

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Agreement Regarding:)	Docket No. _____
)	
[SITE NAME])	Environmental
[SITE ADDRESS])	Oversight Agreement
)	
Project Proponent:)	Education Code
)	Section 17213.1
[NAME])	
[ADDRESS])	
_____)	

I.
INTRODUCTION

1.1 Parties. The California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) enters into this Environmental Oversight Agreement (Agreement) with **[NAME OF PROPONENT]** (Proponent). DTSC and Proponent are referred to collectively herein as the "Parties."

1.2 Site. The property which is the subject of this Agreement (Site) is an existing school site where a project may be constructed or is a proposed school site (**Choose One**), and is located at **[SITE ADDRESS, CITY, COUNTY]**, California **[ZIP CODE]**. **[Alternate language for use when the property address information does not adequately describe the Site (e.g., if the Site is a portion of the property covered by the address or if the property does not have an address and is identified by intersections or other descriptive phrases): "The Site is an existing school site**

where a project may be constructed or is a proposed school site, and consists of (narrative description of Site).] The Site is identified by Assessor's Parcel Number(s) _____ . A location map and diagram of the Site are attached as Exhibit A and Exhibit B.

1.3 Jurisdiction. This Agreement is entered into by DTSC and Proponent pursuant to Education Code Section 17213.1. This section authorizes DTSC to enter into an enforceable agreement with Proponent to oversee Proponent's preparation of a Preliminary Endangerment Assessment (PEA) for the Site and other related activities, if necessary.

1.4 Purpose. The purpose of this Agreement is for the Proponent to perform a PEA under the oversight of DTSC to determine, among other things, whether current or past hazardous material management practices or waste management practices have resulted in a release or threatened release of hazardous materials, or whether naturally occurring hazardous materials are present. The definition and requirements of a PEA, for purposes of this Agreement, are those set forth in Education Code Sections 17210, 17210.1 and 17213.1. The purpose of this Agreement is also for DTSC to obtain reimbursement from the Proponent for DTSC's oversight costs.

II. BACKGROUND

2.1 Ownership. The Site is owned by **[PROPERTY OWNER]**. **[If site consists of more than one parcel, identify the owners of each parcel.]**

2.2 Current Knowledge of the Site. The Phase I Environmental Assessment Report (hereinafter referred to as Phase I) for the Site [or other report if Phase I has not been done] indicates that a PEA is needed for the Site.

2.3 Physical Description. **[BRIEFLY DESCRIBE SITE, SITE SIZE, AND THE GENERAL AREA, NOTING ANY DISTINGUISHING PHYSICAL FEATURES, SUCH AS SURFACE WATER BODIES, BUILDINGS, VACANT LOT, ETC.]**

2.4 Site History. **[BRIEFLY DESCRIBE THE HISTORICAL USES OF THE SITE, INCLUDING ANY HAZARDOUS MATERIALS/WASTE HANDLING, STORAGE OR DISPOSAL AREAS, IF KNOWN.]**

III. AGREEMENT

3.0 **IT IS HEREBY AGREED THAT DTSC** will provide review and oversight of the PEA conducted by the Proponent in accordance with Education Code Sections 17210.1 and 17213.1 and the Scope of Work contained in Exhibit C. The Proponent shall conduct the activities in the manner specified herein and in accordance with the schedule specified in Exhibit E. All work shall be performed consistent with Chapter 6.8, Division 20 of the Health and Safety Code (commencing with Health and Safety Code section 25300 et seq.), as amended; the National Contingency Plan (40 Code of Federal Regulations (CFR) Part 300), as amended; U.S. EPA and DTSC Superfund guidance documents regarding site investigation and remediation.

3.1 Scope of Work and DTSC Oversight. DTSC shall review and provide Proponent with written comments on all Proponent deliverables as described in

Exhibit C (Scope of Work) and other documents applicable to the scope of the project. DTSC may provide oversight of field activities, including sampling, as appropriate. DTSC's completion of oversight activities described in this Agreement shall constitute DTSC's complete performance under this Agreement.

3.2 Additional Activities. Additional activities may be conducted and DTSC oversight provided by amendment to this Agreement or Exhibits hereto in accordance with Paragraph 3.17. If DTSC expects additional oversight costs to be incurred related to these additional activities, DTSC will provide a written estimate of the additional oversight cost to the Proponent before the additional activities are undertaken, unless the Parties agree that the circumstances of the Site make it impracticable to provide the estimate prior to performance of the additional activities.

3.3 Agreement Managers. Ms. Sharon Fair, Branch Chief, School Property Evaluation and Cleanup Division is designated by DTSC as its Manager for this Agreement. **[PROPONENT'S PROJECT MANAGER]** is assigned by the Proponent as Manager for this Agreement. Each Party to this Agreement shall provide at least ten (10) days advance written notice to the other of any change in its designated manager.

3.4 Notices and Submittals. All notices, documents and communications required to be given under this Agreement, unless otherwise specified herein, shall be sent to the respective parties at the following addresses in a manner that produces a record of the sending of the notice, document or communication such as certified mail, overnight delivery service, facsimile transmission or courier hand delivery service:

3.4.1 To DTSC:

Ms. Sharon Fair, Branch Chief
School Property Evaluation and Cleanup Division
Attn: Ms. Robbie Morris
Department of Toxic Substances Control
1011 North Grandview Avenue
Glendale, California 91201

3.4.2 To the Proponent:

[NAME, TITLE]
[COMPANY]
[ADDRESS]

3.4.3 To the Property Owner: **[OPTIONAL]**

[INCLUDE IF DIFFERENT FROM PROPONENT, MUST HAVE NAME AND MAILING ADDRESS]

3.5 DTSC Review and Approval. If DTSC determines that any report, plan, schedule or other document submitted for approval pursuant to this Agreement fails to comply with this Agreement or fails to protect public health or safety or the environment, DTSC may (a) return comments to the Proponent with recommended changes; or (b) if agreed by the Proponent, modify the document as deemed necessary and approve the document as modified.

3.6 Communications. All approvals and decisions made regarding submittals and notifications will be communicated to each party in writing by the other party's Agreement Manager or his/her designee. No informal advice, guidance, or suggestions or comments by either party regarding reports, plans, specifications, schedules or any other

writings shall be construed to relieve the party of the obligation to obtain such written approvals.

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

3.8 Payment. In accordance with the requirements of Education Code sections 17210.1 and 17213.1, the Proponent agrees to pay (1) all costs incurred by DTSC for review of documents submitted prior to the effective date of the Agreement, and (2) all costs incurred by DTSC in providing oversight pursuant to this Agreement, including review of the documents described in Exhibit C and associated documents, and in providing oversight of field activities. An estimate of DTSC's oversight costs is attached as Exhibit D. It is understood by the parties that Exhibit D is an estimate and cannot be relied upon as the final cost figure. DTSC will bill the Proponent quarterly. Proponent agrees to make payment within sixty (60) days of receipt of DTSC's billing. Such billings will reflect any amounts that have been advanced to DTSC by the Proponent.

3.8.1 In anticipation of services to be rendered, Proponent shall make an advance payment of fifty percent (50%) of the estimate of DTSC's oversight costs set forth in Exhibit D, unless the estimate is less than or equal to \$8,000. If the estimate is less than or equal to \$8,000, Proponent shall make an advance payment of the total amount of the estimate

set forth in Exhibit D. Proponent shall make an advance payment of **\$ (50 %)**_____ to DTSC. That payment shall be made no later than ten (10) days after this Agreement is fully executed. If the Proponent's advance payment does not cover all costs payable to DTSC under this paragraph, Proponent agrees to pay the additional costs within sixty (60) days of receipt of a bill from DTSC.

3.8.2 If any bill is not paid by the Proponent within sixty (60) days after it is sent by DTSC, the Proponent may be deemed to be in material default of this Agreement.

3.8.3 All payments made by the Proponent pursuant to this Agreement shall be by warrant or a cashier's or certified check made payable to the "Department of Toxic Substances Control," and bearing on its face the project code for the Site (Site No. **[Calstars Site Code]** and the Docket Number (Docket No. HSA-A 00/01-xxx) of this Agreement. Payments shall be sent directly to:

Department of Toxic Substances Control
Accounting/Cashier
1011 I Street, 21st Floor
P.O. Box 806
Sacramento, California 95812-0806

A photocopy of the warrant or check shall be sent concurrently to DTSC's Agreement Manager.

3.8.4 If the advance payment exceeds DTSC's actual oversight costs, DTSC will provide an accounting for expenses and refund the difference within one hundred-twenty (120) days after termination of this Agreement in accordance with Paragraph 3.18. In no other case shall the Proponent be entitled to a refund from DTSC or to assert a claim against DTSC for any amount paid or expended under this Agreement.

3.9 Condition Precedent. It is expressly understood and agreed that DTSC's receipt of the advance payment described in Paragraph 3.8.1. is a condition precedent to DTSC's obligation to provide oversight, review and/or comment on documents.

3.10 Record Retention. DTSC shall retain all cost records associated with the work performed under this Agreement for such time periods as may be required by applicable state law. DTSC shall maintain records of oversight activities as required by Chapter 6.66 (commencing with Health and Safety Code section 25269) of Division 20 of the Health and Safety Code. The Proponent may request to inspect all documents which support DTSC's cost determination in accordance with the Public Records Act, Government Code section 6250 et seq.

3.11 Project Coordinator. The work performed pursuant to this Agreement shall be under the direction and supervision of a project coordinator which shall be an environmental assessor as defined in Education Code section 17210 (b). The Proponent shall submit: (a) the name and address of the project coordinator; and (b) in order to demonstrate the qualifications of an environmental assessor, the resume of the coordinator. The Proponent shall promptly notify DTSC of any change in the identity of the Project Coordinator. All engineering and geological work shall be conducted in conformance with applicable state law, including but not limited to, Business and Professions Code sections 6735 and 7835.

3.12 Access. Proponent shall provide, and/or use best efforts to obtain access to the Site and offsite areas to which access is necessary to implement this Agreement. Such access shall be provided to DTSC's employees, contractors, and consultants at all

reasonable times. Nothing in this paragraph is intended or shall be construed to limit in any way the right of entry or inspection that DTSC or any other agency may otherwise have by operation of any law. Proponent gives its permission, to the extent it has authority to give such permission, to DTSC and its authorized representatives to enter and move freely about all property at the Site at all reasonable times for purposes including, but not limited to: inspecting records, operating logs, sampling and analytic data, and contracts relating to this Site; reviewing the progress of the Proponent in carrying out the terms of this Agreement; conducting such tests as DTSC may deem necessary; and verifying the data submitted to DTSC by the Proponent.

3.13 Sampling, Data and Document Availability. When requested by DTSC, the Proponent shall make available to DTSC, and shall provide copies of, all data and information concerning the presence, if any, of hazardous materials at the Site, including technical records and contractual documents, sampling and monitoring information and photographs and maps, whether or not such data and information was developed pursuant to this Agreement, that is within Proponent's possession or control.

3.14 Notification of Field Activities. The Proponent shall inform DTSC at least seven (7) days in advance of all field activities pursuant to this Agreement and shall allow DTSC and its authorized representatives to take duplicates of any samples collected by the Proponent pursuant to this Agreement. DTSC and Proponent will agree to the most appropriate method of collecting the duplicate samples.

3.15 Notification of Environmental Condition. The Proponent shall notify DTSC's Agreement Manager immediately upon learning of any condition posing an immediate

threat to public health or safety or the environment. Within seven (7) days of the onset of such a condition, the Proponent shall furnish a report to DTSC, signed by the Proponent's Agreement Manager, setting forth the events which occurred and the measures taken in the response thereto.

3.16 Preservation of Documentation. The Proponent shall maintain a central repository of the data, reports, and other documents prepared pursuant to this Agreement. All such data, reports and other documents shall be preserved by the Proponent for a minimum of six (6) years after the conclusion of all activities carried out under this Agreement. If DTSC requests that some or all of these documents be preserved for a longer period of time, the Proponent shall either comply with that request, deliver the documents to DTSC, or permit DTSC to copy the documents prior to destruction. The Proponent shall notify DTSC in writing at least ninety (90) days prior to the expiration of the six-year minimum retention period before destroying any documents prepared pursuant to this Agreement. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the six year period, the related records shall be retained until the completion and resolution of all issues arising therefrom or until the end of the six-year period, which ever is later.

3.17 Amendments. This Agreement may be amended or modified solely upon written consent of all parties. Such amendments or modifications may be proposed by any party and shall be effective the third business day following the day the last party signing the amendment or modification sends its notification of signing to the other party. The parties may agree to a different effective date.

3.18 Termination. Except as otherwise provided in this Paragraph, each party to this Agreement reserves the right unilaterally to terminate this Agreement for any reason. This termination may be accomplished by giving a thirty (30) day advance written notice of the election to terminate this Agreement to the other Party. In addition, the Proponent may, if it elects not to pursue the acquisition of or construction project proposed on the Site, also unilaterally terminate this Agreement by giving written notice which becomes effective after five (5) days from the date of receipt by DTSC. In the event that this Agreement is terminated under this Paragraph, the Proponent shall be responsible for DTSC costs through the effective date of termination.

3.19 Exhibits. All exhibits attached to this Agreement are incorporated herein by this reference.

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

3.21 Proponent Liabilities. Nothing in this Agreement shall constitute or be considered a satisfaction or release from liability for any condition or claim arising as a result of Proponent's past, current, or future operations. Nothing in this Agreement is intended or shall be construed to limit the rights of any of the parties with respect to claims arising out of or relating to the deposit or disposal at any other location of substances removed from the Site. By entering into this Agreement, Proponent does not assume any liability for contamination at the Site as it exists on the effective date of this Agreement. The Proponent shall not be deemed to be an operator of the site under state or federal law

solely by reason of conducting the PEA subject to DTSC oversight in compliance with this Agreement.

3.22 Government Liabilities. The State of California (State) shall not be liable for any injuries or damages to persons or property resulting from acts or omissions by the Proponent or by related parties in carrying out activities pursuant to this Agreement, nor shall the State of California be held as a party to any contract entered into by the Proponent or its agents in carrying out the activities pursuant to this Agreement.

3.23 Third Party Actions. In the event that the Proponent is a party to any suit or claim for damages or contribution relating to the Site to which DTSC is not a party, the Proponent shall notify DTSC in writing within ten (10) days after service of the complaint in the third-party action. Proponent shall pay all costs incurred by DTSC relating to such third-party actions, including but not limited to responding to subpoenas.

3.24 Reservation of Rights. DTSC and the Proponent reserve the following rights.

3.24.1 DTSC reserves its right to pursue cost recovery under the Comprehensive Environmental Response, Compensation and Liability act of 1980 (CERCLA), as amended, the California Health and Safety Code section 25360, and any other applicable section of the law, except as set forth in section 3.21 of this Agreement.

3.24.2 Nothing in this Agreement is intended or shall be construed to limit or preclude DTSC from taking any action authorized by law or equity to protect public health and safety or the environment and recovering the costs thereof.

3.24.3 Nothing in this Agreement shall constitute or be construed as a waiver of the Proponent's rights, (including any covenant not to sue or release) with respect to any claim, cause of action, or demand in law or equity that the Proponent may have against any "person," as defined in Section 101(21) of CERCLA, or Health and Safety Code section 25319, that is not a signatory to this Agreement.

3.24.4 By entering into this Agreement, Proponent does not admit to (nor does DTSC allege) any fact, fault or liability under any statute or regulation.

3.25 Compliance with Applicable Laws. Nothing in this Agreement shall relieve DTSC or the Proponent from complying with all applicable laws and regulations, and DTSC and the Proponent shall conform all actions required by this Agreement with all applicable federal, state and local laws and regulations.

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

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

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

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

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

3.31 Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

Date: _____

[BRANCH CHIEF]

School Property Evaluation and Cleanup Division
Department of Toxic Substances Control

Date: _____

[PROPONENT NAME, TITLE]

EXHIBITS

A - SITE LOCATION MAP

B - SITE DIAGRAM

C - SCOPE OF WORK

D - COST ESTIMATE

E - SCHEDULE

EXHIBIT C

SCOPE OF WORK

The following Tasks will be completed as part of this Agreement:

TASK 1. Submittal of Existing Data

The Proponent will submit to DTSC, if relevant and available, all background information, sample analysis results, environmental assessment reports, and any other information pertinent to the hazardous materials management and/or release, characterization and cleanup of the Site not previously submitted as part of the Phase I Environmental Assessment reviewed by DTSC. DTSC will review the information, and, in coordination with the Proponent, identify areas and media of concern, and determine the additional work, if any, required to complete the assessment of the Site. This information may be submitted as appendices to the PEA Work Plan for the site.

TASK 2. Preliminary Endangerment Assessment (PEA).

The Proponent shall conduct a PEA to determine whether a release or threatened release of hazardous materials exists at the Site, or whether naturally occurring hazardous materials are present, which pose a threat to children's health, children's learning abilities, public health or the environment. The PEA shall be conducted in accordance with the DTSC guidance manual for evaluating hazardous substance release sites, titled: "Preliminary Endangerment Assessment Guidance Manual," State of California, Environmental Protection Agency, Department of Toxic Substances Control (January 1994; revised June 1999). Documents which may be required as part of the PEA are:

- (a) PEA Workplan. This workplan shall include a sampling plan designed to determine the presence of contamination or naturally occurring hazardous materials at the Site, and, if present, the type and extent of the materials or contamination; a health and safety plan addressing health and safety issues and safe work practices; and a quality assurance/quality control plan to produce data of known quality.
- (b) PEA Report. This report will document whether a release has occurred, a threatened release exists, or whether naturally occurring hazardous materials are present, the threat the Site poses to children's health, children's learning abilities, public health and the environment, and whether further action is necessary.
- (c) The Proponent shall comply with the public participation requirements set forth in California Education Code Section (CEC) 17213.1(a)(6). Comments pertaining to the PEA shall be submitted to DTSC immediately. Upon review, DTSC will approve or disapprove the PEA.

TASK 3. Public Notices.

The Proponent shall provide a notice to residents in the immediate area of the proposed school Site, utilizing a format developed by DTSC, prior to the commencement of PEA fieldwork and required notices pursuant to AB 972.

TASK 4. Quality Assurance/Quality Control (QA/QC) Plan.

All sampling and analysis conducted by the Proponent under this Agreement shall be performed in accordance with a QA/QC Plan submitted by the Proponent and approved by DTSC. The QA/QC Plan will describe:

- (a) The procedures for the collection, identification, preservation and transport of samples;
- (b) The calibration and maintenance of instruments;
- (c) The processing, verification, storage and reporting of data, including chain of custody procedures and identification of qualified person(s) conducting the sampling and of a laboratory certified or approved by DTSC pursuant to Health and Safety Code section 25198; and
- (d) How the data obtained pursuant to this Agreement will be managed and preserved in accordance with the Preservation of Documentation section of this Agreement.

TASK 5. Health and Safety Plan.

The Proponent will submit a Site Health and Safety Plan in accordance with California Code of Regulations, Title 8, section 5192 and DTSC guidance, which covers all measures, including contingency plans, which will be taken during field activities to protect the health and safety of the workers at the Site and the general public from exposure to hazardous waste, substances or materials. The Health and Safety Plan should describe the specific personnel, procedures and equipment to be utilized.

TASK 6. Document Review.

DTSC will review the PEA Work Plan and PEA Report and provide written comments to the Proponent.

EXHIBIT E
PROJECT SCHEDULE

TASK	TIMELINE
Agreement Execution	[Date]
Proponent to submit advance payment.	Within 10 days of Agreement execution.
Proponent to submit all existing data and reports of previous investigations	Within 10 days of Agreement execution
A scoping meeting should be scheduled to coordinate project activities	Within 15 days of Agreement execution
DTSC to review and comment on submitted workplan	Within 30 days of receiving document
Proponent to mail out notification of fieldwork letter to residents nearby the proposed school site	10 days prior to commencement of PEA fieldwork
DTSC to review and comment on PEA report	In compliance with California Education Code section 17213.1(a)(6)
Proponent to hold public hearing and publish notice of availability PEA report	In compliance with California Education Code section 17213.1(a)(6)
DTSC to review and approve or disapprove the PEA Report	In compliance with California Education Code section 17213.1(a)(6)