

STATE OF CALIFORNIA
 ENVIRONMENTAL PROTECTION AGENCY
 DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Agreement Regarding:

)	Docket No. _____
)	
)	Investigating Site Contamination Program
)	(ISCP) Environmental Oversight
[PROPERTY NAME])	Agreement
)	
)	Health and Safety Code Section 25395.21(g)
Borrower)	
[NAME])	
[ADDRESS])	
_____)	

I.
 INTRODUCTION.

1.1 Parties. The California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) enters into this Investigating Site Contamination Program (ISCP) Environmental Oversight Agreement (Agreement) with [NAME OF BORROWER] (Borrower). DTSC and Borrower are referred to collectively herein as the Parties.

1.2 Property. The property which is the subject of this Agreement (Property) is located at [PROPERTY ADDRESS, CITY, COUNTY], California [ZIP CODE]. **[Alternate language for use when the property address information does not adequately describe the Property (e.g., if the Property is a portion of the property covered by the address or if the property does not have an address and is identified by intersections or other descriptive phrases): "The Property consists of (narrative description of Property).]** The Property consists of _____ acres and is identified by Assessor's Parcel Number(s) _____. A diagram of the Property and a location map are attached as Exhibit A and Exhibit B.

1.3 Jurisdiction. This Agreement is entered into by DTSC and Borrower pursuant to Health and Safety Code section 25395.21(g). This section requires the Borrower to enter into an enforceable agreement with DTSC to provide regulatory oversight of the Borrower's preparation of a Preliminary Endangerment Assessment (PEA) for the Property.

1.4 Purpose. Borrower has applied for a loan from the Cleanup Loans and Environmental Assistance to Neighborhoods Account. Pursuant to the requirements of the Investigating Site Contamination Program (ISCP), Borrower must enter into this Agreement as a condition of the loan. The purpose of this Agreement is for Borrower to perform a PEA under the oversight of DTSC to determine, among other things, whether current or past hazardous material management practices or

waste management practices have resulted in a release or threatened release of hazardous materials. The definition and requirements of a PEA, for purposes of this Agreement, are those set forth in Health and Safety Code section 25319.5.

II. BACKGROUND

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

2.2 Current Knowledge of the Property. The Phase I Environmental Assessment (hereinafter referred to as Phase I) report for the Property indicates that a PEA is needed for the Property.

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

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

III. AGREEMENT

3.0 IT IS HEREBY AGREED THAT DTSC will provide review and oversight of the PEA conducted by Borrower in accordance with Health and Safety Code section 25319.5 and the Scope of Work contained in Exhibit C. Borrower shall conduct the activities in the manner specified herein and in accordance with the schedule specified in Exhibit D. All work shall be performed consistent with Chapter 6.8, Division 20 of the Health and Safety Code (commencing with Health and Safety Code section 25300 et seq.), as amended; the National Contingency Plan (40 Code of Federal Regulations (CFR) Part 300), as amended; U.S. EPA and DTSC Superfund guidance documents regarding site investigation and remediation. Where applicable, work shall also be performed consistent with Chapter 6.5, Division 20 of the Health and Safety Code (commencing with section 25100 et seq.).

3.1 Scope of Work and DTSC Oversight. DTSC shall review and provide Borrower with written comments on all Borrower deliverables as described in Exhibit C (Scope of Work) and other documents applicable to the scope of the project. DTSC may provide oversight of field activities, including sampling, as appropriate. DTSC's completion of oversight activities described in this Agreement shall constitute DTSC's complete performance under this Agreement.

3.2 Agreement Managers. **[BRANCH CHIEF NAME, TITLE]** is designated by DTSC as its Manager for this Agreement. **[BORROWER'S PROJECT MANAGER]** is assigned by Borrower as Manager for this Agreement. Each Party to this Agreement shall provide at least ten (10) days advance written notice to the other of any change in its designated manager.

3.3 Notices and Submittals. All notices, documents and communications required to be given under this Agreement, unless otherwise specified herein, shall be sent to the respective parties at the following addresses in a manner that produces a record of the sending of the notice, document or

communication such as certified mail, overnight delivery service, facsimile transmission or courier hand delivery service:

3.3.1 To DTSC:

[DIVISION OR BRANCH CHIEF NAME]

Attn: **[PROJECT MANAGER]**

Department of Toxic Substances Control

Site Mitigation Program

[OFFICE ADDRESS]

3.3.2 To Borrower:

[NAME, TITLE]

[COMPANY]

[ADDRESS]

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

[INCLUDE IF DIFFERENT FROM BORROWER]

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

3.5 Communications. All approvals and decisions made regarding submittals and notifications will be communicated to each party in writing by the other party's Agreement Manager or his/her designee. No informal advice, guidance, or suggestions or comments by either party regarding reports, plans, specifications, schedules or any other writings shall be construed to relieve the party of the obligation to obtain such written approvals.

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

3.7 Liability for Costs. Borrower is liable for all of DTSC's costs that have been incurred in taking response actions at the Property (including costs of overseeing response actions performed by the Borrower and costs to be incurred in the future). Notwithstanding, Borrower's liability for DTSC's costs, Borrower is not responsible for paying DTSC's costs associated with the oversight of the Preliminary Endangerment Assessment subject to this Agreement, if DTSC determines there are sufficient funds in the Cleanup Loans and Environmental Assistance to Neighborhoods Account established pursuant to Health and Safety Code section 25395.20 (b) (Account) to reimburse DTSC for its oversight costs. If DTSC determines that the Account has insufficient funds to pay for the oversight costs associated with the Preliminary Endangerment Assessment, Borrower shall pay DTSC for all of these costs.

3.8 Payment of Costs. In the event that DTSC determines that funds in the Account are insufficient, DTSC will bill Borrower quarterly for its response costs incurred after the effective date of this Agreement. Borrower shall pay DTSC within sixty (60) days of receipt of any DTSC billing. Any billing not paid within sixty (60) days is subject to interest calculated from the date of the billing pursuant to Health and Safety Code section 25360.1. All payments made by Borrower pursuant to this

Agreement shall be by cashier's or certified check made payable to ADTSC, and shall bear on the face, the project code of the Property (Property _____) and the Docket number of the Agreement. Payments shall be sent to:

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

A photocopy of all payment checks shall also be sent to the person designated by DTSC to receive submittals under this Agreement.

3.9 Project Coordinator. The work performed pursuant to this Agreement shall be under the direction and supervision of a project coordinator. Borrower shall submit: a) the name and address of the project coordinator; and b) the resume of the coordinator in order to demonstrate the following qualifications. The project coordinator must be either a professional engineer registered in this state, or a geologist registered in this state, or a certified engineering geologist registered in this state or a licensed hazardous substances contractor certified pursuant to Chapter 9 (commencing with section 7000) of Division 3 of the Business and Professional Code. A licensed hazardous substance contractor shall hold the equivalent of a degree from an accredited public or private college or university or a private postsecondary educational institution approved by the Bureau for Private Postsecondary and Vocational Education with at least 60 units in environmental, biological, chemical, physical, or soil science; engineering; geology; environmental or public health; or a directly related science field. In addition, any person who conducts a preliminary endangerment assessment shall have at least three years experience in conducting those assessments. Borrower shall promptly notify DTSC of any change in the identity of the Project Coordinator. All engineering and geological work shall be conducted in conformance with applicable state law, including but not limited to, Business and Professions Code sections 6735 and 7835.

3.10 Access. Borrower shall provide, and/or use best efforts to obtain access to the Property 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. Borrower gives its permission, to the extent it has authority to give such permission, to DTSC and its authorized representatives to enter and move freely about all property at the Property at all reasonable times for purposes including, but not limited to: inspecting records, operating logs, sampling and analytic data, and contracts relating to this Property; reviewing the progress of the Borrower 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 Borrower.

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

3.12 Notification of Field Activities. Borrower shall inform DTSC at least seven (7) days in advance

of all field activities pursuant to this Agreement and shall allow DTSC and its authorized representatives to take duplicates of any samples collected by the Borrower pursuant to this Agreement. DTSC and Borrower will agree to the most appropriate method of collecting the duplicate samples.

3.13 Notification of Environmental Condition. Borrower 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, Borrower shall furnish a report to DTSC, signed by Borrower's Agreement Manager, setting forth the events which occurred and the measures taken in the response thereto.

3.14 Preservation of Documentation. Borrower 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 Borrower 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, Borrower shall either comply with that request, deliver the documents to DTSC, or permit DTSC to copy the documents prior to destruction. Borrower shall notify DTSC in writing at least ninety (90) days prior to the expiration of the six-year minimum retention period before destroying any documents prepared pursuant to this Agreement. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the six year period, the related records shall be retained until the completion and resolution of all issues arising therefrom or until the end of the six-year period, which ever is later.

3.15 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.

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

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

3.18 Borrower Liabilities. Nothing in this Agreement shall constitute or be considered a satisfaction or release from liability for any condition or claim arising as a result of Borrower's past, current, or future operations. Nothing in this Agreement is intended or shall be construed to limit the rights of any of the parties with respect to claims arising out of or relating to the deposit or disposal at any other location of materials removed from the Property.

3.19 Government Liabilities. The State of California (State) shall not be liable for any injuries or damages to persons or property resulting from acts or omissions by Borrower 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 Borrower or its agents in carrying out the activities pursuant to this Agreement.

3.20 Third Party Actions. In the event that Borrower is a party to any suit or claim for damages or contribution relating to the Property to which DTSC is not a party, Borrower shall notify DTSC in writing within ten (10) days after service of the complaint in the third-party action.

3.21 Reservation of Rights. DTSC and Borrower reserve the following rights.

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

3.21.2 Nothing in this Agreement shall constitute or be construed as a waiver of Borrower'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 Borrower may have against any "person," as defined in Section 101(21) of CERCLA, or Health and Safety Code section 25319, that is not a signatory to this Agreement.

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

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

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

3.24 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.

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

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

3.27 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.

3.28 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: _____
[DIVISION OR BRANCH CHIEF]
Site Mitigation Program
Department of Toxic Substances Control

_____ Date: _____
[BORROWER NAME, TITLE]

EXHIBITS

A - PROPERTY DIAGRAM

B - PROPERTY LOCATION MAP

C - SCOPE OF WORK

D - SCHEDULE

EXHIBIT C
SCOPE OF WORK

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

TASK 1.

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

TASK 2.

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

- (a) PEA Workplan. This workplan shall include a sampling plan designed to determine the presence of contamination at the Property, and, if present, the type and extent of the contamination; a health and safety plan addressing health and safety issues and safe work practices; and a quality assurance/quality control plan to produce data of known quality.
- (b) PEA Report. This report will document whether a release has occurred, a threatened release exists, the threat the Property poses to public health and the environment, and whether further action is necessary.

TASK 3.

Public Participation.

3.1 Borrower shall conduct appropriate public participation activities given the nature of the community surrounding the Property and the level of community interest. Borrower shall work cooperatively with DTSC to ensure that the affected and interested public and community are involved at key stages of the process. Any such public participation activities shall be conducted in accordance with Health and Safety Code sections 25358.7, the DTSC Public Participation Policy and Procedures manual, and with DTSC's review and approval.

3.2 Borrower shall prepare a community profile to examine the level of the community's knowledge of the Property; the types of community concerns; the proximity of the Property to homes and/or schools, day care facilities, churches, hospitals or other sensitive uses, the current and proposed use of the Property; media interest; and involvement of community groups and elected officials.

3.3 Borrower shall develop and submit fact sheets to DTSC for review and approval when specifically requested by DTSC. Borrower shall be responsible for printing and distribution of fact sheets upon DTSC approval using the approved community mailing list.

TASK 4.

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

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

TASK 5.

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

EXHIBIT D

Calendar of Tasks and Schedules

TASK

SCHEDULE

Doc. Name: vcasch3.wpd