



Department of Toxic Substances Control



Matthew Rodriguez
Secretary for
Environmental Protection

Barbara A. Lee, Director
8800 Cal Center Drive
Sacramento, California 95826-3200

Edmund G. Brown Jr.
Governor

June 30, 2017

Mr. Chris Jew, Chief Business Officer
Cupertino Union School District
10301 Vista Drive
Cupertino, California 95014

SCHOOL CLEANUP AGREEMENT, DOCKET NUMBER HSA-FY16/17-115,
SEDGWICK ELEMENTARY SCHOOL EXPANSION PROJECT, CUPERTINO,
SANTA CLARA COUNTY (SITE CODE: 204271-11)

Dear Mr. Jew:

Enclosed for your file is a fully executed School Cleanup Agreement (Agreement) for the Sedgwick Elementary School Expansion Project. The Agreement covers the Department of Toxic Substances Control's (DTSC) oversight costs for activities associated with the implementation of this Agreement as well as any associated activities.

DTSC has assigned Mr. Jose Luevano as the project manager who will be responsible for the technical oversight and coordination with you and/or your environmental consultant. Mr. Luevano can be reached at the DTSC Sacramento office at the letterhead address. His phone number is (916) 255-3577, and his e-mail address is Jose.Luevano@dtsc.ca.gov.

As noted in the Agreement, the advance payment in the amount of \$20,086.00 is due within 10 days of Agreement execution. It is important that the following information be clearly marked on the face of the check: Docket Number HSA-FY16/17-115 and EnviroStor Site Code 204271-11. The advance payment check should be sent directly to:

Department of Toxic Substances Control
Accounting/Cashier
1001 I Street, 21st Floor
P.O. Box 806
Sacramento, California 95812-0806

A photocopy of the check should be sent to Mr. Luevano.

Mr. Chris Jew
June 30, 2017
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Thank you for your cooperation with DTSC. If you have any questions regarding this project, please contact Mr. Luevano.

Sincerely,

for 

Ellen DelMar
Agreement Coordinator
Brownfields and Environmental Restoration Program

Enclosure: *Fully Executed School Cleanup Agreement*

cc: (via e-mail)

Ms. Lesley Taylor
California Department of Education
ltaylor@cde.ca.gov

Ms. Ellen DelMar
Department of Toxic Substances Control
Ellen.Delmar@dtsc.ca.gov

Mr. Jose Salcedo
Department of Toxic Substances Control
Jose.Salcedo@dtsc.ca.gov

Mr. Jose Luevano
Department of Toxic Substances Control
Jose.Luevano@dtsc.ca.gov

Mr. John Little
Department of Toxic Substances Control
John.Little@dtsc.ca.gov

Schools Reading File – Sacramento Office (hard copy)

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

JUN 26 2017

DATE RECEIVED
CYPRESS OFFICE

Agreement Regarding:	)	Docket No. HSA-FY15/16-115
	)	
Sedgwick Elementary School	)	School Cleanup Agreement
Expansion Project	)	
10480 Finch Avenue	)	
Cupertino, California 95014	)	
Site Code Number: 204271-11	)	
	)	Health and Safety Code
Project Proponent:	)	sections 25355.5 and 25358.1
	)	and Education Code section 17213.2
Cupertino Union School District	)	
10301 Vista Drive	)	
Cupertino, California 95014	)	

RECEIVED JUN 29 2017

I.
INTRODUCTION

1.1 Parties. The California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) enters into this School Cleanup Agreement (Agreement) with the Cupertino Union School District (Proponent). DTSC and the Proponent are referred to collectively herein as the "Parties."

1.2 Site. The property, which is the subject of this Agreement, (Site) is adjacent to an existing school and is proposed for use as an expansion project and is located at 10480 Finch Avenue, Cupertino, Santa Clara County, California 95014. The Site is identified by Assessor's Parcel Number 375-40-067. A location map and Site diagram are attached as Exhibit A and Exhibit B, respectively.

1.3 Jurisdiction. This Agreement is entered into by DTSC and the Proponent pursuant to Health and Safety Code section 25355.5 and Education Code section 17213.2. These sections authorize DTSC to enter into an enforceable agreement with

the Proponent to oversee the Proponent's implementation of response actions at the Site and other related activities, if necessary.

1.4 Purpose. The purposes of this Agreement are:

(a) For the Proponent to conduct a response action(s) and other associated activities under the oversight of DTSC and receive Site certification from DTSC; and

(b) For DTSC to obtain reimbursement from the Proponent for DTSC's oversight costs for activities associated with this Agreement; and

(c) To enable the Proponent to integrate and expedite the site cleanup and project finance and construction processes by seeking and obtaining all California Department of Education and Office of Public School Construction final approvals and State Allocation Board School Facility Program apportionment for a project at the Site prior to completion of the required response action(s); and

(d) To establish the terms of the Proponent's obligation to complete all DTSC required investigations and/or response action(s).

II. BACKGROUND

2.1 Ownership. The Site is owned by F.A. Pestarino Jr., Trustee.

2.2 Substances Found at the Site. Chemicals of concern at the Site are organochlorine pesticides (OCPs) and lead in soil. The Proponent submitted an application requesting to enter into this Agreement for DTSC's oversight of the development and implementation of response actions for the Site.

2.3 Physical Description. The Site consists of approximately 1.48 acres and is occupied by a single family residence and out buildings. The Site is bordered to the

east and south by Sedgewick Elementary School and to the west and north by residential property.

2.4 Site History. The Site is residential property. A historic aerial photograph of the Site depicts an existing residence building present in 1956. From 1939 to 1956, orchard trees existed on the Site.

III. AGREEMENT

3.0 **IT IS HEREBY AGREED THAT** DTSC will provide review, oversight and approval of the response actions conducted by the Proponent in accordance with the Scope of Work contained in Exhibit C. The Proponent shall conduct the activities required under this Agreement in the manner specified herein and in accordance with the schedule specified in Exhibit D. All work shall be performed consistent with Education Code sections 17210, 17210.1, 17213.1 and 17213.2; Health and Safety Code section 25300 et seq., as amended; the National Contingency Plan (Code of Federal Regulations, Title 40, Part 300), as amended; and United States Environmental Protection Agency and DTSC Superfund guidance documents regarding site investigation and remediation.

3.1 Scope of Work and DTSC Oversight. DTSC shall review and provide the Proponent with written comments on all of the Proponent's deliverables as described in Exhibit C (Scope of Work) and other documents determined by DTSC to be necessary to the scope of the project or the implementation of this Agreement. DTSC shall provide oversight of field activities, including sampling and remedial activities, as appropriate.

3.2 Additional Activities. Additional activities may be conducted and DTSC's oversight provided by amendment to this Agreement or Exhibits attached hereto in accordance with Paragraphs 3.10, 3.17 and 3.19. 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.

3.3 Agreement Managers. Mr. José Salcedo, Unit Chief, Schools Unit, Sacramento Office, Brownfields and Environmental Restoration Program, is designated by DTSC as its Manager for this Agreement. Mr. Travis Kirk, Director, Facility Modernization, Cupertino Union School District, is designated by the Proponent as Manager for this Agreement. Each Party to this Agreement shall provide at least 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 by regular mail to the respective Agreement Managers at the following addresses:

(a) To DTSC:

Mr. José Salcedo, Unit Chief
Schools Unit – Sacramento Office
Brownfields and Environmental Restoration Program
Attn: Mr. Jose Luevano, Project Manager
Department of Toxic Substances Control
8800 Cal Center Drive, 2nd Floor
Sacramento, California 95826

(b) To the Proponent:

Mr. Travis Kirk
Director, Facility Modernization
Cupertino Union School District
10301 Vista Drive
Cupertino, California 95014

For all documents required to be given to DTSC, the Proponent shall submit one hard (paper) copy and one electronic copy in Adobe Portable Document Format (PDF), as specified in Exhibit E. All submittals shall include applicable signatures and certification stamps.

3.5 DTSC Review and Approval.

(a) All response action activities taken pursuant to this Agreement shall be subject to the approval of DTSC. The Proponent shall submit all deliverables required by this Agreement to DTSC. Once the deliverables are approved by DTSC, they shall be subject to the terms of, and be enforceable under this Agreement.

(b) 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 (1) return comments to the Proponent with recommended changes and a date by which the Proponent shall submit to DTSC a revised document incorporating the recommended changes; or (2) modify the document as deemed necessary and approve the document as modified.

(c) Any modifications, comments or other directives issued pursuant to this Paragraph are incorporated into this Agreement. Any noncompliance with these modifications or directives shall be deemed a failure or refusal to comply with this Agreement and may be subject to penalties for noncompliance as specified in Paragraph 3.23.

3.6 Communications. All approvals and decisions of DTSC made regarding submittals and notifications will be communicated to the Proponent in writing by DTSC's

Agreement Manager or his/her designee. Confirmation of a designation shall be provided in writing by DTSC to validate any approvals or decisions made by the designee of DTSC's Agreement Manager. No informal advice, guidance, suggestions or comments by DTSC regarding reports, plans, specifications, schedules or any other writings by the Proponent shall be construed to relieve the Proponent of the obligations to obtain such written approvals.

3.7 Stop Work Order. 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. In the event that DTSC determines that any activities (whether or not pursued in compliance with this Agreement) are proceeding without DTSC's authorization, DTSC may order the Proponent to stop further implementation of this Agreement or activities for such a period of time needed to obtain DTSC's authorization, if such authorization is appropriate. Any deadline in this Agreement directly affected by a Stop Work Order under this Paragraph shall be extended for the term of the Stop Work Order.

3.8 Payment. The Proponent shall pay (1) all costs incurred by DTSC for preparation of this Agreement and 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 F. It is understood by the Parties that Exhibit F is an estimate and cannot be relied upon as the final cost figure. DTSC will bill the Proponent quarterly. The Proponent shall make payment within 30 days of the date 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, the Proponent shall make an advance payment of \$20,086.00 to DTSC no later than 10 days after this Agreement is fully executed. If the advance payment does not cover all costs payable to DTSC under this Agreement, the Proponent shall pay the additional costs within 30 days of the date of DTSC's billing.

3.8.2 If any billing is not paid by the Proponent within 60 days after it is sent, DTSC will commence calculating interest from the date of the billing, at the same rate of return earned on investment in the Surplus Money Investment Fund pursuant to Government Code section 16475 and Health and Safety Code section 25360.1.

3.8.3 All payments made by the Proponent pursuant to this Agreement shall be by a warrant or check made payable to the "Department of Toxic Substances Control", and bearing on its face the project code for the Site (Site Code Number 204271) and the Docket Number (Docket Number HSA-FY15/16-115) of this Agreement. Payments shall be sent to:

Department of Toxic Substances Control
Accounting Office
P.O. Box 806
Sacramento, California 95812-0806

A photocopy of the warrant or check shall be sent concurrently to DTSC's Agreement Manager. The Proponent requests future DTSC's billings to be submitted to:

Mr. Travis Kirk
Director, Facility Modernization
Cupertino Union School District
10301 Vista Drive
Cupertino, California 95014

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 120 days after termination of this Agreement in accordance with Paragraph 3.28. 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, comment, and/or approval pursuant to this Agreement.

3.10 Operation and Maintenance (O&M). If O&M is required, the Proponent shall comply with all O&M requirements in accordance with the final approved Removal Action Workplan (RAW), Remedial Action Plan (RAP), and/or Remedial Design, as applicable. Within 30 days of the date of DTSC's request, the Proponent shall prepare and submit to DTSC for approval an O&M plan that includes an implementation schedule. The Proponent shall implement the O&M plan in accordance with the approved schedule.

3.11 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. 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.

3.12 Project Coordinator. The work performed by and on behalf of the Proponent pursuant to this Agreement shall be under the direction and supervision of a project coordinator with expertise in hazardous substance site cleanup. The Proponent shall submit: a) the name and address of the project coordinator; and b) in order to demonstrate the expertise in hazardous substance site cleanup, the resume of the project coordinator. The Proponent shall notify DTSC within 10 business days 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 et al.

3.13 Access. The Proponent shall provide and/or 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. DTSC and its authorized representatives shall have the authority to enter and move freely 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.

3.14 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 electronic data, technical records and contractual documents, sampling and monitoring information, photographs and maps, whether or not such data and information was developed pursuant to this Agreement. The required information or data about the Site may include information that is publicly available or that is within the Proponent's possession or control.

3.15 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 splits of any samples collected by the Proponent pursuant to this Agreement. DTSC and the Proponent will agree to the most appropriate method of collecting the split samples.

3.16 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.

3.17 Previously Unidentified Release. If, at any time during construction at the Site, a previously unidentified release or threatened release of a hazardous material or the presence of a naturally occurring hazardous material is discovered, the Proponent shall, pursuant to Education Code section 17213.2(e), immediately cease all

construction activities at the Site and notify DTSC's Agreement Manager. At this point, DTSC may determine, in consultation with the Proponent, that certain tasks, including, but not limited to, investigatory work, engineering evaluation, or procedure/methodology modifications are necessary in addition to, or in lieu of, the tasks and deliverables included in any part of a DTSC-approved RAW or other decision document. Within 14 days after the receipt of such determination, the Proponent may confer with DTSC to discuss the additional work DTSC has requested. The Proponent shall submit to DTSC a workplan for the additional work within 30 days of receipt of DTSC's determination or according to an alternate schedule established by DTSC. Upon approval of a workplan, the Proponent shall implement it in accordance with the provisions and schedule contained therein. If approved in writing by DTSC, the Proponent may continue to proceed with work at the Site that does not impede or interfere with ongoing investigations or work to be conducted.

3.18 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 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 90 days prior to 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.

3.19 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.

3.20 Exhibits. All exhibits identified in and attached to this Agreement are incorporated herein by this reference.

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

3.22 Proponent Liabilities. The requirements in this Agreement constitute the requirements of DTSC pursuant to Health and Safety Code section 25187. Nothing in this Agreement shall constitute or be construed as a satisfaction or release from liability for any condition or claim arising as a result of the Proponent's past, current, or future operations.

3.23 Penalties for Noncompliance. The Proponent may be liable for penalties for each day out of compliance with any term or condition set forth in this Agreement as a result of Proponent's failure to comply, pursuant to Health and Safety Code sections 25187, 25359.2, 25359.4 and 25367.

3.24 Government Liabilities. The State of California 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.

3.25 Third-Party Actions. In the event that the Proponent is or becomes 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 10 days after service of the complaint in the third-party action. The Proponent shall pay all costs incurred by DTSC relating to such third-party actions, including but not limited to responding to subpoenas.

3.26 Reservation of Rights. DTSC and the Proponent reserve the following rights:

(a) DTSC reserves its right to pursue cost recovery under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, Health and Safety Code section 25360 et seq., or any other applicable provision of the law.

(b) 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.

(c) 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 the Comprehensive Environmental

Response, Compensation and Liability Act of 1980, as amended, or Health and Safety Code section 25319, that is not a signatory to this Agreement.

(d) 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.

(e) By entering into this Agreement, the Proponent does not admit to any fact, fault or liability under any statute or regulation.

3.27 Dispute Resolution. The Parties agree to use their best efforts to resolve all disputes informally. The Parties agree that the procedures contained in this Paragraph are the required administrative procedures for resolving disputes arising under this Agreement. If the Proponent fails to follow the procedures contained in this Paragraph, it shall have waived its right to further contest the disputed issue. The Proponent reserves its legal rights to contest or defend against any final decision rendered by DTSC under this Paragraph. Disputes regarding DTSC billings shall follow the procedures set forth in Paragraph 3.27.3.

3.27.1 The Proponent shall first seek resolution with DTSC's assigned project manager and unit chief. If the issue is not resolved after review by the unit chief, the Proponent shall seek resolution with the DTSC branch chief by presenting in a letter the issues in dispute, the legal or other basis for the Proponent's position, and the remedy sought. The branch chief shall issue a written decision with an explanation for the decision within 15 business days after receipt of the letter from the Proponent.

3.27.2 If the Proponent disagrees with the branch chief's decision, the Proponent may appeal to the division chief of the School Property Evaluation and

Cleanup Division. To appeal to the division chief, the Proponent shall prepare a letter stating the reasons why the branch chief's decision is not acceptable. Attached to the letter shall be (a) the Proponent's original statement of dispute, (2) supporting documents, and (3) copies of any responses prepared by the project manager, unit chief, and branch chief. This letter and attachments shall be sent to the division chief within 10 business days from the date of the Proponent's receipt of the branch chief's response. The division chief or his/her designee shall review the Proponent's letter and supporting documents, consider the issues raised and render a written decision to the Proponent within 15 business days of receipt of the Proponent's letter. The decision of the division chief, or his/her designee, shall constitute DTSC's administrative decision on the issues in dispute.

3.27.3 If the Proponent disputes a DTSC billing, or any part thereof, the Proponent shall notify DTSC's assigned project manager and attempt to informally resolve the dispute with DTSC's project manager and branch chief. If the Proponent desires to formally request dispute resolution with regard to the billing, the Proponent shall file a request for dispute resolution in writing within 45 days of the date of the billing in dispute. The written request shall describe all issues in dispute and shall set forth the reasons for the dispute, both factual and legal. If the dispute pertains only to a portion of the costs included in the billing, the Proponent shall pay all costs which are undisputed in accordance with Paragraph 3.8. The filing of a notice of dispute pursuant to this Paragraph shall not stay the accrual of interest on any unpaid costs pending resolution of the dispute. The written request shall be sent to:

Chief, Collections and Resolution Unit
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806
(916) 322-0481

A copy of the written request for dispute resolution shall also be sent to the person designated by DTSC to receive submittals under this Agreement. A decision on the billing dispute will be rendered by the Special Assistant for Cost Recovery and Reimbursement Policy or other DTSC designee.

3.27.4 The existence of a dispute shall not excuse, stay, or suspend any other compliance obligation or deadline required pursuant to this Agreement.

3.28 Termination of Agreement.

(a) In the event the Proponent withdraws or rescinds its application for State funds for the school project pursuant to the California Code of Regulations, title 2, section 1859.107, as amended, and all applicable regulations, procedures, and policies implementing Education Code chapter 12.5 (Leroy F. Greene School Facilities Act of 1998, commencing with section 17070.10), as amended; or in the event the Proponent's request for final site and plan approval for the school project is not approved by the California Department of Education or the Proponent's request for full and final funding is not approved by the State Allocation Board, the Proponent, upon giving 30 days written notice, shall be entitled to terminate the Agreement. In the event that this Agreement is terminated, the Proponent shall be responsible for DTSC's costs incurred in the implementation and administration of this Agreement through the effective date of termination. DTSC will submit a final billing within 120 days from the effective date of termination.

(b) Contamination Remains in Place Where Proponent is Property Owner. The Proponent, as owner of the Site, shall be subject to the jurisdiction of DTSC, if contamination exceeds levels that are protective of human health, safety and/or the environment. DTSC may issue an order to the Proponent requiring completion of cleanup pursuant to Health and Safety Code, chapter 6.5 (Hazardous Waste Control, commencing with section 25100) or chapter 6.8 (Hazardous Substance Account, commencing with section 25300), as applicable. If DTSC determines that contamination may remain in place under restrictions limiting future land use, the Proponent may be required to develop engineering controls and/or institutional controls, and to enter into an operation and maintenance agreement and/or a land use covenant with DTSC to protect public health, safety and the environment.

3.29 Compliance with Applicable Laws. Nothing in this Agreement shall relieve the Proponent from complying with all applicable federal, State and local laws, regulations and requirements. The Proponent shall carry out this Agreement in compliance with all applicable requirements, including, but not limited to, requirements to obtain permits and to assure worker safety.

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

3.31 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.

3.32 Parties Bound. This Agreement applies to and is binding upon the Proponent and its officers, directors, agents, employees, contractors, consultants,

receivers, trustees, administrators, successors and assignees, including but not limited to individuals, partners and subsidiary, 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 any signatory, or of the facility or Site shall alter any signatory's responsibilities under this Agreement.

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

3.34 Rescission of Previous Agreements. To the extent the Parties have entered into a prior agreement, including, but not limited to an Environmental Oversight Agreement, Voluntary Cleanup Agreement or a Master Agreement, relating to the same school project, that prior agreement is hereby rescinded and superseded by this Agreement.

3.35 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.

3.36 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: 6/30/2017

José Salcedo, Unit Chief
Schools Unit – Sacramento Office
Brownfields and Environmental Restoration Program
Department of Toxic Substances Control



Date: 6/21/17

Chris Jew, Chief Business Officer
Cupertino Union School District

EXHIBITS

A - SITE LOCATION MAP

B - SITE DIAGRAM

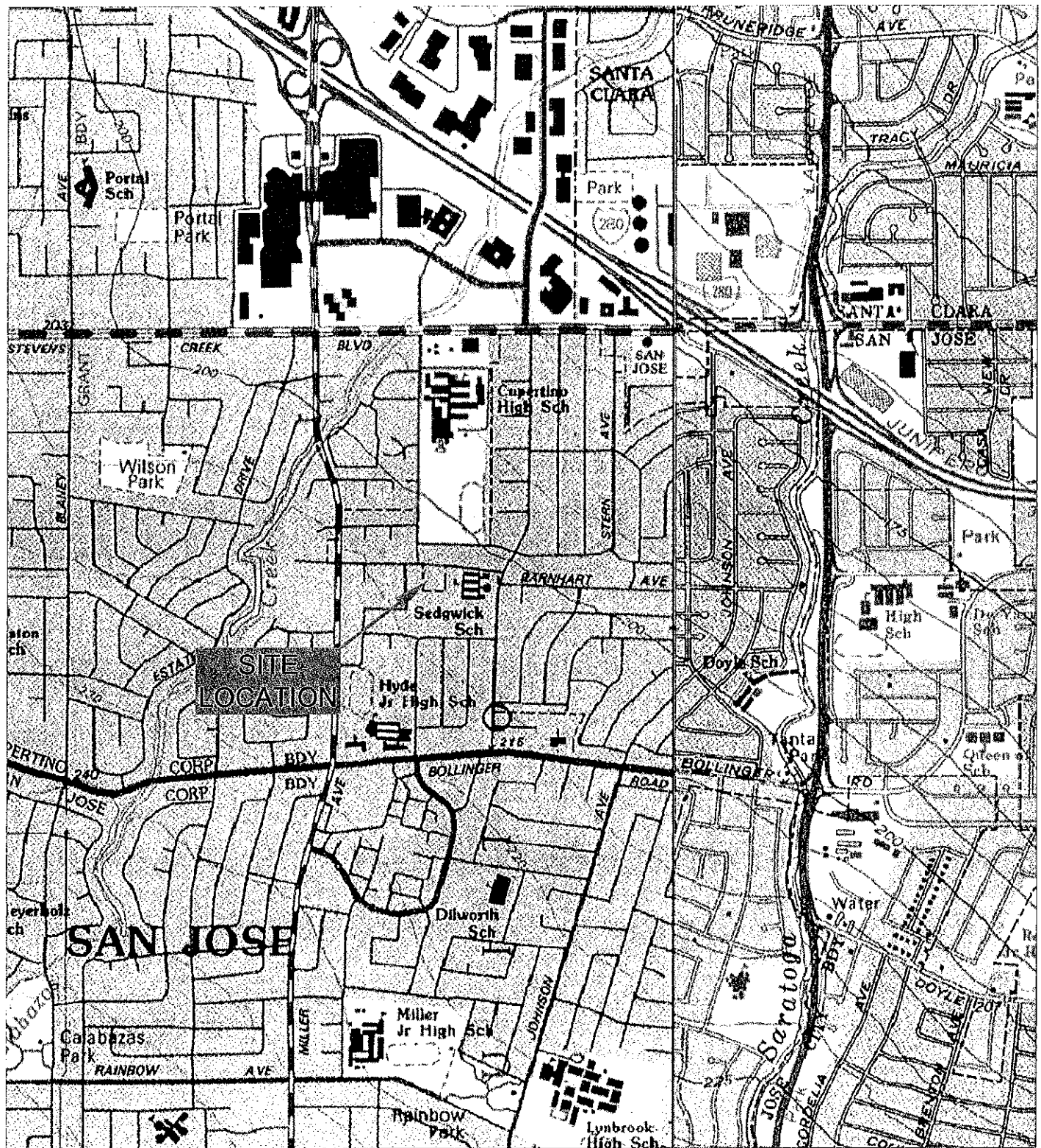
C - SCOPE OF WORK

D - PROJECT SCHEDULE

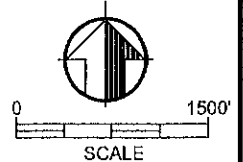
E - GUIDELINES FOR SUBMITTING DOCUMENTS IN ADOBE PORTABLE
DOCUMENT FORMAT

F - COST ESTIMATE

EXHIBIT A
SITE LOCATION MAP



U.S.G.S. 7.5 MINUTE QUADRANGLE
CUPERTINO, CALIFORNIA 1991



padre
associates, inc.
ENGINEERS, GEOLOGISTS &
ENVIRONMENTAL SCIENTISTS

SEDGWICK ELEMENTARY SCHOOL EXPANSION
10480 FINCH AVENUE
CUPERTINO, SANTA CLARA COUNTY, CALIFORNIA

PROJECT NO.	DATE	DR. BY	APP. BY
1401-2161	12/15/14	AC	AJK

PLATE 1
SITE LOCATION

EXHIBIT B
SITE DIAGRAM



SOURCE: GOOGLE EARTH MAP DATED MARCH 2015

padre
associates, inc.
ENGINEERS, GEOLOGISTS &
ENVIRONMENTAL SCIENTISTS

SEDGWICK ELEMENTARY SCHOOL EXPANSION
10480 FINCH AVENUE
CUPERTINO, SANTA CLARA COUNTY, CALIFORNIA

PROJECT NO.	DATE	DR. BY	APP. BY
1401-2171	8/5/15	AC	AJK

PLATE 1-2

SITE PLAN

EXHIBIT C
SCOPE OF WORK

EXHIBIT C

SCOPE OF WORK

The following Tasks will be completed as part of this Agreement. If circumstances warrant, the Proponent, with DTSC's prior written concurrence, may streamline certain tasks.

TASK 1. Submittal of Existing Data

The Proponent shall 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 (Phase I), Phase I Addendum and/or Preliminary Endangerment Assessment (PEA) reviewed by DTSC. DTSC will review the information, and, in coordination with the Proponent, identify areas and compounds of concern, and determine the additional activities, if any, required to complete the investigation/remediation of the Site.

TASK 2. Scoping Meeting

DTSC's project manager will schedule a scoping meeting with the Proponent and the project coordinator within 15 days of Agreement execution. During the scoping meeting, the project coordinator shall present the proposed scope of work, including a summary of the historical and current onsite land uses, the uses of the adjacent properties, results of the PEA investigation, proposed response actions and timeframe for completion of each task. DTSC will provide recommendations, as needed, and request workplans or reports, as appropriate.

TASK 3. Supplemental Site Investigation (SSI)

- 3.1 SSI Workplan: The Proponent shall submit an SSI Workplan that describes the activities proposed to characterize the contamination identified at the Site. The SSI Workplan shall also include a Site-specific health and safety (HAS) plan as specified in Task 5, quality assurance/quality control (QA/QC) plan as specified in Task 6, sampling plan, and implementation schedule. DTSC will review the SSI Workplan and provide written comments to the Proponent or approve the SSI Workplan. The Proponent shall revise the SSI Workplan in accordance with DTSC's comments, if any is issued.
- 3.2 SSI Workplan Implementation: The Proponent shall begin implementation of the approved SSI Workplan in accordance with the approved implementation schedule. DTSC shall provide oversight and approval of SSI Workplan implementation, as appropriate.

- 3.3 SSI Report: The Proponent shall prepare an SSI Report that at a minimum presents the data, summarizes the results of the investigation, validates all data, and includes recommendations and conclusions. DTSC will review the SSI Report and provide written comments to the Proponent or approve the SSI Report. The Proponent shall revise the SSI Report in accordance with DTSC's comments, if any is issued.

TASK 4. Removal Action Workplan (RAW)

If DTSC determines a removal action is appropriate, the Proponent shall prepare a Removal Action Workplan (RAW) in accordance with Health and Safety Code sections 25323.1 and 25356.1. The RAW shall include:

- (a) A description of the onsite contamination;
- (b) The goals to be achieved by the removal action;
- (c) An analysis of the alternative options considered and rejected and the basis for that rejection. This should include a discussion for each alternative which covers its effectiveness, implementability and cost;
- (d) Administrative record list;
- (e) A statement that the RAW serves as an equivalent document to the Engineering Evaluation/Cost Analysis document required by the National Contingency Plan;
- (f) A health and safety plan (as described in Task 9);
- (g) A QA/QC plan (as described in Task 10);
- (h) An implementation schedule; and
- (i) Any other plans (e.g., transportation plan, dust monitoring and mitigation plan) deemed applicable, relevant or appropriate (Site specific).

DTSC will review the RAW and provide written comments to the Proponent. If the RAW is determined by DTSC to be incomplete, the Proponent shall address all outstanding issues as appropriate.

If DTSC determines a Remedial Action Plan (RAP) is required for the proposed response action, the Proponent shall prepare the RAP in accordance with Health and Safety Code section 25356.1(c) for DTSC's review and approval. The preparation, review and approval of a RAP may be addressed under Paragraph 3.2 (Additional Activities) of this Agreement.

TASK 5. Health and Safety (HAS) Plan

The Proponent shall submit a Site-specific HAS Plan in accordance with California Code of Regulations, title 8, section 5192 and DTSC guidance, which covers all measures, including contingency plans, which shall 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 HAS Plan should describe the specific personnel, procedures and equipment to be utilized.

TASK 6. 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 shall 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 Paragraph 3.18 (Preservation of Documentation) of this Agreement.

TASK 7. RAW Public Participation

- 7.1 The Proponent shall conduct appropriate public participation activities given the nature of the community surrounding the Site and the level of community interest. The Proponent shall work cooperatively with DTSC to ensure that the affected and interested public and community are involved in DTSC's decision-making process. Any such public participation activities shall be conducted in accordance with Health and Safety Code sections 25358.7 and 25358.7.1, the DTSC Public Participation Policy and Procedures Manual, and with DTSC's review and approval.
- 7.2 The Proponent shall prepare a community profile to examine the level of the community's knowledge of the Site; the types of community concerns; the proximity of the Site to homes and/or schools, day care facilities, churches, etc.; the current and proposed use of the Site; media interest; and involvement of community groups and elected officials.
- 7.3 The Proponent shall inform the community of Site conditions and project activities, utilizing a notification format developed by DTSC. The notification may be provided through publication of a public notice in a local newspaper and/or mail-out of an information letter or a fact sheet to community members. The Proponent shall develop and submit information letters or fact sheets to DTSC for review and approval when specifically requested by DTSC. The Proponent shall be responsible for printing and distribution of information letters or fact sheets upon DTSC's approval using the approved community mailing list.
- 7.4 The Proponent shall publish, as appropriate or if deemed necessary by DTSC, in a major local newspaper(s), a public notice announcing the availability of the RAW for public review and comment. The public comment period shall last a minimum of 30 days. Within two (2) weeks of the close of the public comment

period, the Proponent shall prepare and submit to DTSC a draft response to the public comments received.

- 7.5 DTSC may require that the Proponent hold at least one public meeting to inform the public of the proposed activities and to receive public comments on the RAW.
- 7.6 If appropriate, the Proponent shall revise the RAW on the basis of comments received from the public, and submit the Final RAW to DTSC for review and approval. The Proponent shall also notify the public of any significant changes from the action proposed in the RAW.

TASK 8. California Environmental Quality Act (CEQA)

Based on the results of the draft Initial Study, DTSC will prepare the necessary CEQA documents. If required, the Proponent shall submit the information necessary for DTSC to prepare these documents. If appropriate, the Proponent shall revise the RAW to meet the applicable CEQA requirements, and submit the Final RAW to DTSC for review and approval. The Proponent shall also notify the public of any significant changes from the action proposed in the RAW.

TASK 9. Implementation of Final RAW

The Proponent shall implement the removal action in accordance with the approved Final RAW. During implementation of the RAW, DTSC may specify such additions, modifications and revisions to the RAW as deemed necessary to protect human health and safety or the environment or to implement the RAW.

TASK 10. Removal Action Completion Report

Within 30 days of completion of RAW field activities, the Proponent shall prepare a Removal Action Completion Report documenting the implementation of the Final RAW. DTSC will review the Removal Action Completion Report and provide written comments to the Proponent or approve the Removal Action Completion Report.

TASK 11. Certification

Where response actions have been required at the Site, DTSC will issue certification when the four (4) following conditions have been met:

- (a) DTSC has performed a Site inspection to ensure that all response actions, except operation and maintenance activities (if appropriate), have been completed as necessary to ensure that hazardous materials at the Site no longer pose a significant risk;
- (b) DTSC has determined that response action standards and objectives have been met;
- (c) DTSC has approved the Removal Action Completion Report; and
- (d) DTSC has approved the final Operation and Maintenance Plan, if appropriate.

EXHIBIT D
PROJECT SCHEDULE

EXHIBIT D

PROJECT SCHEDULE

TASK	TIMELINE
Proponent to submit advance payment	Within 10 days of Agreement execution
Proponent to submit existing data and reports	Within 15 days of Agreement execution
A scoping meeting to plan and coordinate project activities	Within 15 days of Agreement execution
Proponent to submit SSI Workplan and Report	As determined in consultation with DTSC
DTSC to review and comment or approve on submitted SSI Workplan and Report	As determined in consultation with DTSC
Proponent to submit draft RAW	Within 30 days of receipt of DTSC's request
DTSC to review and comment on draft RAW	Within 30 days of receipt of draft RAW
Public participation and CEQA activities	As determined in consultation with DTSC
Proponent to finalize RAW, incorporate public comments, if necessary, and submit Final RAW	Within 15 days of close of public comment period
DTSC to approve Final RAW	Within 15 days of receipt of Final RAW
Proponent to implement Final RAW	As outlined in Final RAW
Proponent to submit Removal Action Completion Report	As outlined in Final RAW
DTSC to review and comment or approve Removal Action Completion Report	Within 30 days of receipt of Removal Action Completion Report
Operation and Maintenance Plan, if required	As determined by DTSC
Certification	As determined by DTSC

EXHIBIT E

**GUIDELINES FOR SUBMITTING DOCUMENTS
IN ADOBE PORTABLE DOCUMENT FORMAT**

EXHIBIT E

Guidelines for Submitting PDF Documents to DTSC

With the DTSC Cleanup Program's database, EnviroStor, the public can now download and view project-related documents online. To provide the public with this vital source of information, please provide a PDF copy of documents, even if a hard copy will be supplied.

Due to differences in internet downloading capabilities and resolutions of PDF files, many users have problems uploading and downloading PDF files. Most often the problem is caused by files being saved at unnecessary large sizes. The following guidelines were created to provide consistency in PDF files and allow most users to access these files from EnviroStor.

1) File size: For each file that needs to be uploaded, the maximum file size should be kept to **30 megabytes** (MB). If you have a large file, please save large color images (e.g., figures, site photos, maps) and supplemental information (appendices) into separate PDF files.

2) Resolution for scanned files: For files being scanned from a scanner, the resolution or DPI setting should be no more than **200 DPI**.

3) Saving and Naming PDF files: If you make any changes to a PDF file, always use the Save As option instead of the Save option when saving. This will produce a smaller file size. It is recommended that the files be named by using an abbreviated site name, report title, date, and, if multiple files are being uploaded, the section of report (e.g., **Site_report_mmddyy_section**, 968-81stAve_PEA_072706_text).

4) Accessibility: To ensure that all files uploaded into EnviroStor are searchable and comply with California's Web Accessibility law, please run all PDF files through an Optical Character Recognition (OCR) process prior to submitting the file to DTSC.

5) Bookmarks: For large reports, bookmarks should be created in the PDF for ease of navigation.

EXHIBIT F
COST ESTIMATE

EXHIBIT F

COST ESTIMATE WORKSHEET
SCHOOL CLEANUP AGREEMENT

Cupertino Union School District

Project Name: Sedgwick Elementary School Expansion Project

Envirostor Project Code: 204271-11

Title	VCP Coord.	Project Manager		Supervisor		Toxicology	Geology	Industrial Hygiene	Public Particip	HQ CEQA	Legal	Clerical
Classification	SSA	ES	HSE	SESI	HSEI	Staff Tox	EG	Assoc IH	PPS	AEP	Attorney	OT
TASK:												
Agreement Prep./Negotiation	3											1
Supplemental Site Investigation (SSI)												
- SSI Workplan												
- SSI Fieldwork Oversight												
- SSI Report												
Estimated hours reflect time for meetings, review draft and any revisions needed, comment letters (as necessary) and/or approval letters.												
Removal Action Workplan (RAW)												
- Draft RAW			32		2	12	0	8				1
- RAW Fieldwork Oversight			12		1							
- Final RAW			16		2	8						1
Estimated hours reflect time for meetings, review draft and any revisions needed, comment letters (as necessary) and/or approval letters.												
Public Participation			10		2				45			
CEQA			12		2					24		
Removal Action Completion Report (RACR)			12			8						1
Site Certification			8		2							
Cost Recovery/Project Closeout			8		2							1
Total No. Hours/Class	3	0	110	0	13	28	0	8	45	24	0	5
Hourly Rate/Class	104	132	194	215	240	179	195	152	125	132	185	76
Cost/Class	312	0	21340	0	3120	5012	0	1216	5625	3168	0	380
Grand Total Cost	\$40,173											

Staff Tox - Staff Toxicologist; EG - Engineering Geologist; IH - Industrial Hygienist; PPS - Public Participation Specialist,
AEP - Associate Environmental Planner; CEQA - California Environmental Quality Act; OT - Office Technician

* Hourly rates are revised annually and subject to change. Rates for FY15-16

* Hourly rates include indirect labor costs

13-Apr-16