

Date: August 5, 2016
Proposal No.: P6545
Prepared For: Mr. Mike Smith
SCOTTS VALLEY UNIFIED SCHOOL DISTRICT
4444 Scotts Valley Drive, Suite 5B
Scotts Valley, CA 95066
Re: Proposal for Implementation of PEA Work Plan
8 Bean Creek Road
Scotts Valley, California

Dear Mr. Smith:

Thank you for requesting Cornerstone Earth Group to prepare and submit this agreement for environmental services. Our proposal is based on Cornerstone's August 3, 2016 Draft Preliminary Environmental Assessment (PEA) Work Plan submitted to the Department of Toxic Substances Control (DTSC), information provided to date, conversations with you and our understanding of the proposed school development. This document will serve as our agreement to work together.

The Project

Scotts Valley Unified School District (District) proposes to redevelop areas of the approximate 8.46-acre existing Scotts Valley Middle School Campus (Santa Cruz County Assessor's Parcel Number 022-561-03) located along Bean Creek Road in Scotts Valley, California (Site). To prepare the school for proposed opening for the 2018-19 school year, the District is planning to demolish several existing buildings and construct approximately 33,000 square feet of new middle school structures and associated new sports field, landscaping, and parking areas. Additional improvements, such as possible seismic upgrades and/or renovation of existing buildings and utilities are also planned. The District is obtaining state funds for this project. Thus, Site approval from the Department of Toxic Substance Control Schools Division (DTSC) is required.

As part of the DTSC oversight process, our Phase I ESA report prepared for the site was submitted to the DTSC for review. In their response letter dated March 28, 2015, DTSC indicated a Preliminary Environmental Site Assessment (PEA) is required for the Site. The District executed an Environmental Oversight Agreement with the DTSC to initiate the PEA process.

Cornerstone prepared a draft PEA Work Plan dated July 29, 2016 to evaluate potential areas of environmental concern identified during the PEA scoping meeting on July 5, 2016 with DTSC and the District. A revised PEA Work Plan dated August 3, 2016 was then submitted to the DTSC for review and approval. The PEA Work Plan has not yet been approved by DTSC.

Purpose

The purpose of the work presented in this proposal is to implement the Draft PEA Work Plan and prepare a PEA report. Note that the Work Plan has not yet been approved by DTSC. Additional sampling and/or testing required by DTSC will be performed on a time and expense basis.

Environmental Services**Pre-Field Activities**

The following tasks will be performed prior to starting field work:

- Approximately five days before starting field work, the District will provide a field work notice to nearby businesses within view of the Site.
- We will mark our boring locations at least two working days prior to beginning our explorations as required by law.
- We will notify the regional utility notification center – Underground Service Alert (USA), and you, so that public and private utilities can be identified and marked at the ground surface. Where practical we will mark our borings in white paint, or otherwise designate our exploration locations, as requested by USA. Utility operators/owners are required to mark their utilities at the ground surface prior to the start of work.
- To reduce the risk of damaging unidentified underground utilities during drilling, we will also contract with a private utility locator. We are not responsible for damage to utilities that are not clearly identified.
- We will retain a drilling contractor with a California C-57 license to facilitate the collection of soil and soil vapor samples in locations accessible by drilling equipment.
- We will retain a concrete coring contractor to core 5-inch diameter holes in hardscape areas that are not accessible with drill rig. The concrete cores will be left on-Site at a location selected by the District.

Subsurface Investigation

Our field geologist or engineer will direct a subsurface investigation and implement the scope of work outlined in the Draft PEA Work Plan. This work involves advancing four borings to a depth of 15 feet (SB-1 to SB-4) for the collection and analysis of soil and soil vapor samples; additionally, advancing 116 borings to depths ranging between ½ to 2½ feet (SB-5 to SB-116) for collection and analyses of soil samples. The soil and soil vapor samples will be analyzed for the compounds outlined in the Draft PEA Work Plan.

Upon completion of sampling activities, the borings will be sealed up to the ground surface using cement grout. Our proposal does not include costs to restore or repair any concrete slabs. The District should understand that some disturbance to the ground surface may occur as a result of accessing the desired locations of subsurface exploration. Although we will be careful to limit the extent of such occurrences, they cannot be avoided and this proposal does not include any costs to repair disturbed areas.

Soil cuttings, purged ground water, and rinsate will be stored on-Site in an EPA-approved 55-gallon drum. Upon receipt of the analytical results, we will coordinate with a disposal company to remove the drum. Our fee estimate assumes the drum will be disposed as non-hazardous waste. The District will be responsible for signing the waste profile form.

PEA Report Preparation

We will prepare a draft PEA report that will be submitted to DTSC for their review and approval and made available for public comment. The PEA report will be prepared based on our discussions with DTSC staff and in general accordance with DTSC's October 2015 PEA Guidance Manual. The report will include the following components:

- Discussion of the analytical results of the Work Plan;
- Discussion of laboratory and field quality assurance and quality control measures;
- Preparation of a human health screening evaluation;
- Third party analytical data validation as required by DTSC;

As requested by DTSC, cumulative screening level risk and hazard will be estimated following DTSC's October 2015 PEA Guidance Manual (DTSC, 2015).

We will submit the draft PEA Report to DTSC for their review and comment. The District should understand the DTSC staff typically provides comments and revisions to draft documents. We will modify the draft PEA report as needed and resubmit a final draft version to DTSC for approval. Our fee estimate assumes two draft reports and one final signed report will be submitted to DTSC. Additional revisions required by DTSC will be performed on a time and expense basis.

GENERAL CONSULTATION AND PROJECT MANAGEMENT

We anticipate ongoing project management and general consultation for this project including attendance at project meetings and coordination with DTSC staff and the project team. We will also assist DTSC staff as needed in preparing the following items: required tasks for DTSC to complete their internal CEQA process; and a Public Notice for the PEA report that will be made available for public review and comment.

Schedule

We will implement the work plan based on the schedule provided below:

Week of August 8: Submit field work notice

Week of August 15: Implement sampling and analyses plan

Week of September 19: Submit draft PEA report to DTSC for review

Fee and Terms

We will perform our services for the estimated fees provided in Table 1 in accordance with attached terms and conditions. If unforeseen conditions are encountered, or if we experience delays or circumstances beyond our control, we will notify you immediately to discuss modifications to the scope of services and/or project fees. Payment for services shall be due 30 days after receipt of Cornerstone Earth Group's Invoice. To be recognized, any dispute over charges must be claimed in writing within 30 days of the billing date. Disputes or questions about a statement shall not be cause for withholding payment for remaining portions due. Requested changes to this contract must be approved in writing before we proceed.

TABLE 1. APPROXIMATE COSTS

TASK	ESTIMATED NUMBER OF HOURS/UNITS	FIXED HOURLY RATE OR UNIT COST	APPROXIMATE COST
Task 1. Pre-Field Activities			
Concrete Coring	21 cores	\$ 90 per core	\$ 1,890
Utility Locator	8 hours	\$ 150 per hour	\$ 1,200
Office Coordination			
Principal Engineer	4 hours	\$ 225 per hour	\$ 900
Senior Staff Engineer	8 hours	\$ 145 per hour	\$ 1,160
Staff Engineer/Geologist	16 hours	\$ 135 per hour	\$ 2,160
Site Visit			
Staff Engineer/Geologist	8 hours	\$ 135 per hour	\$ 1,080
Locate/Mark Borings and USA Clearance			
Staff Engineer/Geologist	8 hours	\$ 135 per hour	\$ 1,080
Sub-Total			\$ 9,470
Task 2. Soil Sampling			
Field Work (116 Borings)			
Senior Staff Engineer	8 hours	\$ 145 per hour	\$ 1,160
Staff Engineer/Geologist	32 hours	\$ 135 per hour	\$ 4,320
Office Coordination			
Principal Engineer	4 hours	\$ 225 per hour	\$ 900
Senior Staff Engineer	8 hours	\$ 145 per hour	\$ 1,160
Staff Engineer/Geologist	8 hours	\$ 135 per hour	\$ 1,080
Equipment and Supplies	1 events	\$ 1,210 per event	\$ 1,210
Drilling Contractor	2 days	\$ 4,000 per day	\$ 8,000
Laboratory Analyses			
OCPs	54 tests	\$ 105 per test	\$ 5,670
Lead	65 tests	\$ 25 per test	\$ 1,625
PCBs	19 tests	\$ 80 per test	\$ 1,520
SVOCs	6 tests	\$ 215 per test	\$ 1,290
Cyanide	6 tests	\$ 45 per test	\$ 270
CAM 17 Metals	6 tests	\$ 115 per test	\$ 690
Compositing	163 samples	\$ 7 per unit	\$ 1,141
Sub-Total			\$ 30,036
Task 3. Soil Vapor Probe Installation, Sampling, Destruction			
Field Work (4 Multi-Depth Probes)			
Senior Staff Geologist	16 hours	\$ 145 per hour	\$ 2,320
Staff Engineer/Geologist	4 hours	\$ 135 per hour	\$ 540
Office Coordination			
Senior Staff Engineer	2 hours	\$ 145 per hour	\$ 290
Staff Engineer/Geologist	4 hours	\$ 135 per hour	\$ 540
Sampling Equipment and Supplies	1 events	\$ 1,470 per event	\$ 1,470
Laboratory Analyses			
VOCs	10 tests	\$ 195 per test	\$ 1,950
2-proponal	1 tests	\$ 90 per test	\$ 90
Sub-Total			\$ 7,110

TABLE 1. APPROXIMATE COSTS

TASK	ESTIMATED NUMBER OF HOURS/UNITS	FIXED HOURLY RATE OR UNIT COST	APPROXIMATE COST
Task 4. Data Validation and QA/QC Sampling			
Third Party Laboratory	1 events	\$ 1,000 per event	\$ 1,000
Office Coordination			
Senior Staff Engineer	2 hours	\$ 145 per hour	\$ 290
Staff Engineer/Geologist	2 hours	\$ 135 per hour	\$ 270
Sub-Total			\$ 1,560
Task 5. Human Health Risk Assessment			
Project Toxicologist	20 hours	\$ 245 per hour	\$ 4,900
Principal Engineer	2 hours	\$ 225 per hour	\$ 450
Senior Staff Engineer	4 hours	\$ 145 per hour	\$ 580
Staff Engineer/Geologist	8 hours	\$ 135 per hour	\$ 1,080
Sub-Total			\$ 7,010
Task 6. PEA Report Preparation			
Senior Principal Geologist	3 hours	\$ 245 per hour	\$ 735
Principal Engineer	6 hours	\$ 225 per hour	\$ 1,350
Senior Staff Engineer	12 hours	\$ 145 per hour	\$ 1,740
Staff Engineer/Geologist	24 hours	\$ 135 per hour	\$ 3,240
Technical Illustrator	8 hours	\$ 115 per hour	\$ 920
Sub-Total			\$ 7,985
Task 7. Project Management and Project Team Coordination			
Principal Engineer	40 hours	\$ 225 per hour	\$ 9,000
Senior Staff Engineer	10 hours	\$ 145 per hour	\$ 1,450
Staff Engineer/Geologist	10 hours	\$ 135 per hour	\$ 1,350
Sub-Total			\$ 11,800
Contingency for Additional Sampling, Laboratory Analyses, Expedited Testing			\$ 5,000
		ESTIMATED TOTAL	\$ 79,971

Authorization

Please acknowledge your receipt of and agreement with the terms and conditions contained in this agreement by signing this agreement and returning one signed original to us. To help expedite approval and project initiation, an email authorization that references this proposal and authorized fee can be sent to ksoenen@cornerstoneearth.com.

We thank you for this opportunity and look forward to working with you on this important project. Should you have any questions regarding this proposal, or if we may be of further service, please contact us at your convenience.

Sincerely,

Cornerstone Earth Group, Inc.



Kurt M. Soenen, P.E.
Principal Engineer

Copies: Addressee (1 by email)

Scotts Valley Unified School District

Name

Date

Please Print Name and Title

**CORNERSTONE EARTH GROUP, INC.
TERMS AND CONDITIONS**

1. Agreement

- 1.1 Cornerstone Earth Group, Inc.'s ("Cornerstone") services are defined by and limited to (a) those services (the "Work") described in the attached proposal, which is incorporated herein by this reference, and (b) these Terms and Conditions of Agreement ("Terms and Conditions"). Together, the proposal and Terms and Conditions form the "Agreement." This Agreement represents the entire agreement between the Client and Cornerstone (collectively, the "Parties") and supersedes all prior negotiations, representations, or agreements, either written or oral. The Agreement can only be amended by a written instrument signed by both the Client and Cornerstone. In the event that the Client authorizes the Work by means of a purchase order or other writing ("Confirmation"), it is expressly agreed that these Terms and Conditions shall apply, and any terms, conditions or provisions appearing in the Confirmation are void and inapplicable except to the extent the Confirmation authorizes the Work and binds the Client to this Agreement.
- 1.2. Failure to immediately enforce any provision in this Agreement shall not constitute a waiver of the right to enforce that provision or any other provision. No waiver by the Parties of a breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such breach or as a waiver of a breach of any other term or covenant in this Agreement.

2. Scope of Services

- 2.1 Cornerstone will serve the Client by providing professional counsel and technical advice based on information furnished by the Client. The Client will make available to Cornerstone all known information regarding existing and proposed conditions of the site, and will immediately transmit any new information that becomes available or any change in plans. The Client and Cornerstone agree that Cornerstone, its officers, directors, employees, agents and/or subcontractors shall not be liable for any claims, damages, costs, or losses arising from or in any way related to conditions not actually encountered during the course of Cornerstone's Work and Cornerstone shall not have any liability or responsibility for losses resulting from inaccurate or incomplete information supplied by the Client, and the Client agrees to defend and indemnify Cornerstone, its officers, directors, employees, agents and/or subcontractors against claims, damages, costs or losses arising therefrom. Cornerstone, its officers, directors, employees, agents and/or subcontractors shall not be liable for failing to discover any condition the discovery of which would reasonably require the performance of services not authorized by the Client.

3. Terms of Payment

- 3.1 The Client's obligation to pay for the Work is in no way dependent upon the Client's ability to obtain financing. The Client's obligation to pay for the Work is in no way dependent upon the Client's successful completion of the Client's project. No provision of this Agreement shall be construed to constitute a "Pay-When-Paid" clause or a "Pay-If-Paid" clause.
- 3.2 Payment for the Work shall be due and payable upon receipt of Cornerstone's invoice. To be recognized, any dispute over charges must be claimed in writing within thirty (30) calendar days of the billing date. Any dispute over an invoice amount shall not affect the Client's obligation to pay invoice amounts not in dispute. Amounts unpaid thirty (30) calendar days after the issue date of Cornerstone's invoice shall be assessed a service charge of 1 percent per month on balances outstanding.
- 3.3 Timely payment is a substantial condition of the Client's performance under this Agreement. Cornerstone may at its option withhold delivery of reports or other work product or suspend performance of the Work pending receipt of payments for all past due invoices and Cornerstone, its officers, directors, employees, agents and/or subcontractors shall have no liability to the Client for delay or damage caused because of such withholding or suspension. In the event that Cornerstone must take legal action to enforce this Agreement for payment for the Work performed and Cornerstone prevails, Cornerstone will be reimbursed by the Client for all expenses, including but not limited to reasonable attorney's fees and litigation costs.

4. Standard of Care

- 4.1 While performing the Work under this Agreement, Cornerstone shall exercise the degree of care and skill ordinarily exercised under similar circumstances by members of the environmental and geotechnical engineering consulting professions, as applicable; performing the kind of services to be performed hereunder and practicing in the same or similar locality at the same period of time.
- 4.2 Except for the express promise set forth in Subsection 4.1 herein, Cornerstone neither makes, nor offers, nor shall Cornerstone be liable to the Client for any express or implied warranties with respect to the performance of the Work.

5. Force Majeure

- 5.1 Cornerstone will diligently proceed with its services and will complete the Work in a timely manner, but it is expressly agreed to and understood by the Client that Cornerstone shall not be held responsible for delays occasioned by factors beyond its control, nor by factors which could not reasonably have been foreseen at the time of the execution of the Agreement between the parties.
- 5.2 Except for the obligation to pay for the Work performed and expenses incurred, neither Cornerstone nor the Client shall be liable for its failure to perform hereunder, in whole or in part, due to contingencies beyond its reasonable control, included, but not limited to, strikes or other concerted acts of workmen not in Cornerstone's employ, whether direct or indirect, riots, war, acts of terrorism, fire, floods, storms, washouts, acts of God or the public enemy, explosions, accidents, epidemics, breakdowns, injunctions, compliance with any law, regulation or order, whether valid or invalid, of the United States of America or any governmental body or any instrumentality thereof, whether now existing or hereafter created.

6. Effect of Delay or Impediment to Work

- 6.1 If any event occurs which causes or may cause Cornerstone: (a) to be impeded in its performance of the Services; or (b) to be delayed in the completion of the Work within the time provided in the attached proposal and/or in an applicable Change Order due to any act or omission of the Client, its officers, directors, employees and agents, or the Client's contractors, or due to any contingency beyond Cornerstone's control as provided in Section 5 herein, Cornerstone shall notify the Client in writing within ten (10) business days of the date on which Cornerstone becomes aware of such event.
- 6.2 The Client shall notify Cornerstone in writing of the Client's agreement or disagreement with Cornerstone's claim of an impediment or delay to performance within five (5) business days after receipt of Cornerstone's notice under Subsection 6.1. If the Client agrees with Cornerstone's claim, the time for performance of such requirement may be extended as mutually agreed in writing by the parties as provided in Subsection 1.1. If the Client disputes Cornerstone's assertion of an impediment or delay, such dispute shall be resolved pursuant to Section 17.
- 6.3 Impediments or delays to performance, addressed pursuant to this Section, shall not (a) constitute a breach hereunder; (b) give rise to any special right to terminate this Agreement; or (c) give rise to a claim by the Client for damages or other relief, if and to the extent that such impediment or delay is due to any act or omission of the Client, its officers, directors, employees and agents, or the Client's contractors, or due to any contingency beyond Cornerstone's control as provided in Section 5.

7. Right of Entry

- 7.1 Unless otherwise agreed in writing, the Client shall furnish and/or secure right of entry to the Site described in the proposal for Cornerstone personnel and equipment in order for Cornerstone to perform the Work. The Client shall waive any claim against Cornerstone, its officers, directors, employees, agents and/or subcontractors and agree to defend and indemnify Cornerstone, its officers, directors, employees, agents and/or subcontractors from any claims arising from entry onto the Site which is the subject of the Work.

- 7.2 The Parties acknowledge and agree that although Cornerstone will take reasonable precautions to minimize damage to property, including landscapes, hardscapes, crops and underground utilities, any and all damages, losses or expenses which could result from damage to such property due to Cornerstone's performance of the Work under this Agreement shall be the sole and exclusive responsibility of the Client provided that such damages, losses or expenses are not the result of Cornerstone's breach of the standard of care set forth in Subsection 4.1 herein. The Client shall indemnify, defend and hold harmless Cornerstone, its officers, directors, employees, agents and/or subcontractors from any damages, losses or expenses including, without limitation, attorney's fees, sustained or incurred by Cornerstone, its officers, directors, employees, agents and/or subcontractors as a result of any and all claims arising out of any damage to subsurface utilities due to Cornerstone's performance of the Work under this Agreement, provided that such claims are not the result of Cornerstone's breach of the standard of care set forth in Subsection 4.1 herein.

8. Monitoring of Construction

- 8.1 The Client acknowledges and understands that unanticipated or changed conditions may be encountered during construction. There is a substantial risk to the Client and to Cornerstone if Cornerstone is not engaged to provide complete services, including but not limited to, construction observation services. Such risks include the increased likelihood of misinterpretation of Cornerstone's findings and conclusions and error in implementing recommendations by Cornerstone. If Client fails to retain Cornerstone to provide complete services, the Client agrees, notwithstanding any other provisions of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless Cornerstone, its officers, partners, employees and Cornerstones from and against any and all claims, suits, demands, liabilities, losses, damages or costs, including reasonable attorneys' fees and defense costs arising out of or in any way connected with the Work or arising out of implementing or interpreting Cornerstone's work product except when the Claim arises from the sole negligence of Cornerstone or where the Claim arises from the willful, wanton or reckless conduct of Cornerstone.
- 8.2 Cornerstone shall not be required to make exhaustive or continuous on-site observations to check the quality or quantity of the Work and shall not be responsible for any contractor's failure to carry out the work in accordance with the contract documents.
- 8.3 Cornerstone shall not be responsible for the acts or omissions of any contractor or subcontractor or any of the contractors' or subcontractors' agents or employees or other persons performing any work on the Project.

9. Changed Conditions

- 9.1 If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to Cornerstone are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, Cornerstone may call for renegotiation of appropriate portions of this Agreement. Cornerstone shall notify the Client of the changed conditions necessitating renegotiation, and Cornerstone and the Client shall promptly and in good faith enter into renegotiation of this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement, in accordance with the termination provision hereof.

10. Jobsite Safety

- 10.1 Neither the professional activities of Cornerstone nor the presence of Cornerstone or its employees, subconsultants and subcontractors shall relieve the Client or the Client's General Contractor of its obligations, duties and responsibilities, including, but not limited to, health and safety programs. Cornerstone and its personnel have no authority to exercise any control over the site or any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The Client acknowledges and agrees that Cornerstone shall not be responsible for jobsite safety.

11. Hazardous Materials and Environmental Contamination

- 11.1 The Client hereby warrants that if it knows or has any reason to assume or suspect that hazardous or toxic substances, or any other type of environmental hazard, contamination or pollution may exist at the Site, the Client will immediately inform Cornerstone to the best of the Client's knowledge of such hazardous or toxic substances, environmental hazard, contamination or pollution's type, quantity and location.
- 11.2 Cornerstone, its officers, directors, employees, agents and/or subcontractors shall have no title to, ownership of, or legal responsibility and/or liability for any and all contamination at the Site, including, but not limited to, the groundwater thereunder. "Contamination at the Site" includes but is not limited to any hazardous or toxic substance, or any other type of environmental hazard, contamination or pollution present at or under the Site, including, but not limited to the ground water thereunder, which is not brought onto the Site by Cornerstone, its officers, directors, employees, agents and/or subcontractors.
- 11.3 Cornerstone and the Client agree that the discovery of unanticipated Contamination at the Site may constitute a changed condition mandating renegotiation and/or termination of this Agreement. Cornerstone and the Client agree that the discovery of unanticipated Contamination at the Site may make it necessary for Cornerstone to take immediate measures to protect the public health, safety and the environment. The Client agrees that Cornerstone may take any or all measures that in Cornerstone's professional opinion are justified to preserve and protect the health and safety of Cornerstone's personnel, the public and the environment, and the Client agrees to compensate Cornerstone for the cost of such services.
- 11.4 The Client agrees to indemnify, defend and hold harmless Cornerstone, its officers, directors, employees, agents and/or subcontractors from any and all damages, losses or expenses, including, but not limited to, reasonable attorney's fees and legal costs connected therewith, liabilities, penalties and fines sustained by Cornerstone, its officers, directors, employees, agents and/or subcontractors as a result of any and all claim with respect to and arising out of any and all Contamination at the Site, provided that such claims are not the result of Cornerstone's breach of the standard of care set forth in Subsection 4.1 herein.
- 11.5 Subsurface sampling may result in unavoidable contamination of certain subsurface areas, as when a probe or boring is advanced or drilled through a contaminated area into a clean soil or water-bearing zone. Because of the risks posed by such work, and because subsurface sampling is often a necessary part of Cornerstone's Work, the Client hereby agrees to waive all claims against Cornerstone, its officers, directors, employees, agents and/or subcontractors with respect to and arising out of any and all subsurface sampling, including but not limited to claims relating to cross-contamination occurring because of such subsurface sampling, provided that such claims are not the result of Cornerstone's breach of the standard of care set forth in Subsection 4.1 herein.

12. Disposal of Samples and Drill Cuttings

- 12.1 Unless mutually agreed in writing by the Parties as provided in Subsection 1.1 herein, Cornerstone shall hold samples collected during the performance of the Work no longer than thirty (30) calendar days after their date of collection. Drill cuttings will be left on-Site. In the event that soil, rock, water, drill cuttings and/or other samples or materials are contaminated or are suspected to contain hazardous materials or other toxic substances hazardous or detrimental to public health, safety or the environment as defined by federal, state or local law, Cornerstone will, after completion of testing, notify the Client of the same in order for the Client to arrange for the disposal of the samples and/or materials. The Client recognizes and agrees that Cornerstone at no time assumes title to said samples and/or materials, and that the Client is responsible for the disposal of such samples and/or materials. The Client agrees to pay all costs associated with any storage, transport and/or disposal of samples and/or materials, and to defend and indemnify Cornerstone, its officers, directors, employees, agents and/or subcontractors from any and all claims arising out of or in any way related to the storage, transport and/or disposal of asbestos, hazardous or toxic substances, and/or pollutants, including but not limited to any samples and/or materials.

13. Use and Ownership of Documents

- 13.1 All reports, letters, plans, figures, specifications, computer files, field data, logs, notes and other documents and instruments prepared by Cornerstone as instruments of service shall remain the property of Cornerstone. Cornerstone shall retain all common law, statutory and other reserved rights, including copyright thereto. In the event the Client, the Client's contractors or subcontractors, or anyone for whom the Client is legally liable makes or permits to be made any changes to reports, letters, plans, figures, specifications, computer files, field data, logs, notes and other documents prepared by Cornerstone without obtaining Cornerstone's prior written consent, the Client shall assume full responsibility for the results of such changes. Therefore, the Client agrees to waive any claim against Cornerstone and to release Cornerstone from any liability arising directly or indirectly from such changes. In addition, the Client agrees, to the

fullest extent permitted by law, to indemnify and hold harmless Cornerstone from any damages, liabilities or costs, including reasonable attorney's fees and costs of defense, arising from such changes.

The Client agrees that all reports, letters, plans, figures, specifications, computer files, field data, logs, notes and other documents and other services furnished to the Client or its agents and/or employees by Cornerstone, which are not paid for, shall be immediately returned upon demand and may not be used by the Client for any purpose. Any reports, letters, plans, figures, specifications, computer files, field data, logs, notes and other documents, advice or opinions provided by Cornerstone to the Client as part of the Work are provided for the sole and exclusive use of the Client for specific application to the Site detailed in this Agreement. Any third party use of any drafts, reports, letters, plans, figures, specifications, computer files, field data, logs, notes and other documents, advice or opinion of Cornerstone is the sole responsibility of the Client.

14. Insurance

- 14.1 Cornerstone, its officers, directors, employees and agents have and shall maintain during the term of this Agreement insurance in the following types: (a) Worker's Compensation Insurance; (b) Employer's Liability Insurance; (c) Commercial General Liability Insurance (GLI); and (d) Professional Liability Insurance.
- 14.2 Cornerstone shall, at the Client's request, provide the Client with a certificate of insurance or other satisfactory evidence that such insurance has been obtained and are maintained in force through the term of this Agreement. Any additional insurance policy or increase in the coverage of existing insurance required by the Client shall constitute an additional expense under this Agreement, and the Client shall reimburse Cornerstone for any additional premiums and costs incurred by Cornerstone in connection with obtaining such additional insurance.

15. Prevailing Wage Obligations

- 15.1 The Client shall notify Cornerstone in writing if the Work contemplated by this Agreement constitutes a "public work" under any and all federal, state and/or local prevailing wage laws, and/or living wage laws, including but not limited to the Davis-Bacon Act and the provisions of California Labor Code §§ 1720 *et seq.* In addition, the Client shall notify Cornerstone if Cornerstone is obligated by statute, any public contracting authority and/or a developer to pay prevailing wages and benefits and/or any predetermined wages or benefits (collectively, "prevailing wage obligations"). In the event that Cornerstone must adhere to federal, state and/or local prevailing wage obligations for the Work performed, the Client shall provide Cornerstone with any and all prevailing wage determinations applicable to the Work to be performed under this Agreement. Any prevailing wage obligations might affect the payment terms contemplated by this Agreement and thus constitute a changed condition mandating renegotiation and/or termination of this Agreement. The Client understands and agrees that Cornerstone will rely on the representations made by the Client with regard to prevailing wage obligations and the Client agrees to indemnify Cornerstone, its officers, directors, employees, agents and/or subcontractors against any and all claims, liabilities, suits, demands, losses, costs and expenses, including but not limited to reasonable attorney's fees and legal costs, arising from Cornerstone's reliance upon the Client's representations regarding prevailing wage obligations.

16. Limitations--THIS CLAUSE LIMITS CORNERSTONE'S LIABILITY

- 16.1 Cornerstone shall not be responsible for the validity or accuracy of data collected by others or for interpretations made by others.
- 16.2 Cornerstone's relationship with the Client under this Agreement shall be that of an independent contractor. Nothing in this Agreement shall be construed to designate Cornerstone, its officers, directors, employees, agents and/or subcontractors as employees, agents, joint ventures or partners of the Client. Cornerstone shall have no authority to bind, commit or obligate the Client in any manner and shall not hold itself out to third parties as being capable of doing so.
- 16.3 The Client and Cornerstone have discussed the risks and rewards associated with this project, as well as Cornerstone's fee for services. After negotiation, the Client and Cornerstone have expressly agreed to allocate certain of the risks so that, to the fullest extent permitted by law, the total aggregate liability of Cornerstone, its officers, directors, employees, agents and subcontractors to the Client and all third-parties is limited to \$50,000 or the amount of Cornerstone's fee, whichever is greater, for any and all injuries, damages, claims, losses, expenses, or claim expenses (including attorney's fees) arising out of this Agreement from any cause or causes. Such causes include but are not limited to Cornerstone's negligence, errors, omissions, strict liability, breach of contract or breach of warranty. In no event shall Cornerstone, its officers, directors, employees, agents and/or subcontractors be liable in contract, tort, strict liability, warranty or otherwise, for any special, incidental or consequential damages, such as but not limited to delay, disruption, loss of product, loss of anticipated profits or revenue, loss of use of any equipment or system, non-operation or increased expense of operation of any equipment or systems, cost of capital, or cost of purchase or replacement equipment systems or power.
- 16.4 Notwithstanding any other provision of this Agreement, the total aggregate liability of Cornerstone, its officers, directors, employees, agents and subcontractors to the Client and all third parties, including attorney's fees awarded pursuant to this Agreement, for claims, damages or losses arising out of the treatment, transport, storage, discharge, dispersal or release of hazardous materials, shall be limited to \$50,000 or the amount of Cornerstone's fee, whichever is greater and regardless of the legal theory under which liability is imposed.
- 16.5 For an additional 5% of Cornerstone's total fee or \$500, whichever is greater, Cornerstone will raise the limitation of liability up to the amount that actually would be paid by Cornerstone's insurance carriers if Client and Cornerstone initial below:

LIMITATION INCREASE: THE LIMITATION OF LIABILITY IS INCREASED TO THE ACTUAL AMOUNT PAID BY CORNERSTONE'S INSURANCE CARRIERS IN EXCHANGE FOR AN ADDITIONAL FEE OF 5% OF THE TOTAL SERVICE CHARGE OR \$500, WHICHEVER IS GREATER.

- | | Client's Initial | Date | Cornerstone's Initial | Date |
|--|--|------|-----------------------|------|
| 16.6 | The Client shall indemnify, defend and hold harmless Cornerstone and its officers, directors, employees, agents and subcontractors from any and all damages, losses, or expenses, included but not limited to reasonable legal expenses and attorney's fees connected therewith, sustained by Cornerstone, its officers, directors, employees, agents and subcontractors as a result of any and all claims, demands, suits, causes of action, proceedings, judgments and liabilities for property damage, statutory penalty and/or personal injury with respect to and arising out of the Client's negligent acts, omissions or material breach of this Agreement. In the event a claim is the result of joint negligent acts or omissions of the Client and Cornerstone, the Client's duty of indemnification shall be in proportion to its respective allocable share of the joint negligence. | | | |
| 16.7 | Client acknowledges and agrees that in no event shall any action or proceeding be brought against Cornerstone or proceeding be brought against Cornerstone by Client or its assignees for any claim or cause of action arising from or in any way related to the Work or this Agreement unless such action or proceeding is commenced within three (3) years from the Date of Completion of Work provided by Cornerstone under this Agreement. The Date of Completion shall be the date of the final invoice for the Work performed under this Agreement. | | | |
| 16.8 | If Client requests that Cornerstone's work product be relied upon by a third party, including, but not limited to a lender, Client agrees to provide the third party with a copy of these terms and conditions, and Client agrees to require said third party to agree to limit Cornerstone's total liability to Client and any third party as described in paragraph 16.4 and Client agrees to indemnify Cornerstone, its officers, directors, employees, agents and/or subcontractors against any and all claims, liabilities, suits, demands, losses, costs and expenses, including but not limited to reasonable attorney's fees and legal costs, arising from third party claims, damages, costs and losses arising out of or in any way related to Work. | | | |
| 17. Disputing Cornerstone's Performance | | | | |
| 17.1 | Except as provided in Section 6 and Subsection 17.2 herein, if Cornerstone shall breach any provision herein, the Client shall notify Cornerstone within five (5) business days of the Client's knowledge of such breach. Except as provided in Subsections 17.3 herein, upon receipt of the Client's notice, Cornerstone shall have the option to take such corrective measures, if any, to remedy the breach, and shall notify the Client within five (5) business days after receipt of the | | | |

Client's notification of the corrective measures Cornerstone shall take and the estimated time period within which the corrective measures shall be taken. In no event shall Cornerstone be liable to the Client for any damages without being given a reasonable opportunity to remedy its breach as provided herein.

- 17.2 The Client shall make no claim for professional negligence unless the Client has first provided Cornerstone with a written certification executed by an independent Consultant currently practicing in the same discipline and locality as Cornerstone and licensed in the State of California. This certification shall (a) contain the name and license number of the certifier; (b) specify the acts or omissions that the certifier contends are not in conformance with the standard care for a Cornerstone performing professional services under similar circumstances; and (c) state in detail the basis for the certifier's opinion that such acts or omissions do not conform to the standard of care. This certificate shall be provided to Cornerstone no less than thirty (30) calendar days prior to the presentation of any claim or the institution of any mediation, arbitration or judicial proceeding.
- 17.3 Cornerstone agrees that upon receipt of written notice from the Client pursuant to Subsection 17.2 herein it will implement necessary corrections to the Work performed by Cornerstone that fails to conform to the standard of care that Cornerstone has accepted pursuant to Subsection 4.1, as mutually agreed in writing by the Parties as provided in Subsection 1.1. herein, if such written notice is received within one (1) year of the performance of the Work failing to conform to Subsection 4.1. If Cornerstone has been paid by the Client for such Work, Cornerstone shall perform the corrections at its own expense. If Cornerstone has not been paid by the Client for such Work, and the Work is subsequently corrected to conform with the standard of care that Cornerstone has accepted pursuant to Subsection 4.1, the Client shall pay Cornerstone in accordance with Section 3 herein.
- 17.4 In no event shall Cornerstone, its officers, directors, employees, agents and/or subcontractors be liable for any special, incidental or consequential damages, such as but not limited to delay, disruption, loss of product, loss of anticipated profits or revenue, loss of use of any equipment or system, non-operation or increased expense of operation of any equipment or systems, cost of capital, or cost of purchase or replacement equipment systems or power, or any other incidental, special, indirect or consequential damages of any kind or nature whatsoever resulting from Cornerstone's performance or failure to perform the Work in accordance with the standard of care that Cornerstone has accepted pursuant to Subsection 4.1.
- 18. Termination**
- 18.1 Cornerstone shall have the right to terminate this Agreement ten (10) business days after written notice is sent to the Client if (a) the Client fails to pay any of Cornerstone's undisputed invoices within sixty (60) days from the date of the invoice; or (b) Cornerstone's attached proposal and/or the Work was based upon misinformation, whether by the Client or a third party, or upon information not fully disclosed to Cornerstone, whether by the Client or a third party.
- 18.2 Except as provided for in Section 6, and after compliance with Section 17, the Client shall have the right to terminate this Agreement ten (10) business days after written notice is sent to Cornerstone if Cornerstone fails to comply in any material respect with any of the material provisions herein and subsequently fails to notify the Client pursuant to Subsections 17.1 and 17.3 of the corrective measures Cornerstone intends to take.
- 18.3 The termination of this Agreement by Cornerstone under Subsection 18.1 herein, or by the Client under Subsection 18.2 herein, shall not relieve the Client of its obligations to pay Cornerstone for any of the Work performed and expenses incurred as of the date of termination, and shall not constitute a waiver by Cornerstone or the Client of any cause of action for breach of this Agreement or any provision herein.
- 19. Miscellaneous Provisions.**
- 19.1 "Indemnity" Defined. The term "indemnify" shall mean indemnify, defend and hold harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including but not limited to reasonable attorney's fees and all legal costs incurred on appeal, and all interest thereon, accruing or resulting to any and all persons, firms, or any other legal entities, on account of any damages or losses to property or persons, including death or economic losses, arising out of the item, matter, action or inaction specified in the specific provision.
- 19.2 Choice of Counsel. In any circumstance whereby Cornerstone is entitled to indemnification by the Client, Cornerstone shall have the right to select counsel of its choosing.
- 19.3 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns as provided herein. The Client shall not assign, sell, transfer or subcontract this Agreement or any interest herein without the prior written consent of Cornerstone. Cornerstone shall not assign, sell, transfer or subcontract this Agreement or any interest herein without the prior written consent of the Client. The Client hereby consents to the subcontracting of those portions of the Work as the attached proposal herein indicates are or will be subcontracted. Notwithstanding the above, Cornerstone shall have the right to assign monies due hereunder for the Work performed and expenses incurred.
- 19.4 Third Party Beneficiaries. The Parties agree that this Agreement is not intended by either Cornerstone or the Client to give any benefits, rights, privileges, actions or remedies to any person or entity, partnership, firm or corporation as a third party beneficiary or otherwise under any theory of law, that is not a signatory to this Agreement.
- 19.5 Survival. In order that the Parties may fully exercise their rights and perform their obligations arising from the performance of this Agreement, any provisions of this Agreement that are necessary to ensure such exercise or performance shall survive the termination of this Agreement.
- 19.6 Severability. If any part, term or provision of this Agreement shall be held illegal, unenforceable or in conflict with any federal, state or local law having jurisdiction over this Agreement, the validity of the remaining parts, terms or provisions of this Agreement shall not be affected thereby.
- 19.7 Choice of Law and Venue. This Agreement shall be governed by California law. The venue for any legal action brought pursuant to this Agreement shall be located within the County of Santa Clara, State of California.
- 19.8 Publicity. Unless otherwise mutually agreed in writing by the parties as provided in Subsection 1.1, Cornerstone may use and publish the Client's name and a general description of Cornerstone's services with respect to the Work in describing Cornerstone's experience and qualifications to other clients or prospective clients.
- 19.9 Signatories. Each undersigned representative of the Parties to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such Party to this document.
- 19.10 Corporate Protection. It is intended by the parties to this Agreement that Cornerstone's services in connection with the Work shall not subject Cornerstone's individual employees, officers or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary herein, the Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against Cornerstone, a California Corporation, and not against any of Cornerstone's individual employees, officers or directors.
- 19.11 Code Compliance. Cornerstone shall exercise usual and customary professional care in its efforts to comply with applicable laws, codes and regulations as of the date of this Agreement.
- 19.12 Quotation. Unless stated in writing, this quotation shall not remain in effect after thirty (30) days of the Proposal date.
- 19.13 Contractors State License. Cornerstone maintains a General Engineering A license (No. 905816) with a Hazardous Substances Removal and Remedial Actions Certification with the State of California, which are regulated by the Contractors State License Board. Any questions concerning a contractor may be referred to the Registrar, Contractors State License Board, P.O. Box 26000, Sacramento, California 95826.