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Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Joshua R. Daniels, General Counsel
Rebecca Littlejohn, Risk Management Officer

Meeting Date June 23, 2021

Subject Standard Voluntary Agreement with Department of Toxic Substances Control for Acorn Woodland/EnCompass Campus

Ask of the Board Ratification by the Board of Education of a Standard Voluntary Agreement between the District and the Department of Toxic Substances Control for the latter to review the Human Health Risk Assessment from the Acorn Woodland/EnCompass Campus in an amount not to exceed \$3,279.00.

Background The Alameda County Department of Environmental Health (“DEH”) and the Department of Toxic Substances Control (DTSC) oversee investigations and cleanup of hazardous materials releases to the environment. After Trichloroethylene (TCE) was found in groundwater under McClymonds High School in February 2020, DEH staff began to examine whether there were any sites overseen by DEH near other OUSD school campuses. The Acorn Woodland/EnCompass Campus (“Campus”)—which houses Acorn Woodland Elementary School, EnCompass Academy, and Acorn Woodland Child Development Center—was identified as a result and DEH recommended soil vapor testing in July 2020.

Testing commenced shortly there after and the raw results were available in August 2020. OUSD met with DEH staff and DTSC staff to understand the implications of the raw results and to determine next steps. While DTSC did not recommend closing the Campus or imposing access restrictions to buildings, DTSC did recommend conducting indoor air testing of all buildings. Communications to the three school communities went out in late August and the first community meeting was held on September 3, 2020.

Indoor air and sub slab testing was conducted in September and October 2020. The raw results were received in mid October 2020 and were analyzed over the next few weeks. The results showed, among other things, that perchloroethylene (PCE), also known as tetrachloroethylene, was present at various concentration levels in

the indoor air. A follow-up community meeting was held on November 19, 2020, which provided an update on the results of the indoor air testing.

The District then hired an outside expert to produce a Human Health Risk Assessment (HHRA). The purpose was to determine the appropriate student and staff Screening Levels for indoor air based on the unique factors present at the three schools on the Campus (e.g., age of individuals, length of time on campus). The HHRA found that all concentration levels were below the staff- and student-specific screening levels. A follow-up community meeting was held on March 11, 2021, which provided an update on the results of the HHRA and the screening levels.

Additional information—including presentations from the community meetings, test results, and the HHRA—is available at <https://www.ousd.org/Page/20059>.

Discussion

As noted above, DTSC is the state agency that oversees investigations and cleanup of hazardous materials releases to the environment. Among other things, they conduct reviews of HHRA to determine that they have been done appropriately. OUSD seeks to contract with DTSC for this purpose.

The contract was not competitively bid due to the amount and the specialized services that DTSC offers.

Fiscal Impact

\$3,279 from Fund 67

Attachment(s)

- Standard Voluntary Agreement between the District and the Department of Toxic Substances Control (In the Matter of Acorn Woodland Elementary School/EnCompass Campus)

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Acorn Woodland Elementary School /
EnCompass Campus

Proponent:

Oakland Unified School District
1000 Broadway, Suite 300
Oakland, California 94607

Docket No. HSA-FY20/21-023

Standard Voluntary Agreement

Health and Safety Code

Section

25355.5(a)(1)(C)

The California Department of Toxic Substances Control (DTSC) and Oakland Unified School District (OUSD) (Proponent) enter into this Standard Voluntary Agreement (Agreement) and agree as follows:

1. Site. This Agreement applies to the Site located at 1025 81st Avenue in Alameda County, California 94621 (Site), identified by Alameda Assessor's Parcel Number(s) 41-4211-1-3 and 42-4211-2 and any off-site area to which hazardous substances have or may have migrated from the Site. The Site occupies a portion of the Assessor Parcel Number 41-4211-1-3, which is shared with the Oakland Public Library, 81st Avenue Branch. The Site is approximately 8.54 acres in size and is bordered by 1026 77th Avenue and 79th Avenue to the North, Ruidsdale Street to the East, 81st Avenue to the South, and 919 81st Avenue to the West. The Site currently operates as an elementary school. Historical uses at the Site include residences along the eastern portion from the late 1800s through 1960. An assembly hall and resort building were located along the southern portion of the Site in the 1950s. Falcone Extract Manufacturing Company (Falcone), including offices and warehouse, operated onsite from the mid-1940s through the late 1950s. Two above ground storage tanks (ASTs) were installed by Falcone; however, the contents and fate of these ASTs is unknown. Building types associated with Woodland Elementary School occupied the Site beginning in 1960. Site location map and a Site parcel map are attached as Exhibits A and B.

2. Jurisdiction. This Agreement is entered into by DTSC and Proponent pursuant to Health and Safety Code section 25355.5(a)(1)(C), which authorizes DTSC to enter into an enforceable agreement to oversee investigation and/or remediation of a release or a threatened release of any hazardous substance at or from the Site.

3. Purpose. The purpose of this Agreement is for Proponent to investigate, remediate, and/or evaluate a release, a threatened release, or a potential release of any hazardous substance at or from the Site under the oversight of DTSC. The purpose of this Agreement is also for DTSC to obtain reimbursement from Proponent for DTSC's oversight costs incurred pursuant to this Agreement.

4. Ownership and Notification.

4.1. The Site is owned by OUSD.

4.2. Prior to DTSC providing oversight or review or comment on any document, Proponent shall provide DTSC with all of the following: (a) proof of the identity of all current record owners of fee title to the Site and their mailing addresses; (b) written evidence that the owners of record have been sent a notice that describes the actions completed or proposed by Proponent; and (c) an acknowledgment of the receipt of the notice required in subparagraph (d) from the property owners or proof that Proponent has made reasonable efforts to deliver the notice to the property owner and was unable to do so.

4.3. Proponent shall notify DTSC of any changes in ownership of the Site subsequent to the Effective Date of this Agreement and provide written evidence that Proponent notified the new owner(s) of record of the actions completed or proposed by Proponent under this Agreement.

5. Substances Found at the Site. Based on the information available to DTSC and Proponent, the Site is or may be contaminated with hazardous substances, including benzene, chloroform, ethylbenzene, tetrachloroethene (PCE), and trichloroethene (TCE).

6. Scope of Work and DTSC Oversight. DTSC shall review and provide Proponent with written comments on all Proponent's deliverables as described in Exhibit C (Scope of Work) and other documents applicable to the scope of the project. DTSC shall provide oversight of field activities, including sampling and remedial activities, as appropriate. Proponent agrees to perform all the work required by this Agreement. Proponent shall perform the work in accordance with applicable local, state and federal statutes, regulations, ordinances, rules and guidance documents, in particular, Health and Safety Code section 25300 et seq., as amended.

7. Additional Activities. DTSC and Proponent may amend this Agreement to include additional activities in accordance with Paragraph 17 of this Agreement. If DTSC expects to incur additional oversight costs for these additional activities, it will provide an estimate of the additional oversight costs to Proponent.

8. Access. Proponent shall provide, and/or obtain access to the Site and take all reasonable efforts to obtain access to offsite areas to which access is necessary to implement the 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 law.

9. Sampling, Data and Document Availability. When requested by DTSC, Proponent shall make available for DTSC's inspection, and shall provide copies of, all data and information concerning contamination at or from 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. For all final reports, Proponent shall submit one hard (paper) copy and one electronic copy with all applicable signatures and certification stamps as a text-readable Portable Document Formatted (pdf) file compatible with Adobe Acrobat or a formatted file compatible with Microsoft Word.

10. Record Preservation. Proponent shall retain, during the implementation of this Agreement and for a minimum of six years after its termination, all data, reports, and other documents that relate to the performance of this Agreement. If DTSC requests that some or all of these documents be preserved for a longer period of time, Proponent shall either comply with the request, deliver the documents to DTSC, or permit DTSC to copy the documents at Proponent's expense prior to destruction.

11. Notification of Field Activities. Proponent shall inform DTSC at least seven 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 Proponent pursuant to this Agreement.

12. Project Managers. Within 14 days of the effective date of this Agreement, DTSC and Proponent shall each designate a Project Manager and shall notify each other in writing of the Project Manager selected. The Proponent's Project Manager shall have the technical expertise in project management, regulatory compliance, and hazardous substance site investigation and remediation sufficient to fulfill his or her responsibilities. Each Project Manager shall be responsible for overseeing the implementation of this Agreement and for designating a person to act in his/her absence. All communications between DTSC and Proponent, and all notices, documents and correspondence concerning the activities performed pursuant to this Agreement shall be directed through the Project Managers. Each party may change its Project Manager with at least seven days prior written notice.

13. Proponent's Consultant and Contractor. All engineering work performed pursuant to this Agreement shall be under the direction and supervision of a registered professional engineer licensed in California, with expertise in hazardous substance site investigation and remediation. All geological work performed pursuant to this Agreement shall be under the direction and supervision of a registered professional geologist licensed in California, with expertise in hazardous substance site investigation and remediation. Proponent's contractors and consultants shall have the technical expertise sufficient to fulfill his or her responsibilities. Within 14 days of the effective date of this Agreement, Proponent shall notify DTSC's Project Manager in writing of the name, title, and qualifications of the registered professional engineer and/or professional geologist and of any contractors or consultants and their personnel to be used in carrying out the work under this Agreement in conformance with applicable state law, including but not limited to, Business and Professions Code sections 6735 and 7835.

14. DTSC Review and Approval. All work performed pursuant to this Agreement is subject to DTSC's 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 Proponent with recommended changes and a date by which the Proponent must submit to DTSC a revised document incorporating or addressing the recommended changes; or (b) modify the document in consultation with Proponent and approve the document as modified. All DTSC approvals and decisions made regarding submittals and notifications will be communicated to Proponent in writing by DTSC's Branch Chief or his/her designee. 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 Proponent of the obligation to obtain such written approvals.

15. Payment.

16.1 Proponent is required to pay (a) all costs incurred by DTSC in association with preparation of this Agreement, and for oversight activities, including review of documents, conducted prior to the effective date of this Agreement; and (b) all costs incurred by DTSC in providing oversight pursuant to this Agreement, including review of the documents and activities described in Exhibit C and associated documents, and oversight of field activities. Costs incurred include interest on unpaid amounts that are billed and outstanding more than 60 days from the date of the invoice.

16.2 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 may provide an adjusted cost estimate as the work progresses. Prior to adjusting the cost estimate, DTSC will provide Proponent with a written notice and a detailed explanation of the change to the cost estimate. DTSC will bill Proponent quarterly. Proponent agrees to make payment within 30 days of receipt of DTSC's billing. Such billings will reflect any amounts that have been advanced to DTSC by Proponent.

16.3 In anticipation of oversight activities to be conducted, Proponent shall make an advance payment of \$3,279 to DTSC no later than 10 days after this Agreement is fully executed. It is expressly understood and agreed that DTSC's receipt of the entire advance payment as provided in this paragraph is a condition precedent to DTSC's obligation to provide oversight, review of or comment on documents. DTSC will draw-down from the advance payment, which will be documented in DTSC's invoice. When the advance payment is depleted, DTSC will continue to request payment through the invoice process.

16.4 All payments made by Proponent pursuant to this Agreement shall be by check payable to the "Department of Toxic Substances Control" and bearing on its face the project code for the Site (Site # 202366) and the docket number HSA-FY20/21-023 of this Agreement. Upon request by Proponent, DTSC may accept payments made by credit cards or electronic funds transfer. Payments by check shall be sent to:

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

A photocopy of the check shall be sent concurrently to DTSC's Project Manager.

16.5 DTSC shall retain all cost records associated with the work performed under this Agreement as may be required by state law. DTSC will make all documents that support DTSC's cost determination available for inspection upon request in accordance with the Public Records Act, Government Code section 6250 et seq.

16. Amendments. This Agreement may be amended in writing by mutual agreement of DTSC and Proponent. Such amendment shall be effective the third business day following the day the last party signing the amendment sends its notification of signing to the other party. The parties may agree to a different effective date.

17. Termination for Convenience.

18.1 Except as otherwise provided in this paragraph, each party to this Agreement reserves the right to unilaterally terminate this Agreement for any reason. Termination may be accomplished by giving a 30-day advance written notice of the election to terminate this Agreement to the other party. In the event that this Agreement is terminated under Paragraph 18.1, Proponent shall be responsible for DTSC costs through the effective date of termination.

18.2 If operation and maintenance activities are required for the final remedy, Proponent may not terminate the Agreement under Paragraph 18.1 upon DTSC's approval of an Operation and Maintenance Plan as proposed by Proponent, unless an Operation and Maintenance Agreement is entered into between DTSC and Proponent or between DTSC and a party responsible for the required operation and maintenance activities.

18. Calendar of Tasks and Schedules. The attached Exhibit E (Calendar of Tasks and Schedules) is merely for the convenience of listing in one location the submittals required by this Agreement. The Calendar of Tasks and Schedules lists activities specific to this project based on the available information. DTSC and Proponent shall make a reasonable effort to complete the activity within the schedule outlined in Exhibit E. A schedule for each related activity shall be established as part of this Agreement.

If Proponent is unable to meet the activity's schedule, Proponent will notify DTSC's Project Manager 10 days prior to the scheduled action or submittal date. If DTSC is unable to meet the activity's schedule, DTSC will notify Proponent 10 days prior to the scheduled action or submittal date.

19. Incorporation of Exhibits, Plans and Reports. All exhibits are incorporated into this Agreement by reference. All plans, schedules and reports that require DTSC's approval and are submitted by Proponent pursuant to this Agreement are incorporated in this Agreement upon DTSC's approval.

20. Reservation of Rights. DTSC reserves all of its statutory and regulatory powers, authorities, rights, and remedies under applicable laws to protect public health or the environment, including the right to recover its costs incurred therefor. Proponent reserves all of its statutory and regulatory rights, defenses and remedies available to the Proponent under applicable laws.

21. Non-Admission of Liability. By entering into this Agreement, Proponent does not admit to any finding of fact or conclusion of law set forth in this Agreement or any fault or liability under applicable laws.

22. Proponent Liabilities. Nothing in this Agreement shall constitute or be considered a covenant not to sue, release or satisfaction from liability by DTSC for any condition or claim arising as a result of Proponent's past, current, or future operations or ownership of the Site.

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

24. Third Party Actions. In the event that Proponent is a party to any suit or claim for damages or contribution relating to the Site to which DTSC is not a party, Proponent shall notify DTSC in writing within 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.

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


26. 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 provisions of the Agreement.

27. Parties Bound. This Agreement applies to and is binding, jointly and severally, upon Proponent and its agents, receivers, trustees, successors and assignees, and upon DTSC and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement. Proponent shall ensure that its contractors, subcontractors and agents receive a copy of this Agreement and comply with this Agreement.

28. Effective Date. The effective date of this Agreement is the date of signature by DTSC's authorized representative after this Agreement is first signed by Proponent's authorized representative. Except as otherwise specified, "days" means calendar days.

29. Representative Authority. Each undersigned representative of the party 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 party to this Agreement.

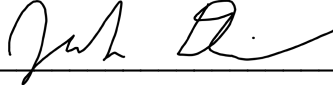
30. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document. This Agreement and documents related to it may be executed and transmitted by facsimile or pdf copy, which copies shall be deemed to be, and utilized in all respects as, an original. However, Proponent must provide the wet-inked signed original of each counterpart to DTSC by mail within 14 calendar days of signing.



Juliet C. Pettijohn
Branch Chief
Site Mitigation and Restoration Program
Department of Toxic Substances Control

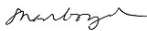
Date: 04/26/2021


For Oakland Unified School District

Signature:  _____ Date: April 22, 2021

Printed Name: Joshua R. Daniels

Title: General Counsel

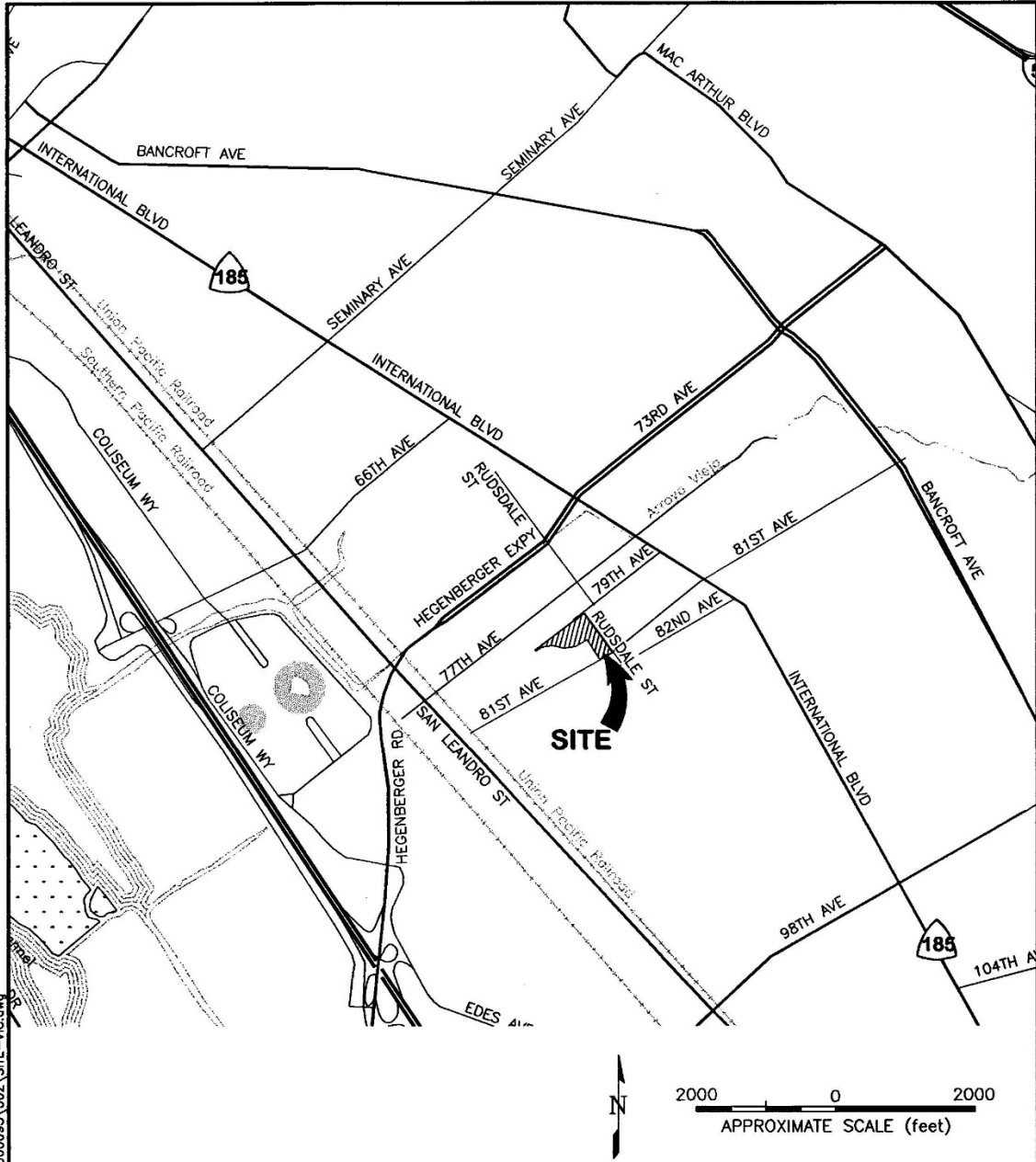

Shanthi Gonzales, President, Board of Education 6/24/2021


Kyla Johnson Trammell, Secretary, Board of Education 6/24/2021

LIST OF EXHIBITS TO THE AGREEMENT

- EXHIBIT A: SITE LOCATION MAP
- EXHIBIT B: SITE PARCEL MAP
- EXHIBIT C: SCOPE OF WORK
- EXHIBIT D: COST ESTIMATE FOR DTSC OVERSIGHT SERVICES
- EXHIBIT E: CALENDAR OF TASKS AND SCHEDULE

EXHIBIT A SITE LOCATION MAP



CAD FILE: 2000\00\PROJECTS\44000095\002\SITE-VIC.dwg

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SITE VICINITY MAP

WOODLAND ELEMENTARY SCHOOL
1025 81ST AVENUE
OAKLAND, CALIFORNIA

DRAFTED BY: L. Sue DATE: 10-30-00
CHECKED BY: N. Siler DATE: 10-30-00

PROJECT NO. 44-000095-002

PLATE

1

EXHIBIT B SITE PARCEL MAP

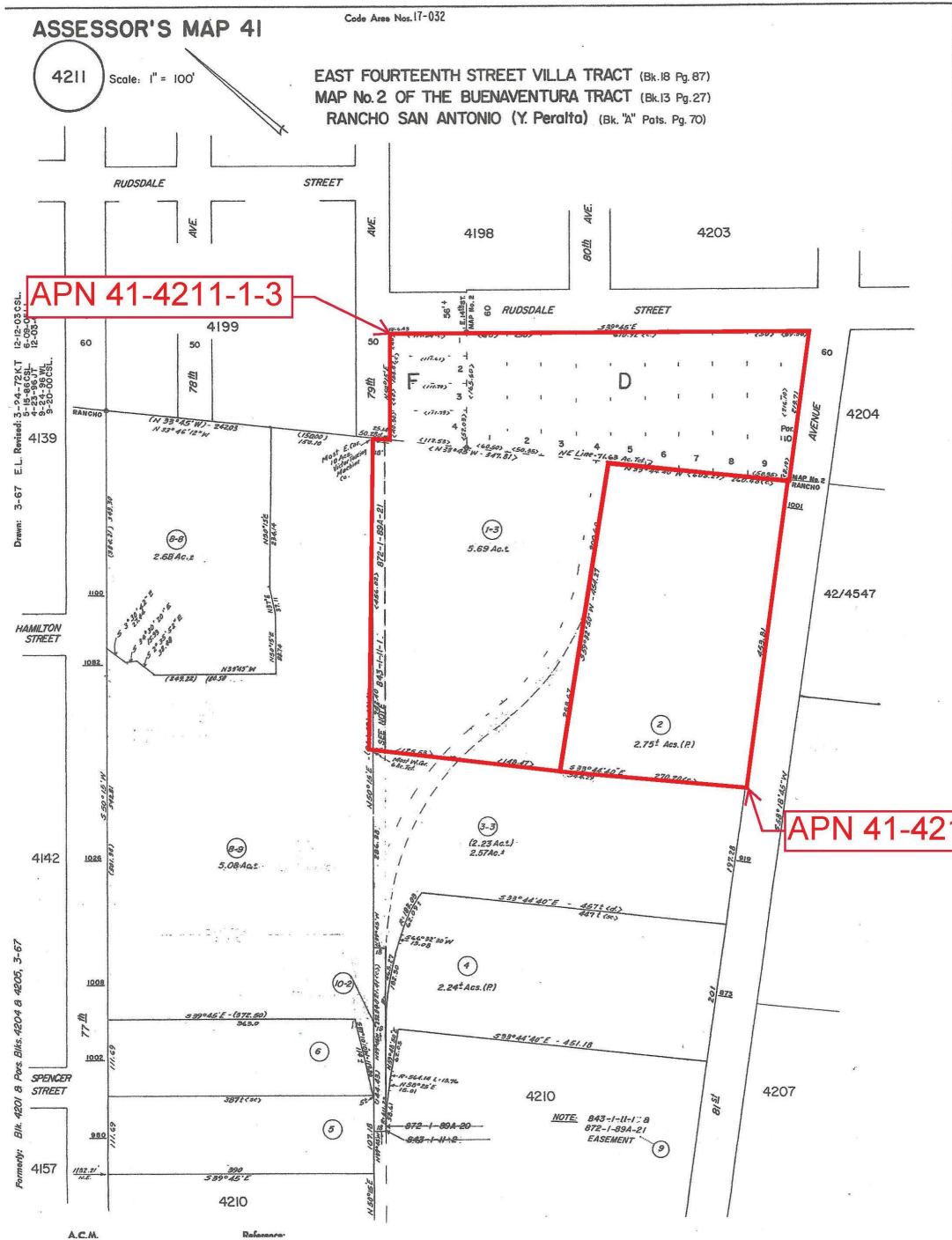


EXHIBIT C
SCOPE OF WORK

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

TASK 1 Health Risk Assessment

Proponent will conduct a risk evaluation consistent with U.S. EPA Risk Assessment Guidance for Superfund and the most current version of the applicable DTSC guidance documents. This evaluation must identify chemicals of concern and potential routes of exposure; characterize the potential risk and/or non-cancer hazard; evaluate potential threats to environmental receptors; consider existing and contemplate uses; and identify cleanup goals. DTSC toxicologist and Project Manager will review the Human Health Risk and provide comments and recommendations. This task includes DTSC participation in meetings with OUSD and other regulatory agencies.

TASK 2 Community Meeting

DTSC may participate in a community meeting at the Proponent's request to inform the public of the Site conditions based on the Health Risk Assessment.

EXHIBIT D
COST ESTIMATE

COST ESTIMATE WORKSHEET Type of Agreement: Standard Voluntary Agreement Date: 3/17/2021 Site Name: Acorn Woodland Elementary School / EnCompass Campus Site Code: 202366					
	DTSC Project Team	Project Management	Supervision	Toxicology	Project Assistants
Task No. In Agreement	Classification (personnel)	HSE	EPM1 (Sup)	Staff Toxicologist	Office Technician (Typing)
	TASK: (enter # hrs)				
	Agreement Prep./Negotiation	1			1
	Project Management	1			
	Health Risk Assessment	4	1	10	
	Community Meeting	2	1	2	
	Total No. Hours/Class	8	2	12	1
	Hourly Rate/Class	\$265	\$340	\$255	\$101
	Cost/Class	\$2,120	\$680	\$3,060	\$101
	Subtotal	\$5,961			
	Contingency (10%)	\$596			
	Grand Total Cost	\$6,557			
	Advance Payment	\$3,279			

Notes:

EXHIBIT E
CALENDAR OF TASKS AND SCHEDULE

Activity	Schedule
Advance Payment	Within 10 days of Agreement execution
Submit Health Risk Assessment	Within 10 days of Agreement execution
DTSC comments and recommendations	Within 30 days of date received by DTSC ¹
Community Meeting	TBD

¹ Note that DTSC approvals in the target timeframes are contingent upon receiving documents that meet industry standards, comply with DTSC's direction, and that responses to DTSC questions and/or comments are received in a timely manner.