase technical oversight of demolitions, including with respect to the contractors involved; implement internal controls and a quality assurance program for the purpose of making sure all activities comply with relevant laws; and perform independent inspections during and after the demolition process and removal of hazardous materials.

Notably, five of these recommendations (1, 2, 3, 4, and 7) are almost entirely duplicative of prior SIGTARP recommendations from the Flint Report, and the other two (5 and 6) are partially duplicative of those recommendations. As we explained in our July 2018 letter, we believe Treasury has already addressed the Flint Report's recommendations. *See* Exhibit A. Similarly, we believe this Draft's recommendations are either (a) already required under HHF (Recommendations 1 and 2); (b) performed by the HFAs administering their respective HHF blight elimination programs, their program partners, or their contractors (Recommendations 3 and 4, in part, and in some states, Recommendation 7[13]); and/or (c) conducted or monitored by the respective state environmental protection agency (Recommendations 3, 5, 6, and 7).

Recommendation 8

SIGTARP's eighth recommendation calls for Treasury to require the South Carolina HFA to repay $13,750 to the program, attributable to two specific costs – $7,800 for creating a stormwater plan and $5,950 for soil borings. Although SIGTARP deems these costs unallowable and unnecessary for demolition, the Draft does not provide any analysis of these expenses. Once SIGTARP provides its analysis, Treasury will review, discuss with South Carolina's HFA, and take any appropriate action.

Quality Standards for Inspection and Evaluation at 19 ("The OIG must perform its work thoroughly, objectively, and with consideration to the Department's/Agency's point of view and should recognize Department/Agency successes in addressing challenges or issues.").

[12] Available at https://www.schousing.com/Home/NeighborhoodInitiativeProgram.

[13] In programs that feature a land bank-centric structure, certain activities may be shared by the state environmental agency and the land bank.

Preliminarily, Treasury's contract with South Carolina's HFA permits these types of costs to be charged to the program. Acceptable charges include costs incurred for both demolition and greening, and as noted above, Treasury requires state HFAs to comply with all relevant laws and regulations. Stormwater plans are required by law in the state of South Carolina for construction or land disturbances on all properties of at least one acre.[14] Soil borings are an industry standard practice related to greening of property, and they are used to determine whether a lot can support building construction or other forms of redevelopment.

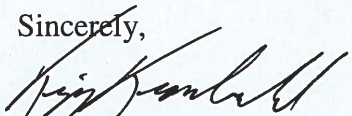
* * *

Treasury will carefully evaluate any supporting documentation provided by SIGTARP and respond to the Draft's recommendations under separate cover. At this late stage of the program, Treasury's consideration of these recommendations will also take into account the short amount of time remaining and the ability of individual HFAs to timely and meaningfully respond to any new requirements or guidance issued by Treasury.

In addition, we note that SIGTARP has recently opened a second evaluation of blight elimination in Flint, Michigan. As stated above, Michigan's blight elimination program will close by the end of next year. If SIGTARP's evaluation finds additional actions that could improve the program, we encourage SIGTARP to share that information with Treasury as soon as possible so that actions could be taken before the program closes.

Even as the TARP program nears its end, we remain committed to taking appropriate actions to improve HHF program performance and enhance compliance procedures. We look forward to working with SIGTARP as we continue to wind down the remaining programs funded through TARP, including HHF.

Sincerely,



Kipp Kranbuhl
Deputy Assistant Secretary
Small Business, Community Development, &
Affordable Housing Policy

[14] *See* S.C. Dep't of Health & Environmental Control, Stormwater Overview, https://www.scdhec.gov/environment/water-quality/stormwater/stormwater-overview (last visited June 26, 2019).

EXHIBIT A

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

July 6, 2018

The Honorable Christy Goldsmith Romero
Special Inspector General
for the Troubled Asset Relief Program
1801 L Street, N.W., 4th Floor
Washington, D.C. 20036

Re: Audit Report Relating to Blight Elimination in Flint, Michigan

Dear Ms. Romero:

I write in response to the November 21, 2017 Audit Report (Report) from the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) concerning environmental risks from blight elimination activities in Flint, Michigan. On November 20, 2017, we provided an official response to the draft version of the Report, in which we stated our intention to consider carefully the Report's six recommendations. With this letter, we provide an update on Treasury's efforts to respond to SIGTARP's specific recommendations.

Treasury established the Hardest Hit Fund (HHF) in February 2010, to help prevent foreclosures and stabilize housing markets in areas hardest hit by the housing crisis. State housing finance agencies (together with certain designated entities, the HFAs) in 18 states and the District of Columbia use these funds to design and implement programs tailored to the specific needs and conditions of their respective communities. Eight states have chosen to create blight elimination programs, which have demolished and greened nearly 26,000 blighted properties as of March 31, 2018.

Since the inception of the HHF program, Treasury has required the HFAs and their contractors to comply with "all Federal, state and local laws, regulations, regulatory guidance, statutes, ordinances, codes, and requirements." This, of course, includes environmental laws and regulations. Treasury has also required the states to implement a system of internal controls designed to ensure compliance with applicable laws, and to provide regular, independent verification that such internal controls are effective. Treasury conducts regular, on-site compliance reviews of each of the HFAs to confirm the presence of internal controls and that the HFAs are following their policies and procedures. Treasury has further enhanced its sample-based testing during these reviews to address areas at higher risk of noncompliance as needed.

The Report relied largely upon a review of documentation associated with the demolition of a single structure in 2014, the first year that Genesee County Land Bank participated in Michigan's HHF blight elimination program. Following the receipt of the Report, Michigan conducted a thorough review and analysis of SIGTARP's findings. That review concluded that many of the documents that SIGTARP identified as missing from that demolition file did in fact exist, and that most of the inspections recommended by SIGTARP had been conducted for the subject property. In addition, Michigan and the Genesee County Land Bank have both enhanced

their procedures and controls in the years following the 2014 demolition that SIGTARP analyzed, and these enhancements addressed many of SIGTARP's concerns. A copy of Michigan's analysis is attached to this letter as Exhibit A.

During the introduction of blight elimination programs under HHF, Treasury participated in an interagency working group of industry leaders, including representatives from the Environmental Protection Agency (EPA), to encourage best practices in all blight elimination activities and compliance with environmental regulations. Since then, Treasury has engaged in an ongoing dialogue with each of the HFAs operating a blight program about relevant program requirements, risks, and best practices, and has encouraged coordination with our EPA counterparts as environmental questions arise. In coordination with Treasury, the EPA advised the HFAs regarding best practices in blight elimination programs and shared numerous EPA resources with state officials. These resources include, but are not limited to, EPA's residential demolition toolkit,[1] deconstruction rapid assessment tool,[2] and resource directory for blight elimination best practices and technical assistance.[3]

Treasury and each of the HFAs operating blight elimination programs continue to collaborate to share and implement best practices regarding environmental compliance, including discussion of materials provided by the EPA. This collaboration has occurred on regular teleconferences, as well as at the Hardest Hit Fund Summit held in Washington, D.C. on June 4 and 5, 2018.

Based upon these actions, Treasury believes that it has addressed each of your recommendations. Even as we enter the final phase of HHF and continue the orderly wind down of TARP, we continue to work with our state partners to implement any necessary changes to their programs. Please feel free to contact Treasury's Office of Financial Stability at (202) 622-4421 if you have any questions about this letter.

Sincerely,

Lorenzo Rasetti

Lorenzo Rasetti
Chief Financial Officer
Office of Financial Stability

Enclosures

[1] "On the Road to Reuse: Residential Demolition Bid Specification Development Tool," *available at* http://1.usa.gov/15yzqyt.
[2] "Deconstruction Rapid Assessment Tool," *available at* http://www2.epa.gov/large-scale-residential-demolition/deconstruction-rapid-assessment-tool.
[3] "Large-Scale Residential Demolition Resource Directory," *available at* http://www2.epa.gov/large-scale-residential-demolition.

STEPFORWARDMICHIGAN.ORG
PO Box 30632, Lansing, Michigan 48909-8132
Phone: 866-946-7432 | FAX: 517-636-6170

December 30, 2017

Transmitted Via E-mail

United States Department of the Treasury
RE: Michigan response to SIGTARP Evaluation Report- Risk of Asbestos Exposure, Illegal Dumping, and Contaminated Soil From Demolitions in Flint, Michigan and Other Cities

Dear Treasury:

The Michigan Homeowner Assistance Nonprofit Housing Corporation (MHA) would like to thank SIGTARP and the Army Corps of Engineers (ACOE) for conducting an evaluation of Flint's demolition program. We take all reviews of our programs seriously and are committed to ensuring our blight partners maintain the highest standards for safety and accountability.

While SIGTARP identified several areas of concern, we believe many of the issues have been and are currently being followed by Flint and the Genesee County Land Bank (GCLB). Since issuance of the report, MHA and MSHDA have been working with the Genesee County Land Bank and appropriate local, state and federal partners to review the issues raised. In doing so, we learned that a lack of documentation present in files may have contributed to SIGTARP and the ACOE to assume significant risks were present that, in fact, were not. Our office is allowing GCLB the opportunity to submit all of the necessary and required documentation that was lacking to update your files and will do so upon confirmation from your office on the secure e-mail address for data submission. They will await your direction on this step. MHA has attached Flint's response to all of the identified areas of concern highlighted by SIGTARP and the ACOE.

SIGTARP also suggested, and we appreciate, process improvements that could strengthen our oversight of the blight elimination program. Our responses to those SIGTARP recommendations follows:

- **SIGTARP recommended additional site inspections.**

All files must contain an initial site inspection to determine if a property meets one, if not all, of the following requirements: 1) considered a public nuisance according to local code or ordinance; 2) is a nuisance because of age, use and/or physical condition; or 3) has had utilities, plumbing, heating or sewage disconnected, destroyed, removed or rendered ineffective so that the property is unfit for the intended use. All properties are then inspected to identify and address any environmental problems that must be handled by the demolition contractor or sub-contractors. Upon completion of demolition and remediation of

environmental hazards, a final site inspection is obtained to provide proof of completion of demolition and to show that property has been graded and greened.

In order to obtain this final inspection, an "open-hole" on-site inspection must have passed city and state regulators. Our current process does not require receipt of this inspection documentation in our files. However, going forward with amendments to the MHA Blight Operations Manual, we will mandate and audit that all files contain a copy of this passed inspection.

- **Oversight Requirements: State should be required to perform technical oversight to assure waste materials are handled properly.**

All blight partners currently maintain in their files waste manifests that document all contaminated materials are hauled and dumped in the appropriate manner and at the appropriate sites. MHA will insert into its Blight Operations Manual and update procedures that require all Blight Partners to provide all waste and chain of custody manifests. This information will show proof that waste materials have been handled and disposed of properly and are following state and federal regulations.

As an additional assurance, MHA requires that all demolition contractors review and sign a Contractor Attestation form which contains assurance of compliance to City, State and Federal requirements.

- **Clean material (dirt) must be used.**

Each blight partner receives proof that the source of dirt, or dirt on site used to fill the holes and grade the lots, meets city, state and federal guidelines. MHA will insert into its Blight Operations Manual that all files must contain either the source testing or the individual lot test to provide proof that soil used meets all safety/environmental guidelines.

- **Funding limitations: SIGTARP and the ACOE are suggesting that we allow for funding limit exceptions for properties with unusually high levels of hazardous material above the current per-property limit of $25,000.**

As per our most recent Quarterly Performance Report for 3rd quarter 2017, Michigan's median assistance spent on demolition since inception of the program is $10,786, well below our maximum amount of assistance. For properties that blight partners find exceed the $25,000 cap due to excessive abatement costs, MHA allows the partner to continue with demolition, providing the blight partner funds any costs over the cap. This practice is currently being done across the state and we would like to continue to monitor this to see if there is an

overwhelming need to submit a written proposal to Treasury to increase our per-property cap statewide. We understand older structures are often mired with exceptionally high asbestos and/or lead. All blight partners understand this and analyze costs and address their funding sources to determine the feasibility of demolition on a per-site basis. Our concerns with allowing exceptions on a per-property basis will raise continued cost containment concerns, however we will closely monitor this situation going forward and request amendments when and if needed.

- **Additional training for all commissioned contractors in the HHF Blight Program.**

Each of our blight partners work closely with city, state and federal officials to ensure they are conducting the demolition with full adherence to regulations. To further enhance these working relationships MHA will mandate that all blight partners attend bi-annual training with DEQ to certify that all staff have the most up-to-date information on required guidelines and to address concerns and local challenges. This additional oversight will be monitored and hosted by MHA.

In closing, these new or enhanced file documentation requirements should mitigate identified risks outlined by this SIGTARP review and hold all of our blight elimination partners accountable for safe processes that are in full compliance with all environmental and safety guidelines and standards. MHA has been commissioned with providing proper oversight of this program and has done so with the goal of reducing foreclosure by stabilizing neighborhoods. We take this responsibility very seriously and will do our best to ensure full compliance with all environmental and safety regulations without fraud, waste or abuse. All of Michigan's cities deserve nothing less.

Genesee County Land Bank Authority (GCLBA) Response to
Appendix A—U.S. Army Corps of Engineers Report
Blight Elimination Program (BEP) Demolition Review- September 2017
FOR U.S. Department of the Treasury - Special Inspector General for the Troubled Asset Relief Program (SIGTARP)

December 22, 2017

Genesee County Land Bank Authority (GCLBA) provides a response written in green text to each finding identified in sections 4 through 6 below.

4 Land Bank Execution and Oversight

Comments on the Land Bank's execution of its agreement with the State follow. Many comments are generalized since they would apply to any blight elimination Partner executing a program such as the Land Bank.

4.1 Inspection Authority

The Land Bank's 8/1/13 proposal states that a compliance demolition inspection will be completed prior to demolition. It's not clear who will perform the inspection, but no evidence of any such inspection is provided. The Land Bank should have been more clear about who would perform the inspection and then documented it's completion in the file.

Response: Pre-demolition inspections are completed on all HHF demolition properties. A pre-demolition inspection was completed on the 2725 Kellar Ave (herein after referred to as the subject property) and was included in the file provided to SIGTARP and reviewed by the Army Corps. A compliance inspection was also completed by Global Environmental after abatement and prior to demolition. Materials were identified as remaining. Abatement contractor, DMC re-notified and revisited the site on 11/20/14 to remove remaining materials. Global's inspection report from 10/24/14 and DMC's notification will be made available to U.S. Treasury via secure transfer upon request.

Abatement contractors take before and after photos of materials abated. These photos are uploaded to our file sharing site. GCLBA project manager review the photos and compare to the pre-demolition inspection survey to confirm that all materials identified have been removed. Random compliance inspections are done by the GCLBA

environmental consultant at the completion of abatement work before proceeding with the demolition of a structure. If any materials identified in the survey have not been removed the abatement contractor is contacted to address these issues. Once cleared, the demolition contractor is issued a Notice to Proceed for the demolition. In the case of 2725 Kellar, material was identified on 10/24/14 and DMC removed the materials identified on 11/20/14. DMC confirmed that the photos were uploaded on 12/8/14. GCLBA staff reviewed the photos and confirmed that the material identified was removed and the demolition contractor was issued a Notice to Proceed for the demolition. Because of space constraints the photos were downloaded to a flash drive.

4.2 Inspection Documentation

Response: Demolitions completed in the winter when the ground is frozen receive at least two post demolition inspections: winter-grade and final-grade. Winter-grade inspections ensure that property has been backfilled and properly graded as not to be a hazard for the winter months. When the ground thaws contractors return with topsoil, seed, and mulch. A final-grade inspection is completed after the application of topsoil, seed, and mulch to ensure this work meets GCLBA specifications. Before receiving either a winter-grade (as necessary) or final-grade certification of approval, an open hole inspection is always completed by the City of Flint's Building Safety Inspection office for demolitions completed in the COF.

4.2.1 In-process Hazardous Material Inspections

USACE recommends that Partners be required to perform inspections during hazardous material removal. This inspection should confirm that materials are removed according to the contract, and federal and state regulations (including NESHAP, OSHA and MIOSHA). It should be performed by a person trained in hazardous waste identification, handling, transportation, and disposal.

Response: There is no indication that hazardous material from the subject property was improperly disposed of or managed. The Michigan Department of Environmental Quality (MDEQ) advised the GCLBA that materials typically found in demo houses do not qualify as hazardous waste. Instead, they consider the waste typically found in Land bank houses to be household abandoned waste that can be disposed of in a landfill. GLCBA diverts certain materials that are classified as household waste from landfills by having surveyors identify them for removal (see response 5.3.10). Household hazardous materials (including cans of paint, light bulbs, batteries, TVs, tires, household cleaning agents, etc.) are the items identified during the hazardous survey by qualified professionals trained in hazardous waste identification. The items identified are removed during hazardous material abatement by a person trained in hazardous waste identification, handling, transportation, and disposal and disposed of in compliance with state and federal regulations. Items removed are itemized and submitted to the GCLBA. The packet reviewed by USACE included an itemized list of

asbestos and household abandoned wastes removed, supported by receipts for the destination of the materials, including a manifest and receipt from the Type II landfill that received the asbestos containing material. Random inspections are completed by environmental professionals with the appropriate training to verify that no hazardous materials remain in the structure prior to demolition. The GCLBA and MSHDA will review compliance protocols and create additional compliance measures where appropriate.

4.2.2 Post Hazardous Material Removal Inspections

USACE recommends that Partners be required to perform inspections after hazardous material removal. This inspection should confirm that all contract performance requirements have been achieved. It should be performed by a professional trained in hazardous material identification.

Response: The GCLBA has measures in place to monitor household hazardous waste removal from the structure prior to demolition. The GCLBA will continue to review logs of materials removed and compare them to the items identified in the survey. The GCLBA will also continue to have qualified contractors complete post abatement/hazardous material removal inspections as was completed on this property. Global Environmental completed an inspection on this property but did not bill the GCLBA for the activity. Global's findings will be made available to U.S. Treasury via secure transfer upon request.

The GCLBA and MSHDA will review compliance protocols and create additional compliance measures where appropriate.

4.2.3 NESHAP, OSHA, MIOSHA Requirements

USACE recommends that Partners be required to perform inspections during asbestos removal work, regardless of the level of asbestos contamination. This inspection should confirm that all contract requirements and NESHAP, OSHA, and MIOSHA regulations are being followed. It should be performed by a person trained in these regulations.

Response: GCLBA requires that contractors follow the guidance provided by MDEQ and MIOSHA to abate what can feasibly be abated. Exceptions may be made in the case of roofing materials in good condition and in cases where a composite sample of drywall and joint compound contains less than 1% asbestos. According to MDEQ - the state agency that enforces NESHAP - roofing materials in good condition, and drywall and joint compound with a composite sample result less than 1% do not require notification to NESHAP.

There is no documentation indicating that NESHAP Regulated Asbestos Containing Material (RACM) at the subject property was not fully abated. The GCLBA has compliance measures in place to hold contractors accountable, meet contract

requirements and comply with NESHAP and MIOSHA regulations. The GCLBA requires abatement contractors to take before and after photographs of all materials abated and post them to a Box.com account that is accessible to MDEQ regulators and GCLBA staff. The GCLBA staff reviews all photographs to verify that all RACM and ACM identified for removal was abated. The GCLBA contracts with qualified environmental professionals with the appropriate experience and certifications to perform random compliance inspections after abatement is complete.

The GCLBA maintains regular communications with MDEQ and MIOSHA regulators to communicate concerns and identify any potential issues identified. The GCLBA and MSHDA will review current compliance protocols and create additional compliance measures where appropriate.

4.2.4 Open Hole Inspections

USACE recommends that Partners be required to ensure an open-hole inspection is performed at every site. The inspection should confirm that all demolition debris has been removed from the site and all foundation material has either been adequately crushed or removed according to contract requirements. In this case, the inspection could have been performed by the Land Bank or the City. See the comments under the LA Construction contract for further discussion on the Land Bank and City demolition inspections.

Response: Open-hole inspections are performed at every site and one was performed at the subject property. The Land Bank works closely with the local unit of government (LUG) that completes open hole, winter-grade (if necessary), and final-grade inspections. Winter grade inspections ensure the excavation has been backfilled and appropriately graded as not to be a hazard in the winter months until a final grade with topsoil, seed, and mulch can be completed. The LUG does not issue a winter grade or final grade certification if a demolition project has not passed an open hole inspection to confirm that the demolition at the subject property was completed in compliance with city codes. The subject property passed an open hole inspection before receiving a winter-grade approval, and subsequently, a final-grade inspection from the City of Flint. GCLBA requires winter-grade and final- grade certifications prior to releasing payment to contractors. In an attempt to streamline the process and with full knowledge of City requirements, GCLBA did not require submittal of backfill/open-hole certifications as it seemed “redundant” as USACE points out in 4.3, though contractors maintain the documentation. This documentation could’ve been provided had it been requested by auditors during the onsite visit. The open-hole inspection form completed by the City of Flint for the subject property can be made available to U.S. Treasury via secure transfer upon request.

4.2.5 Documentation

USACE recommends that all inspections be documented.

Response: All inspections are documented. The file provided to SIGTARP for the subject property included three Land Bank inspection reports as well as the winter grade and final inspection certification from the City of Flint. See response to 4.2.4 for additional information on inspections.

4.3 Inspection Coordination

Then Land Bank should coordinate inspections between the State, City and Land Bank. Coordinating inspections would prevent redundant inspections by different agencies while providing additional inspection coverage during different phases of work at no additional cost to the project.

Response: The Land Bank coordinates inspections with the LUG. The Land Bank has been informed that MSHDA completes inspections for maintenance after project completion and reimbursement. Each inspection is completed to achieve a different purpose. The City of Flint completes inspections as part of the local demolition permitting process to ensure that the contractors are in compliance with the City ordinance. The city inspections include open hole, winter grade (if required) and final inspection. The GCLBA completes inspections after the city has certified that the demolition was completed in compliance with local codes (including an approved open hole inspection). The GCLBA's winter grade and final inspections are completed to make sure that the final grade is completed in compliance with the scope of work. The state completes inspections after the Land Bank to monitor ongoing maintenance.

4.4 Inspectors Qualifications

The Land Bank inspector's required qualifications and training are unclear. Antonio D. Dunn signed off as the inspector on both forms. No documentation is provided to assess Dunn's qualifications. It is recommend that Partners be required to provide minimum qualifications and training for inspectors.

Response: The GCLBA uses qualified environmental consultants to complete all surveys and compliance inspections. The demolition inspectors working for the GCLBA have experience with landscaping, construction, renovation, and property maintenance. They also have received in house training on dangerous building inspections plus additional environmental training. Their job descriptions and qualifications are similar to those of a code enforcement officer at a municipality in Michigan. There are no certifications or minimum qualifications define by the state or federal government for such a position. The GCLBA inspectors work closely with the City of Flint Building Safety Inspections office and inspectors. The GCLBA welcomes guidance on training required for inspectors completing the initial inspection of blighted properties to determine if

they are blighted as well as final inspections to determine if the site finishing was completed to scope within the contract.

4.5 Contract Administrators Qualifications

The Land Bank contract administrators' qualifications and training are unclear. Several payment checklists and internal review checklists were prepared and signed off by Land Bank staff. However, no documentation is provided to assess those employees' qualifications to do so. It is recommend that Partners be required to provide minimum qualifications and training for employees performing any contract administration duties such as reviewing contract submittals or payments.

Response: The GCLBA staff members managing HHF have extensive experience with compliance, contract management, project management, and grants management in addition to having advanced degrees and training in relevant fields. No minimum qualifications, certifications or minimum requirements exist at the local, state or federal level for contract administrators. The GCLBA uses a competitive process to hire staff to ensure that the most qualified people available are hired. The GCLBA welcomes guidance on minimum qualifications and training for employees performing contract administration duties.

4.6 Quality Assurance and Testing

The Land Bank is not adequately verifying that the holes were filled with clean material. It is USACE policy to perform quality assurance testing on a minimum of 5% of the frequency of contractor testing. It is recommend that Partners be required to implement quality assurance testing of soil at a limited number of sites after the contractor has filled the hole and prior to making payment. Ideally, at least one test would be performed for each contract. Each test is estimated to cost around $6,000-$11,000, depending on how many samples are to be collected at the same time. In order to keep the total cost under the $25,000 cap, testing should be strategically planned to be performed on properties with low demolition costs. It is recommended to perform soil testing early in the contract so that any noted deficiencies can be corrected more easily.

Response: GCLBA demolition specifications, including backfill and topsoil specs were originally developed by Rowe Engineering and have been updated and modified only with consultation and guidance from licensed and knowledgeable environmental consultants, the MDEQ, MIOSHA and using model specifications issued by the United States Environmental Protection Agency (EPA). The GCLBA requires contractors to submit soil samples for fill used on all demolition sites along with a statement indicating all target parameters were below method detection limits and/or MDEQ Part 201 Generic Residential Cleanup Criteria (GRCC). Soil samples were submitted for the subject property and included in the project file reviewed by the USACE.

The GCLBA and MSHDA will review compliance protocols and create additional compliance measures where appropriate.

4.7 Contract Efficiency

The Land Bank awarded separate contracts for hazardous material removal and demolition. It also awarded multiple contracts for demolition, but a small group of contractors seem to have bid on and received the contracts. Partners may be able to save administrative costs by having fewer contracts with expanded work scopes for each contract. Examples include combining contracts for hazardous material removal and demolition, and soliciting fewer contracts with more properties on each contract.

Response: The GCLBA strongly agrees. The GCLBA has requested as much from MSHDA. MSHDA communicated to the GCLBA that the request was denied by Treasury. Other contracting efficiencies currently forgone per recommendation of Treasury include:

- A contract may not include more than 50 properties. This requirement means that GCLBA will manage a minimum of 40 demolition contracts alone to complete 2000 demolitions in the next year.
- An RFP cannot include more than 50 properties. This requirement affects efficiencies of scale when the same contractors respond to multiple RFPs. Each RFP is reviewed and scored on its own merit. It is easier to review the response and submittals to 1 RFP with 3 bid lists of 50 properties each than it is to review 3 RFPs each with 50 properties. Multiple bid lists on one RFP can also result in contract file efficiencies when a singular contractor wins more than one bid list in an RFP with multiple bid lists. For example: under the current requirements, if the same 6 contractors respond to 3 separate RFPs, and one of the contractors is successful in achieving award of all 3 RFPs, GCLBA staff will review 18 bid responses (6 contractors x 3 RFPs) and write, implement, and oversee 3 contracts. In the scenario with multiple bid lists on one RFP, GCLBA staff would review 6 bid responses and write 1 contract for 3 bid lists. Even if a different contractor is awarded each list, GCLBA staff is still reviewing only 6 RFP submittals (as opposed to 18) and writing 3 contracts.

5 Land Bank Contracts

The Land Bank issued contracts with and oversaw four contractors to execute the terms of its agreement with the State. Comments and recommendations for each contract follow:

5.1 2725 Kellar Ave - ADR Consultants for Demolition Inspection Services

5.1.1 Missing Contract Information

Only part of the contract was provided so it was not evaluated.

Response: The Contract including the RFP with the scope of work was provided to SIGTARP in the CD quarterly reports. However, the version that was provided to SIGTARP during the audit did not include the RFP. The GCLBA will make the full contract including the RFP and the Scope of Work available upon request via a secure file transfer.

5.1.2 Inspectors Qualifications

The inspector's qualifications were not provided.

Response: The GCLBA inspectors' job descriptions and qualifications will be made available to U.S. Treasury via secure file transfer upon request. The scope of work for the inspectors aligned with code enforcement officers for local units of government. Therefore, when hiring the inspectors, the GCLBA looked for candidates with similar qualifications as those working in code enforcement for local units of government in Michigan.

5.1.3 Inspection Paperwork

No demolition inspections performed by this contractor were provided.

Response: The demolition inspections completed on the subject property were included in the project file and are available upon request via secure file transfer. The GCLBA requests clarification on what demolition inspections the USACE is referring to.

5.2 2725 Kellar Ave - Agreement and Oversight of Global Environmental Engineering Inc. (Global) for Inspection of Environmentally Hazardous Material

5.2.1 Contract Deficiencies Regarding Asbestos Containing Material

The contract fails to require Global to adequately address materials contaminated with asbestos. The contract focuses on asbestos containing material (ACM), which is specifically defined under NESHAP as materials containing asbestos content greater

than 1%. The writer may not have known that OSHA and MIOSHA require special handling of all materials contaminated with any amount of asbestos. Materials contaminated with less than 1% asbestos should have also been required to be highlighted in the report so they could be handled appropriately under OSHA and MIOSHA regulations. The failure to do so may have given the abatement and demolition contractors the false impression that those contaminated materials did not exist on site. The Land Bank should ensure its specification writers and inspectors are well versed in *all* asbestos and hazardous material handling regulations.

Response: According to 29 CFR 1926 Subpart Z: "Asbestos-containing material (ACM), means any material containing more than one percent asbestos." (https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_id=10862&p_table=standards). Further, regulations regarding surveys go so far as to require a thorough inspection. Every item that contained any asbestos at all was identified in the survey, including the window caulk that contained .5% asbestos. The issue that USACE takes with presentation is of preference and not regulatory. Surveys are provided to all abatement and demolition contractors ahead of preparation of bids or quotes. Additionally, when abatement is completed under a separate abatement contract managed by GCLBA and not by the demolition contractor, GCLBA provides all abatement paperwork to demolition contractors to assist them in preparing bid responses. All contractors performing surveys, abatement, and demolition are licensed asbestos contractors. Additionally, MIOSHA and MDEQ staff have participated in several contractor trainings and regularly provide guidance and direction to contractors. They have also been requested to review and provide feedback on the scopes of work included in RFPs related to ACM. MIOSHA regulators have consistently communicated to the GCLBA and its contractors that they define asbestos containing material (ACM) regulated by MIOSHA as materials containing asbestos content greater than 1% as defined in the above cited regulation. If the GCLBA should be following a different standard than that set forth in the regulation and communicated by MIOSHA, the GCLBA requests clarification and guidance from MSHDA and MIOSHA.

5.2.2 Improper Classification of Asbestos Containing Material

Global's report is inconsistent in how it classifies the asbestos containing drywall joint compound. At one location on "Table 2, Suspect Asbestos Containing Materials" of the Pre- Demolition Environmental Inspection Summary Report the asbestos containing drywall joint compound recorded in the hallway and bedroom 2 is highlighted as a sample that contains asbestos greater than 1% that must be removed prior to demolition on. However, a note on the same table states that the composite of the drywall and joint compound was less than 1% ACM. These statements are inconsistent and misleading. It is incorrect to present the joint material as a composite with the drywall. OSHA interprets sheet rock is separate from joint compound and they should not be treated as a composite sample. The joint compound should have been treated as

separate from the drywall and as Class II asbestos work (see OSHA interpretation at: https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=22395). This misinterpretation of regulations seems to have resulted in the mismanagement of the joint compound throughout demolition by giving the abatement and demolition contractors the false impression that the joint compound was not ACM.

Response: The Joint compound did not need to be abated and disposed of per NESHAP because the composite sample (which is permitted per MDEQ) was less than 1%. Therefore, the joint compound was not listed in the NESHAP notification. The GCLBA is aware that MIOSHA does not permit composite samples and consistently provides information to contractors to help ensure compliance with the guidance and assistance of both MDEQ and MIOSHA. GCLBA further encourages open and direct communication between contractors and regulators. GCLBA continues to be committed to helping contractors achieve compliance and keeping the community safe by holding yearly Contractor meetings where contractors receive information and guidance from the regulators on compliance. GCLBA believes strongly in the importance of contractors understanding any and all relevant environmental compliance regulations, so much so, that the meeting held on January 25, 2017 was overwhelmingly devoted to Q&A with MDEQ and MIOSHA. The GCLBA welcomes additional guidance and training on MIOSHA requirements and notifications. The GCLBA will consider adding additional measures to check for compliance with MIOSHA. Global reports have already been modified to incorporate information that assists contractors in determining which materials are RACM per NESHAP and need to be abated. The table now also clearly states which materials contain trace amounts (<1%) of asbestos. They have additionally added the following language to all surveys: "Friable Materials with ACM >1% must be removed prior to demolition. All other ACM Present must be addressed in accordance with applicable State and Federal regulation prior to demolition." GCLBA will continue to review the hazardous survey report format to determine if the sampling results can be presented in a way that is clearer.

5.2.3 NESHAP Requirements

Per NESHAP for a demolition project, the RACM is not required to be removed or stripped if it is Category II non-friable ACM with low probability of becoming crumbled, pulverized, or reduced to powder during demolition. The inspection report should have clearly stated whether it believed that the joint compound qualified as such and did not need to be removed or stripped prior to demolition.

Response: Per NESHAP for a demolition project, the joint compound did not need to be abated because the composite sample indicated that it was not greater than 1% (please see https://www.gpo.gov/fdsys/pkg/FR-1994-01-05/html/94-74.htm, https://www.gpo.gov/fdsys/pkg/FR-1995-12-19/pdf/95-30790.pdf, and https://www.epa.gov/sites/production/files/documents/carroll-joint-compound-19920904.pdf sourced from https://www.epa.gov/large-scale-residential-

demolition/asbestos-plaster-and-wall-systems.) Also see response to 5.2.2.

5.2.4 Improper Handling of Asbestos Containing Material

Global's report fails to highlight that the tan caulk around the living room window was contaminated with asbestos. "Table 2, Suspect Asbestos Containing Materials" of the Pre- Demolition Environmental Inspection Summary Report lists the tan caulk around the living room window as non ACM. The designation is correct because the amount was less than 1%. However, there should have been another designation to highlight that the material was contaminated with asbestos less than 1%. Material contaminated with asbestos, even less than 1%, requires special handling under OSHA and MIOSHA regulations (see OSHA interpretation at: https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=24747). This failure seems to have resulted in the mismanagement of the window caulk throughout the demolition by giving the abatement and demolition contractors the false impression that the window caulk was not contaminated.

Response: MIOSHA regulators have consistently communicated that they define asbestos containing material (ACM) regulated by MIOSHA as materials containing asbestos content greater than 1%. OSHA regulations at 29 CFR 1926 Subpart Z defines asbestos as: "Asbestos-containing material (ACM), means any material containing more than one percent asbestos." The caulk around the living room window contained .5% ACM and is therefore not explicitly regulated by MDEQ or MIOSHA. Methods employed by the abatement contractor in the removal of plaster would surpass requirements for the safe handling of window caulk if any were disturbed. The window caulk was not specified to be abated. GCLBA requirements for contractors to be licensed for asbestos abatement, training for workers, wetting and prompt cleanup of all demolitions would appear to meet wet handling, prompt clean up, and disposal requirements set forth in 29 CFR 1926.1101(g)(1)(ii) and (iii) as cited in interpretation cited by USACE. Therefore there was no mishandling of the material by the abatement contractor. The GCLBA requests clarification and guidance from MSHDA and MIOSHA. MIOSHA and MDEQ staff have participated in several contractor trainings and have provided specific guidance to contractors. They have also been requested to review and provide feedback on the scopes of work included in RFPs related to ACM.

5.3 2725 Kellar Ave - Agreement and Oversight of DMC Consultants, Inc. (DMC) for Removal of Environmentally Hazardous Material

5.3.1 Asbestos Abatement Work Plan

An asbestos abatement Work Plan is a required submittal by Section 2, paragraph 1.07 of the Statement of Work (SOW) but not provided in the files.

Response: A work plan is included in the contract file for the abatement contractor that completed abatement of the subject property. The work plan will be made available to U.S. Treasury via secure file transfer upon request.

5.3.2 Asbestos Health and Safety Plan

An asbestos Health and Safety Plan is a required submittal by Section 2, paragraph 1.07 of SOW but is not provided in the files.

Response: The GCLBA has a copy of the Health and Safety plan on file and can provide a copy of the plan to U.S. Treasury via secure file transfer upon request.

5.3.3 Asbestos Abatement Qualifications

Qualifications for asbestos abatement is a required submittal by Section 2, paragraph 1.07 of the SOW but not provided in the files.

Response: Qualifications for asbestos abatement are provided by all contractors working with the GCLBA. The GCLBA keeps these qualifications on file. If they are up to date, contractors have not been required to re-submit qualifications for each bid response. The GCLBA now requires contractors to re-submit qualifications with each bid response. DMC qualifications will be made available to U.S. Treasury via secure file transfer upon request.

5.3.4 Disconnect of Asbestos Material identified for removal vice actual removal

Table 1 below shows the materials slated for removal in Global's inspection versus the materials recorded as removed by DMC.

Table 1

Material	**Survey Inspection Quantity**	**"Inventory Sheet" Quantity**
Mercury Bulb	1	1 (receipt is for multiple houses)
Fluorescent Bulb	9	9 (receipt is for multiple houses)
Fluorescent Ballast	3	3 (receipt is for multiple houses)
Smoke Detector	1	1 (receipt is for multiple houses)
Tires	4	4 (receipt is for multiple houses)
ACM Duct Wrap	20 sf	21 sf
ACM duct wrap	1 lf	-
ACM 9" floor tile	112 sf	112 sf
ACM Plaster	3,624 sf	3624 sf
ACM Drywall joint compound	72 sf	-
ACM Debris	-	Cy
ACM Vermiculite Insulation	906 sf	17 cy
High Pressure Light Fixture/Ballast	-	1 (recycled w scrap metal)

Response: As required under the NESHAP surveys provide *estimates* of materials present and NESHAP notification requests *estimates* of material quantities. The joint

compound was not removed and disposed of for reasons detailed in response to 5.2.3 above. The two items listed as duct wrap by Global were counted together by DMC. In both instances the total amount of duct wrap equals 21sf. The surveys are completed well in advance of the abatement and there are many factors, such as looting, scrapping, and arson, that can affect discrepancies. Contractors switched to using cubic yards as a measurement for vermiculite instead of using square feet as was previously done. GCLBA and DMC had an agreed up method for conversion of vermiculite from SF to CY that was developed by an environmental consultant. Surveyors now include information in tables to describe material condition of ACM. Finally, regarding the non-asbestos items, please refer to response 4.2.1 and 5.3.10.

5.3.5 Notification of Intent to Renovate or Demolish

The asbestos containing joint drywall compound recorded in the hallway and bedroom 2 was not listed on the "Notification of Intent to Renovate/Demolish" form. Per NESHAP, notification should include the estimated amount of regulated asbestos-containing material (RACM) to be removed as well as the amount of non-friable asbestos-containing material (ACM) that will not be removed before demolition (https://www.michigan.gov/documents/deq/deq-aqd-field-tpu-asbestos_NESHAP_fact_sheet_449332_7.pdf). The drywall joint compound should have been listed on the notification as either RACM to be removed or non-friable Category II ACM that will not be removed prior to demolition. It appears that DMC treated the joint compound as if it were not ACM.

Response: See response to 5.2.1-5.2.5

5.3.6 Unsigned NESHAP Documentation

The NESHAP notification appears to be missing two required signatures. Box 17 on the "Notification of Intent to Renovate/Demolish" form requires the property owner's signature as well as the contractor's signature for projects using negative pressure enclosures. In box 11, DMC states that it will use negative pressure containment. The Land Bank and DMC should have signed the form for the file prior to starting abatement.

Response: The law referred to in box 17 of MDEQ NESHAP notification refers to Michigan Public Act 135 of 1986 which does not require owner's signature on the notification, The GCLBA will consult with MIOSHA to verify the necessity of signatures on NESHAP documentation.

5.3.7 Research Documentation

It is possible that it was proper to leave the joint compound for removal during demolition. Per NESHAP for a demolition project, the RACM is not required to be removed or stripped if it is Category II non-friable ACM with low probability of becoming crumbled, pulverized, or reduced to powder during demolition. However, DMC should have researched whether the
joint compound was likely to crumble during demolition and documented its findings. No such documentation was provided in the file.

Response: Contractors are in frequent communication with MDEQ. MDEQ has consistently provided guidance to the GCLBA and contractors that joint compound can remain in demolitions if the composite result of drywall and joint compound contains less than 1% ACM and therefore is not RACM under NESHAP and can remain during a demolition where an excavator is used for the demolition. Additionally, according to Standard Interpretation ID 22584 provided to all attendees of the 2014 Asbestos Symposium and consistently provided to contractors by GCLBA as a reliable source of information from a regulator, "OSHA believes that the fibers in joint compound are too tightly bound for the compound to belong in the "high risk" category" (https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=22584). See response to 5.2.1-5.2.5

5.3.8 Qualified Signatories

Rich Keller signed off as supervisor on DMC's "Daily Project Log" for asbestos abatement, but isn't listed in DMC's proposal as certified or trained. Based on the documentation provided, it's impossible to determine if Keller is a competent person to supervise asbestos abatement. DMC's proposal says Lloyd Whittaker will be supervisor for all abatement activities. Either Whittaker should have signed off as supervisor on the Daily Project Log or DMC should have provided documentation showing that Keller was qualified to do so.

Response – The GCLBA has certifications on file for the subject property. Rich Keller is qualified to complete the work. The certifications will be made available to U.S. Treasury via secure file transfer upon request.

5.3.9 Storage of Asbestos Materials

The Log and Manifest show that the asbestos abatement activities occurred on 9/16/14. The RACM was transported to the disposal facility over a week later, on 9/24/14. It's unclear whether the RACM was stored safely while awaiting transport. Per NESHAP and OSHA (1926.1101) requirements, all ACM containers or wrapped material must be leak-tight and labeled using warning labels specified by OSHA and the US DOT. If the abatement contractor staged containers of ACM in front of homes to await pickup, the

containers should have been sealed and labeled properly to prevent accidental exposure by the public.

Response: The GCLBA agrees. Per communication from regulators, GCLBA understands that MIOSHA regulates asbestos while on site and MDEQ regulates asbestos once off site, including disposal. With regard to the subject property, there are no indications that the RACM was not stored in compliance with OSHA requirements while on site or NESHAP requirements off site.

5.3.10 PCB Analysis/Profile Sheets Missing

Copies of all waste analyses or waste profile sheets for PCB containing equipment removal are a required submittal by SOW Section 3, paragraph 1.05. No documentation of analysis is in the file. Therefore, it's impossible to determine whether the fluorescent light ballasts removed from the Kellar home contained PCB.

Response: All waste in GCLBA residential demolitions is considered to be household abandoned waste. Communication from MDEQ regarding this classification is available upon request. GCLBA believes the responsible thing to do is divert as much of these materials from the landfills as possible and has discussed with surveyors methods that achieve both waste diversion and cost savings. As a result, surveyors assume materials that are likely to contain PCBs do contain them. However, as household abandoned waste, this material is not regulated. SOW Section 3, paragraph 1.05 will be modified to clarify or the requirement will be removed.

5.3.11 PCB Work Plan

A PCB containing equipment removal Work Plan is a required submittal by SOW Section 3, paragraph 1.05. The plan is not in the file. Based on the documentation provided it's impossible to determine whether the plan should have been provided, or whether there was no PCB containing equipment at the Kellar site.

Response: Please refer to the response to 5.3.10

5.3.12 PCB Health and Safety Plan

A PCB containing equipment removal Health and Safety Plan is a required submittal by SOW Section 3, paragraph 1.05. The plan is not in the file. Based on the documentation provided it's impossible to determine whether the plan should have been provided, or whether there was no PCB containing equipment at the Kellar site.

Response: Please refer to the response to 5.3.10

5.3.13 PCB Testing

Information on who sampled, analyzed, and transported all wastes for PCB containing equipment removal is a required submittal by SOW Section 3, paragraph 1.05. This

documentation is not in the file. Based on the information provided it's impossible to determine whether the information should have been provided, or whether there was no PCB containing equipment at the Kellar site.

Response: Please refer to the response to 5.3.10

5.3.14 PCB Manifests

Copies of all licenses, certificates, permits, agreements, manifests, and chain of custody records for PCB containing equipment removal are a required submittal by SOW Section 3, paragraph 1.05. The documentation is not in the file. Based on the information provided it's impossible to determine whether the information should have been provided, or whether there was no PCB containing equipment at the Kellar site.

Response: Please refer to the response to 5.3.10

5.3.15 Final Payment Checklist

Review of the Land Bank's Request for Final Payment Checklist for the Pay Request received 10/3/14 revealed the following issues that should have been identified for corrective action but were not.

5.3.15.1 Missing Subcontractor Information

The review fails to check that the contractor provided all the information required by the list at the very top of the form. Specifically, the subcontractors' proofs of compliance with Michigan Workers' Disability Compensation Act, insurance accord, and licensure should have been provided but were not included in the file.

Response: This information is available in Contract File and the Contractor Pre-Qualification files. This information is not stored in the individual project files. The presence of the information is verified prior to payment. The information is complete for the subject property. Proof of compliance with Michigan Workers' Disability Compensation Act, insurance accord and licensure are available upon request. In the future, contractors will be asked to distinguish sub-contractors from suppliers to avoid confusion.

5.3.16 Photo Documentation

Before and after pictures are not in the file. The Land Bank's Request for Final Payment Checklist for the Pay Request received 10/3/14 notes that the pictures were located at box.com. The pictures were not provided with the file.

Response: The GCLBA receives hundreds of pictures for each project from contractors. These pictures are kept in electronic files and then downloaded to jump drives for storage. They are not printed and included in each project file.

However, as described in other sections of this response, staff does review pictures for compliance prior to payment.

5.4 Physical Inspection of Removal of Environmentally Hazardous Material

5.4.1 Improper Asbestos Waste Containers

During the physical onsite inspection on 12 July 2017, it was noted that unmarked containers were sitting in front of several homes. One neighbor stated that the container arrived during asbestos abatement. Per NESHAP and OSHA (1926.1101) requirements, all ACM containers or wrapped material must be leak-tight and labeled using warning labels specified by OSHA and the US DOT. If the abatement contractor is staging containers of ACM in front of homes to await pickup, the containers should be sealed and labeled properly. This would help prevent accidental exposure by the public.

Response: There is no indication that the containers observed by the USACE contained ACM. However, if SIGTARP's subcontractor, USACE, suspected that the containers posed a potential violation to NESHAP and OSHA and thereby a threat to residents, they should have notified MIOSHA and MDEQ regulators immediately. The GCLBA takes any risk of potential violation very seriously and requests that SIGTARP provide specific addresses where the unmarked containers were observed along with photographs and a detailed description of the containers so the incident can be investigated.

5.5 2725 Kellar Ave - Agreement and Oversight of LA Construction Corporation (LA) for Demolition and Disposal

5.5.1 Contract Solicitation

It is unclear whether the selection process stated in the Request for Proposal (RFP) was followed. The RFP #LB 14-019, dated 9/2/14, page 4 states that the Land Bank intends to award to the lowest responsive and responsible contractor. Page 12 states that the offeror with the highest score would win the contract. In the case of bid list #3, two contractors achieved the same score. The contract was not awarded to the contractor with the lowest price of those two, as would be expected. A memo to the file explained that the lowest price contractor was not awarded bid list #3 because it had also won bid list #2 and did not have the capacity to perform both bid lists simultaneously in addition to its ongoing work with the Land Bank. On the surface this reasoning is logical. However, some aspects of the decision are confusing and deserve further clarification.

Response: The document additionally states that the GCLBA will award to the "most responsive and responsible bidder" and "Any contract resulting from this RFP will not necessarily be awarded to the vendor with the lowest price. Instead, contract(s) shall

be awarded to vendor(s) whose proposal(s) received the most points in accordance with criteria set forth in RFP." The GCLBA determines who the most responsive and responsible bidder is by using an established set of criteria with an associated point structure. Typically, the bidder with the most points receives the award. In the case of a tie, as is the case here, the GCLBA staff makes a determination based on the information provided by the contractor through the competitive bidding process to determine who should receive the contract. GCLBA will update the language on page 4 to read "most" rather than "lowest" for consistency.

Ultimately, the GCLBA stands behind its decision to award the contract to the contractor with the stated capacity to complete the work. The GCLBA welcomes additional guidance from MSHDA on contract awards.

5.5.1.1 Bid Line Items

The Land Bank should have confirmed with the low bidder that it did not have the capacity to perform both bid lists and documented this in the memo. Specifically, the Land Bank interprets the bidder's response to mean that the bidder could only dedicate 8-10 employees to all Land Bank projects and complete 20 demolitions per week *in total*. However, the bidder may have meant to provide 8-10 employees to each bid list in order to complete 20 demolitions per week *for each bid list*.

Response: This issue has already been addressed. The GCLBA now asks contractors to provide a response to the capacity question for the RFP they are responding to overall and not just per bid list.

5.5.1.2 Selection Criteria

The RFP should have stated how the Land Bank would determine which bid list to award in the case where a contractor only qualified for award of one bid list due to its capacity and it would have been awarded both otherwise. Even without the clarification in the RFP, the memo for the file should have documented how the Land Bank determined which bid list to award to the contractor who tied in scoring but lost bid list #3 due to capacity constraints.

Response: The GCLBA will evaluate and determine if additional justification can be provided in the future.

5.5.2 Contract Pricing

The proposal price was revised prior to award without any construction cost basis. LA's original bid price for the Kellar property was $10,800. The correspondence file indicates that LA was asked to reduce its bid by $3,610 based solely on the amount of Treasury funding the property was eligible to receive. This reduction in price may have

caused LA to take unacceptable shortcuts on quality and safety in order to cut costs. It may have contributed to some of the failures noted in this report. This is a prime example of why USACE is recommending there be a process for obtaining an exception to the maximum demolition cost per property.

Response: The GCLBA has had to cancel multiple projects due to the project funding cap. The GCLBA strongly supports the recommendation to allow spending above and beyond the maximum demolition cost per property set by MSHDA at $25,000 to enable the GCLBA to demolish eligible blighted structures that may pose the greatest risk to the community.

5.5.3 Contract Requirements

The contract for the Kellar house should have clearly stated that the joint compound identified by the Global inspection was Category II ACM (see OSHA interpretation at: https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=22395). It was inaccurate and misleading to list the joint material as a composite with the wall. Per NESHAP for a demolition project, the RACM is not required to be removed or stripped if it is Category II non-friable ACM with low probability of becoming crumbled, pulverized, or reduced to powder during demolition. The contract should have clearly stated whether the joint compound qualified as such.

Response: The survey did clearly state that joint compound contained asbestos, and that it contained more than 1%. The survey also clearly stated that the composite result of joint compound and drywall contained less than 1% asbestos. The Standard Interpretation that USACE refers to states nothing regarding contracts. See response to 5.2.1-5.2.5

5.5.4 Joint Compound Documentation

In removing the joint compound, LA should have either produced a negative exposure assessment or used appropriate methods to ensure that airborne asbestos did not migrate from the regulated area in accordance with OSHA 1926.1101(g)(7). Furthermore, DMC should have followed the controls of OSHA 1926.1101(g)(8)(v) or 1926.1101(g)(vi) when removing the joint compound. From the documentation provided, it's unclear whether any of the required procedures were followed.

Response: See response to 5.2.1-5.2.5

5.5.5 Window Caulk Documentation

The contract for the Kellar house should have stated that the tan window caulk in the living room was contaminated with asbestos. If this caulk was in place during demolition, then it should have been handled according to OSHA requirements.

Response: See response to 5.2.1-5.2.5

5.5.6 Contract Deficiency Regarding Asbestos Removal

Regardless of the quantity of asbestos or other NESHAP requirements, removal of materials contaminated with asbestos requires special handling under OSHA (including products containing amounts less than 1%, see OSHA interpretation at: https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=24747). The contract should have included more detailed asbestos removal specifications in order to ensure proper handling. Specifically, the specifications should have required the contractor to provide a removal plan, as well as qualifications and certifications of the employees who would physically be performing and supervising the work on site.

Response: See response to 5.2.1-5.2.5

5.5.7 Air Monitoring Requirements

Based on the contract requirements and documentation provided, it's seems unlikely that OSHA 1926.1101 requirements for containing, removing, handling, and air monitoring were followed when removing the joint compound and window caulk. There is no documentation of providing a regulated area, air monitoring, leak-tight container storage, or proper disposal.

Response: All demolition and abatement contractors are licensed and qualified to handle asbestos. Also see response 5.2.1-5.2.5.

5.5.8 NESHAP Notification Improperly Filled Out

The NESHAP Notification of Intent to Renovate/Demolish form was not filled out properly. The joint compound should have been listed, either as RACM to be removed or as non- friable ACM not removed prior to demolition.

Response: Per NESHAP, the material was not regulated as stated previously.
See response to 5.2.1-5.2.5

5.5.9 Soil Erosion Permits

Soil erosion permits are required for certain properties but the contract is unclear which ones. Statement of Work (SOW) Section 200, paragraph 1.2 states the requirement but no detail is provided anywhere else in the contract. The Land Bank should clarify the requirement.

Response: Soil erosion permits or waivers are required for all projects. The requirement is stated in Section 200, paragraph 1.2. The GCLBA will consider listing the same information somewhere else in the contract and possibly providing additional information that is readily available from the Genesee County Drain

Commissioner. The GCLBA has already added confirmation of soil erosion permits or waivers received as a checklist submittal that is required for payment.

5.5.10 Flint Permits

The City of Flint (City) demolition permit appears to require two inspections, one of which is an open-hole inspection. In addition, SOW Section 300, paragraph 3.7 requires approval to proceed from the local municipality prior to filling the hole. However, all of the inspections documented in the file were performed after the hole was filled and final grade achieved. Either the City or Land Bank should have performed an open-hole inspection. In absence of an open-hole inspection, LA should have been required to prove that it met the requirements of the open-hole inspection prior to receiving payment. This could have been achieved through excavation or soil testing provided by LA at no additional cost to the Land Bank.

Response: The City of Flint completes all required inspections per code. As stated previously, the City of Flint does not issue a winter-grade or final grade certification without an open hole inspection. All contractors are required to provide soil samples for fill material as stated previously. Also see response 4.2.4.

5.5.11 Redundant Inspections

The City and Land Bank performed redundant inspections. Both performed winter grade and final grade inspections. Given the limited resources available for inspections, the Land Bank and City should coordinate resources and divide the inspections. USACE recommends combining efforts to perform the following four inspections: asbestos removal inspection (while the work is underway), pre-demolition inspection, open-hole inspection, and final grade inspection. Sporadic inspections during demolition and fill activities are also recommended for a limited number of properties. All of these inspections will provide assurance that the contractor is performing according to the contract as well as following state and federal regulations.

Response: See responses to 4.2.4 and 4.3.

5.5.12 Landfill Receipts

Landfill receipts/waste manifests are a required submittal by SOW Section 100, Paragraph I. A truck log was provided with manifest numbers but the manifests are not in the file. The manifests should have been received and verified prior to payment by the Land Bank.

Response: Manifests for ACM are included in the file. Landfills don't require manifests for construction debris. Contractors submitting trucking logs are required to maintain receipts from the landfills. While manifests AND trucking logs are consistently

submitted now, in an effort to streamline the program, trucking logs without manifests were approved by MSHDA for non-asbestos containing loads of construction debris. Copies of receipts and manifests for the construction debris for the subject property are available via secure file transfer upon request.

5.5.13 Disability Compensation Act

Proof that subcontractors are in compliance with Michigan Workers' Disability Compensation Act and appropriately licensed is required by SOW Section 100, Paragraph I LA's proposal says that it will not have subcontractors. However, LA's payment requests reveal that it ultimately had multiple subcontractors. No documentation of compliance with the act of licensing is on file. LA should have provided, and the Land Bank should have required proof.

Response: Certificates of Liability Insurance Accords from sub-contractors subject to compliance with the Michigan Workers Disability Compensation Act are required by the GCLBA. The documents demonstrate compliance with the Act and the contract requirements listed in the SOW Section 100, Paragraph I. The Workers Compensation And Employers' Liability coverage amount is statutory in the State of Michigan. Copies of Certificate of Liability Insurance Accords from sub-contractors subject to the act who worked on the subject property are on file and can be provided to U.S. Treasury via secure file transfer upon request.

5.5.14 Deficient Submittals

The "Submittals" section of the SOW (Section 100, Paragraph I) is inconsistent with the technical requirements of the SOW. This paragraph lists documentation that must be included with requests for payment. It includes some technical submittals but omits others that are dispersed throughout the technical Sections of the SOW. This submittals/payment paragraph should either include a comprehensive list of all the submittals, or simply require that all submittals be accepted prior to payment. Based on the files provided, it appears that this oversight allowed LA to be paid without providing technical submittals required by other sections of the SOW. That being the case, it's impossible to determine whether some technical requirements were met.

Response: The GCLBA will review these sections of the contract and align as appropriate.

5.5.15 Topsoil Requirements

Topsoil material requirements are confusing and should be revised for future contracts. SOW Section 300, part 2, mixes terms from the USDA Soil Classification System and the USCS Soil Classification System. For simplicity and clarity, it is recommended that the specification use one classification system when defining requirements for each material.

USACE recommends using the USDA Soil Classification System for the topsoil on this project.

Response: Topsoil specifications were developed by a qualified and experienced environmental consultant- the same consultant that provided the letter that LA's topsoil/backfill met GCLBA's specs. GCLBA will consider modifying the specs given USACE's recommendation for future scopes of work.

5.5.16 Soil Testing

Soil testing requirements are provided in the SOW, Section 300, Part 2. The SOW requires documentation showing that the backfill and topsoil are below MDEQ Direct Contact level. The documentation provided includes a letter stating that the *topsoil* sample passed the required test and lab results for one sample. However, there is no letter of confirmation stating that the *backfill* materials met the MDEQ Direct Contact level criteria. The Land Bank should have required and LA should have provided the certification or statement of confirmation with test results for the backfill.

Response: Soil test results are always required and they were present in the file for the subject property. See response to 5.5.18 for additional information.

5.5.17 Backfill Determination

It's impossible to determine what type of materials were provided as backfill and topsoil since no documentation is provided in the file. Soil requirements are provided in the SOW, Section 300, Part 2. However, very little soil testing and documentation are required. It is recommended that contractors be required to provide soil test results for each borrow source showing conformance with *all the specified criteria* prior to bringing any soil from that source on to the site. (The specification is confusing about whether this was expected for all the criteria or just to show that the material conforms to MDEQ Direct Contact level.
It appears that the Land Bank only required documentation that the topsoil was below MDEQ Direct Contact level.) Specific concerns follow.

5.5.17.1 MDOT Classification for Fill Material below 18"

Fill material up to 18 inches from the surface is required to be MDOT Class II Granular Material or other material as approved by the Land Bank. It's impossible to determine whether this requirement was met because there is no documentation on backfill material in the file. Response: SOW from the time that 14-019 was published states:
" A. Content of fill material up to 18 inches from the surface. All fill material except MDOT Class II Granular Material (excluding blue clay), shall be subject to the approval of the Authority/Authority's Representative.
B. Content of fill material from the 18 inch mark up to 6 inches from the surface: Use loamy material or a sandy clay (mined from the earth and not manufactured) to allow for proper drainage on the site. APPENDIX 1-B: SCOPE OF WORK/SUMMARY OF WORK (Revised

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C. For Approved fill material, notify the GCLBA Representative in advance of the intention to import material, its location and the GCLBA's name, address and telephone number.

D. Contractor must provide Statement of confirmation that backfill and top soil is below MDEQ Direct Contact level and backup documentation (Lab results from soil sample for backfill and top soil) also provided prior to bring backfill and top soil on site."

5.5.17.2 Requirements for Fill Material 18" to 6"

Fill material from the 18 inch mark up to 6 inches from the surface is required to be loamy material or sandy clay (mined from the earth and not manufactured). It's impossible to determine whether this requirement was met because there is no documentation on backfill material in the file.

Response: The GCLBA has compliance measures in place to monitor and evaluate the soil being used on GCLBA demolitions and the condition of the soil on site. GCLBA demolition inspectors do visual inspections of the offsite fill material and top soil piles prior to approval for delivery and use on GCLBA projects. At the beginning of the Hardest Hit Fund Demolition Program, the fill material and topsoil source inspections were randomly performed. The GCLBA now inspects all source material prior to delivery to demolition sites. Soil source is inspected at various locations of the pile to confirm that is free of debris and construction material.

During the final on site inspection after demolition, inspectors do a visual inspection of the grading and compaction and they use a soil core sampler to evaluate the soil on the lot. The soil core sampler can sample six inches of topsoil and ten inches of the fill material. Inspectors do a visual inspection of the sample to confirm that the fill and topsoil meet the specifications outlined in the SOW. The GCLBA inspectors do daily field reports including information regarding the inspection of the fill and topsoil. If the inspector determines that the site does not meet the specifications defined in the SOW, the lot fails inspection and the contractor is notified of the issues that they need to address. The lot is then re-inspected until all the issues are addressed and the site passes the final inspection.

The GCLBA has made improvements to its soil review and approval process since the HHF demolition program's inception. GCLBA's environmental consultant created forms for contractors to provide with their soil laboratory results where they certify that their fill material and top soil meet the requirements identified in the SOW.

5.5.17.3 Requirements for Topsoil for Top 6"

Topsoil is required to conform to ASTM D2487 Group Symbol SM, fall within a certain acidity range, and contain a certain percentage range of organic matter. It's impossible to determine whether the requirements were met because there is no documentation provided regarding these criteria.

Response: The GCLBA's submission guidelines have changed since this project was completed.

Please see 5.5.17.2 for additional information.

5.5.18 Soil Confirmation

The test results for the single soil sample attached to the Statement of Confirmation letter for the topsoil (submitted with the final pay request) are the exact same test results submitted with the payment request for winter grade. It's possible that this occurred because the same material was provided as both fill materials and as topsoil. If that was the case then the material could not have been in compliance with the contract requirements, and the reasons it was allowed should have been documented. As discussed in comment 5.5.17 above, the contract requires two different materials for fill material, and provides another material requirement for topsoil. It is impossible for the material's properties to be both MDOT Class II Granular Material, (the contract fill material requirement below 18") as well as loamy material or sandy clay (the fill material requirement from 18 inches to 6 inches). It is also impossible for the material's properties to be both MDOT Class II Granular Material (the contract fill material requirement below 18") as well as ASTM D2487 Group Symbol SM, with the percentage range of organic matter (the contract topsoil material requirement). The Land Bank and LA should have documented what material was determined acceptable to fill the hole.

Response: The test report provided by the GCLBA is the same for both the backfill and the topsoil. Although the confirmation letter provided states that it is for topsoil, it is applicable to both since it refers to the same test result. The top soil/fill soil test results and analysis provided indicate that all target parameters were below method detection limits and/or MDEQ Par 201 Generic Resident Cleanup Criteria. Contrary to USACE's above statement, soil used for topsoil and fill can be in compliance with the specifications in the SOW. MDOT Class II Granular Material is not **REQUIRED** in the specification. MDOT Class II Granular Material is simply the only material that does not require prior approval. The specification was developed for the GCLBA by AKT Peerless Environmental.

5.5.19 Approved Soil Sources

The contract does not contain any evidence that soil is being purchased and delivered from the approved source. The contract should require LA to provide copies of truck tickets for all fill material and topsoil deliveries. These would provide assurance that the material is being purchased and delivered as expected.

Response: See response to 5.5.18

5.5.20 Grass Seed Inoculation

Seed inoculation with a specific strain of bacteria is required by Section 300, paragraph 3.12 and Section 200, Paragraph 2.1. It's impossible to determine whether the

requirements were met because there is no documentation required by the contract or provided in the file.

Response: Contractors are required to submit seed tags for each contract.

5.5.21 Compaction and Grading Requirements

The contract contains requirements for compaction and grading in Section 300, paragraphs 3.9-3.11. However, it's impossible to determine whether these criteria were met because there is no plan, testing, or documentation required by the contract or provided in the file.

Response: See response to 5.5.17.2

5.5.22 Dust and Noise Control Requirements

Most submittals required by Section 400, paragraph 1.5 are not on file. These include: Proposed dust-control measures, Proposed noise control measures, Schedule of demolition activities, Inventory of items to be removed or salvaged, and Landfill records indicating receipt and acceptance of hazardous wastes by a facility licensed to accept hazardous wastes. The Land Bank should have required and LA should have provided the submittals prior to the start of physical work or prior to payment, as applicable.

Response: Using water during demolition is required as a dust-control measure as detailed in the SOW. The contractors are required to follow local ordinances for noise control. Schedule of demolition is provided after the notice to proceed is issued. Inventory of items to be removed is included in surveys.

5.5.23 Internal Review Checklist

Review of the Land Bank's Internal Review Checklist for the pay request received 1/9/15 revealed the following issues that should have been identified for corrective action but were not.

5.5.23.1 Missing Subcontractors Information

The review fails to check that the contractor provided all the information required by the list at the very top of the form. Specifically, the subcontractors' proofs of compliance with Michigan Workers' Disability Compensation Act, insurance accord, licensure, and LA's confirmation of clean backfill should have been provided but were not included in the file.

Response: See response 5.5.13. Subcontractor insurance accord and licenses are included in the contract file and prequalification file.

5.5.23.2 Categorization of ACM

The form incorrectly states that there was no ACM.

Response: Per NESHAP, there was no RACM present. Therefore, disposal at a landfill as RACM was not required. If ACM is noted, MSHDA requests manifests for ACM disposal. See response 5.3.9.

5.5.23.3 Truck Tickets

The form lists all the weight tickets from the trucking log but fails to identify that the weight tickets themselves are missing. These should have been required/provided.

Response: See response to 5.5.12

5.5.23.4 Soil Testing

The form notes that a soil sample test report was provided but fails to identify that the required Statement of Confirmation was omitted. This should have been required/provided.

Response: See response to 5.5.18.

5.5.23.5 Open Hole Inspection

The form fails to identify that the City open-hole inspection was not provided. The form incorrectly omits the contract and City's open-hole inspection requirement. It provides for winter grade and final grade inspections only.

Response: The GCLBA uses the COF final certification to confirm that an open hole inspection was completed and the site passed the inspection. The COF inspectors would not issues a certification without an approved open hole inspection.

5.5.24 Pay Requests

Review of the Land Bank's Internal Review Checklist for the Pay Request received 6/5/15 revealed the following issues that should have been identified for corrective action but were not.

5.5.24.1 Subcontractors Compliance with MI Workers' Disability Compensation Act

The review incorrectly confirms that the contractor provided the subcontractors' proofs of compliance with Michigan Workers' Disability Compensation Act, insurance accord, and licensure.

Response: See response to 5.5.13.

5.5.24.2 Topsoil Checklist

The checklist notes that the Statement of Confirmation is provided showing backfill and topsoil are below MDEQ Direct Contact level and backup. However, it fails to identify

that the confirmation provided is only for the topsoil. It also fails to identify that the attached test report is the exact same report that was provided as the confirmation for the backfill provided with the previous payment request. It's unclear whether anyone noticed that it was the same test report.

Response: The test report is the same for both the backfill and the topsoil. Although the confirmation letter provided states that it is for topsoil, it is applicable to both since it refers to the same test result. See 5.5.18 for additional information.

5.5.25 Final Payment Checklist

Review of the Land Bank's Request for Final Payment Checklist for the Pay Request received 6/5/15 revealed the following issues that should have been identified for corrective action but were not.

5.5.25.1 Missing Information

The review fails to check that the contractor provided all the information required by the list at the very top of the form. Specifically, the subcontractors' proofs of compliance with Michigan Workers' Disability Compensation Act, insurance accord, and licensure should have been provided but were not included in the file.

Response: The GCLBA has already modified their process to make sure that these items are consistently checked now.

The form is incomplete in that it fails to note whether the NESHAP notification was completed, fails to note whether the field report/daily log/inventory sheets were provided, fails to note whether the trucking log was provided, fails to note whether the demolition permit was provided, fails to note whether the Land Bank inspection report was completed, and fails to mark that the Land Bank inspector approves the payment.

Response: USACE seems to be referring to a checklist in the packet submitted by the contractor that is incomplete. However, the checklist is supplied to contractors as guide to assist them in preparing submittals. The checklist completed by GCLBA staff is complete indicating that the packet contains the required documentation for a final grade payment that follows a winter grade payment. This was a final-grade payment request meaning contractor was requesting reimbursement for topsoil, seed and straw only. No notifications, permits, or waste manifests were required or provided. All were marked "N/A" on the checklist used- and signed- by GCLBA staff.

6 Physical Onsite Inspection of Demolition and Disposal by USACE Personnel

6.1 Open-Hole Inspections

Open holes were seen at several sites awaiting city open hole inspections. A question arose regarding if those holes should be fall protected. For excavations over 6 feet in depth on an active construction site when the excavation is not readily seen because of plant growth or other visual barrier, OSHA 1926.501 requires a guardrail system, fence, or barricades. Also, when equipment is required to approach or operate adjacent to an excavation and the operator does not have a clear view of the edge, then a warning system such as barricades, signals, or stop logs must be utilized. It seems that the snow fencing seen at the sites may be adequate to meet OSHA regulations.

Response: GCLBA is pleased that no concern was noted by inspectors and that snow fencing seen at the sites appears to be adequate to meet MIOSHA regulations.

6.2 Safety Requirements

No protective systems were noted in the open excavations viewed. This is not in violation of OSHA since no workers were in the excavation. However, inspections by the Land Bank should verify that workers are not allowed in excavations over 5 feet in depth without an adequate protective system designed in accordance with OSHA regulations. Excavations less than 5 feed in depth must be inspected by a competent person who determines that there is no indication of potential cave-in.

Response: The GCLBA is pleased that no MIOSHA violations were noted.

6.3 Final Grade

It's unclear whether the requirement to plow strip, or break up sloped surfaces steeper than 1 vertical to 4 horizontal is being met (see Section 300, Paragraph 3.8). The Land Bank should either require the contractor to provide pictures and perform sporadic inspections to confirm that this is being followed, or change the requirement.

Response: The GCLBA requests that SIGTARP provide the addresses to the properties where USACE inspectors are unclear whether the requirement to plow strip, or break up sloped surfaces steeper than 1 vertical to 4 horizontal is being met. The GCLBA will evaluate and determine if this section of the SOF should be modified.

6.4 Dust Abatement

Ongoing wetting, as required by the contract, was witnessed at 3016 S Grand Traverse. A question arose regarding whether it would be safe and acceptable to use Flint River water for this operation given the elevated lead levels. Flint River water lead levels exceed drinking water standards. However, this does not mean that the water is unsafe for other types of use. The USACE assessment is that lead levels present in Flint water do not pose any notable risk of contaminating the debris or soil, or exposing workers to unsafe levels of lead through skin contact.

Response: The GCLBA is pleased that dust abatement measures were observed on site following the SOW and in compliance with regulations, as safety for workers and residents is a priority for us. The GCLBA agrees with the USACE that there are no notable risks of lead exposure due to water use on site.