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**OAKLAND UNIFIED  
SCHOOL DISTRICT**  
Community Schools, Thriving Students

# 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 McClymonds

**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 Air Monitoring Report for McClymonds High School in an amount not to exceed \$6,414.00.

**Background** On February 20, 2020, the District closed McClymonds High School due to the discovery of groundwater that was contaminated with trichloroethylene (TCE). In follow-up testing, additional groundwater contaminants were also discovered. (The groundwater was directed to be tested by the State as part of a long overdue procedure closing out a project that had removed an underground storage in the 1990s.) The concern was that these contaminants would vaporize into the indoor air, thereby putting students and staff at McClymonds at risk. Thankfully, subsequent testing found that the indoor air was safe at McClymonds.

Additional information—including presentations from the community meetings and test results—is available at <https://www.ousd.org/Page/19027>.

**Discussion** The District has continued to test the indoor air on a quarterly basis based on an Air Monitoring report. The Department of Toxic Substances Control (DTSC) is the state agency that oversees investigations and cleanup of hazardous materials releases to the environment. Among other things, they conduct reviews of Air Monitoring Reports 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** \$6,414.00 from Fund 67

**Attachment(s)**

- Standard Voluntary Agreement between the District and the Department of Toxic Substances Control (In the Matter of McClymonds High School)

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

McClymonds High School

Proponent:

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

Docket No. HAS-FY20/21--97

Standard Voluntary Agreement

Health and Safety Code  
Section 25201.9

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

1. Site. This Agreement applies to the Site located at 2607 Myrtle Street, Oakland, in Alameda County, California 94608 (Site), identified by Alameda Assessor's Parcel Number(s) 4-450-1-1 and 5-448-33-1, and any off-site area to which hazardous substances have or may have migrated from the Site. The Site is approximately 0.7 acres in size and is bordered by Myrtle Street, 26<sup>th</sup> Street, Chestnut Street, and 28<sup>th</sup> Street. A Site location map and a Site diagram 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 25201.9, which authorizes DTSC to provide assistance to a person in complying with Health and Safety Code chapter 6.8 and its implementing regulations.

3. Purpose. The purpose of this Agreement is for Proponent to investigate, and/or evaluate a release, a threatened release, or a potential release of any hazardous substance at 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. The Site is owned by Oakland Unified School District.

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 trichloroethene (TCE) and perchloroethene (PCE).

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.

15.1. 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.

15.2. 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.

15.3. In anticipation of oversight activities to be conducted, Proponent shall make an advance payment of **\$6,414.00** 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.

15.4. 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 # 202365) and the docket number HAS-FY20/21--97 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.

15.5. 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.

17.1. 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.

17.2. 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 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 his 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.

Juliet C. Pettijohn Date: 04/23/2021  
Juliet C. Pettijohn  
Branch Chief  
Site Mitigation and Restoration Program  
Department of Toxic Substances Control

For Oakland Unified School District

Signature: Joshua R. Daniels Date: April 22, 2021  
Printed Name: Joshua R. Daniels  
Title: General Counsel

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

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

## LIST OF EXHIBITS TO THE AGREEMENT

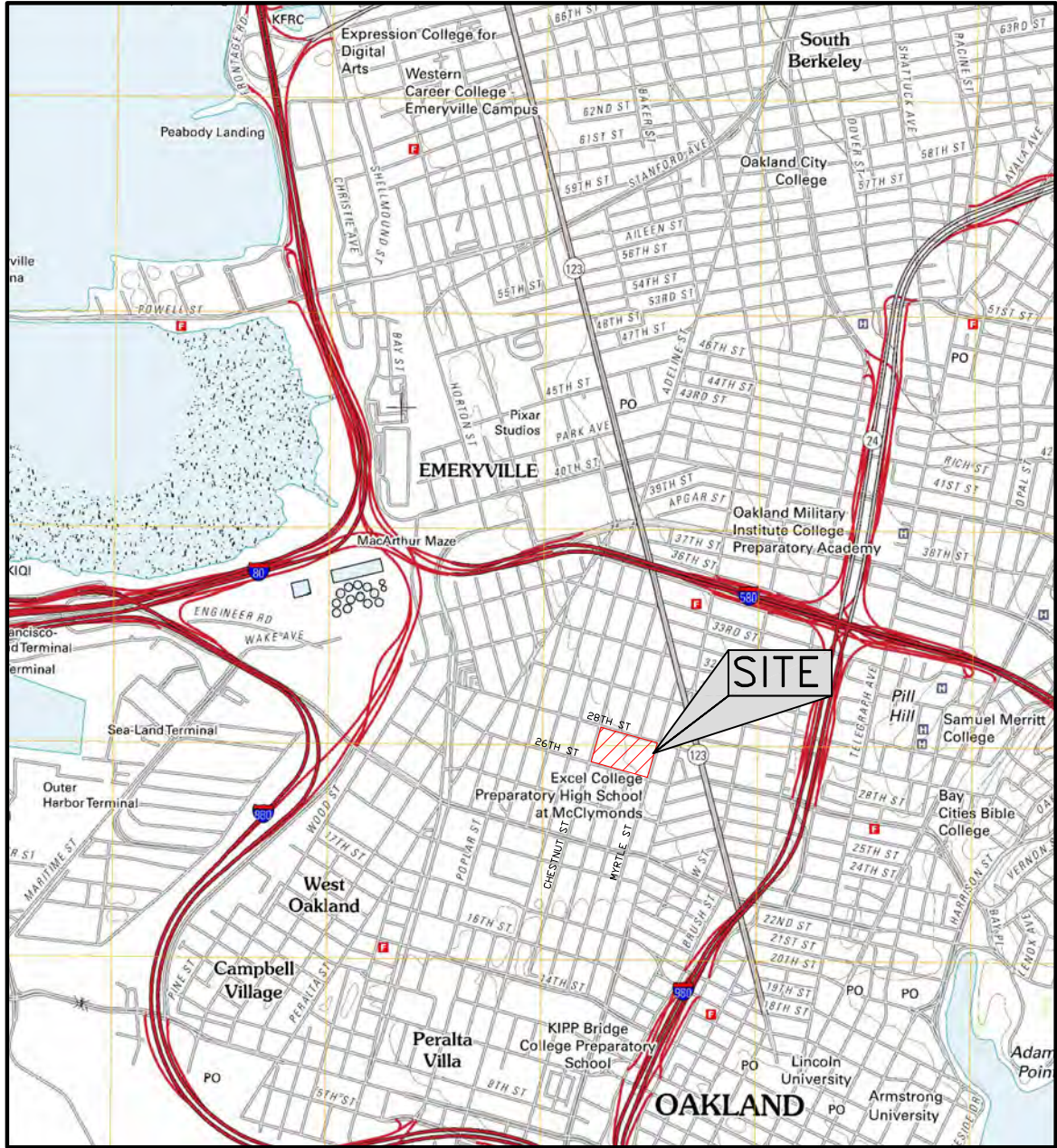
EXHIBIT A: SITE LOCATION MAP

EXHIBIT B: SITE PLAN

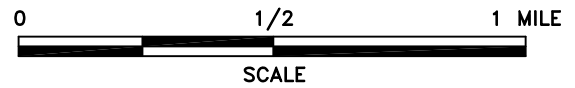
EXHIBIT C: SCOPE OF WORK

EXHIBIT D: COST ESTIMATE FOR DTSC OVERSIGHT SERVICES

EXHIBIT E: CALENDAR OF TASKS AND SCHEDULE




**Exhibit A: Site Location**



**REFERENCE:**

U.S.G.S. OAKLAND WEST,  
CALIFORNIA, 7.5 MINUTE  
SERIES TOPOGRAPHIC MAP,  
DATED 2012.

 Total Quality. Assured.		4703 Tidewater Avenue, Suite B Oakland, California 94601 (510) 434-9200			
<b>Project Name:</b> McCLYMONDS HIGH SCHOOL 2607 MYRTLE STREET, OAKLAND, CALIFORNIA		<b>Drawn By:</b> Z.J.	<b>Date:</b> 3/20	<b>File No.:</b> 1551-2-1	<b>Figure No.:</b> 1
<b>Title:</b> SITE LOCATION MAP		<b>Approved By:</b> F.P.	<b>Project No.:</b> 575-1551-2		

28th Street

Sidewalk

Sidewalk



Chestnut Street

Sidewalk

Bleachers

Athletic Field

Basketball Courts

Swimming Pool

Bleachers

Gymnasium

Plaza of Peace

Asphalt Parking Lot

Sidewalk

Myrtle Street

Locker Rooms

Tennis Courts

Cafeteria

Auditorium

Sidewalk

Sidewalk

26th Street

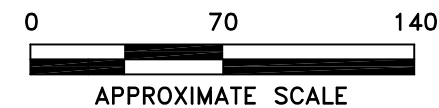
**LEGEND**

 - PROPERTY BOUNDARY

**NOTES**

1. BASE MAP TAKEN FROM BYRENS KIM DESIGN WORKS, "SITE PLAN, 303 - MCCLYMONDS SENIOR HIGH SCHOOL, 2607 MYRTLE STREET, OAKLAND, CA," 94607-3415," SHEET 1 OF 16, DATED 1/18/2013.
2. ALL LOCATIONS ARE APPROXIMATE.

**Exhibit B: Site Plan**



<b>intertek psi</b> Total Quality. Assured.		4703 Tidewater Avenue, Suite B Oakland, California 94601 (510) 434-9200		
Project Name: McCLYMONDS HIGH SCHOOL 2607 MYRTLE STREET, OAKLAND, CALIFORNIA	Drawn By: B.B.	Date: 3/20	File No.: 1551-2-2	Figure No.: 2
Title: SITE PLAN	Approved By: F.P.	Project No.: 575-1551-2		

EXHIBIT C  
SCOPE OF WORK

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

**TASK 1 Document Review: Air Monitoring Report**

Proponent will submit an Air Monitoring Report that, at a minimum, presents the data, summarizes the findings of the investigation, validates the data, and includes recommendations and conclusions. DTSC will provide comments on the Air Monitoring Report.

**TASK 2 Meeting**

DTSC will participate in meetings to discuss Air Monitoring Report, data, and recommended next steps for the air monitoring program.

**EXHIBIT E**  
**CALENDAR OF TASKS AND SCHEDULE**

<b>Activity</b>	<b>Schedule</b>
Advance Payment	Within 10 days of Agreement execution
Submit Air Monitoring Report	Completed
DTSC decision on Air Monitoring Report	Within 15 days of receipt of the Monitoring Report
Invoices	DTSC issues quarterly
Cost estimate and Scope of Work Updates and Amendments	DTSC updates the scope and cost estimate annually, or as needed, based on work needed to complete the Agreement. Amendments are issued on an as-need basis.

<sup>1</sup> 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.



EXHIBIT D: COST ESTIMATE WORKSHEET

Type of Agreement: Standard Voluntary Agreement for non-Responsible Party

Date: February 2021

Site Name: McClymonds High School

DTSC Project Team	Project Manager	Supervisor	Branch Chief	Toxicologist	Public Participation Specialist	Industrial Hygenist	Adm. Support
Agreement Preparation and Negotiation	2	1	0.5				
Air Monitoring Plan review	2	1		6			
Meeting on Air Monitoring Data and Recommendations (2)	4	4		4			
Project Management	1	1					
Classification (personnel)	Senior Env. Scientist	Senior Haz Material Engineer (Sup.)	Branch Chief	Associate Toxicologist	Public Participation Specialist	Associate Industrial Hygenist	Associate Gov. Program Analyst
Total hours per position	9	7	0.5	10	0	0	0
Hourly cost	\$217	\$312	\$334	\$211	\$165	\$217	\$165
Total costs per position	\$1,953.00	\$2,184.00	\$167.00	\$2,110.00	\$0.00	\$0.00	\$0.00
<b>Total costs estimate</b>	<b>\$6,414.00</b>						

Hourly Cost based on DTSC Contract Estimation Rates, Effective FY 20/21