

Date: March 24, 2020
Proposal No.: P9659

Prepared For: Ms. Wendy Zhang
Assistant Superintendent of Business Services
MILPITAS UNIFIED SCHOOL DISTRICT
1585 Rogers Street
Milpitas, California 95035

Re: Geotechnical Investigation and Geologic Hazards Evaluation
Milpitas High School
1285 Escuela Parkway
Milpitas, California

The Agreement

Thank you for requesting Cornerstone Earth Group to prepare and submit this agreement for geotechnical services. We understand this project will be subject to the Department of the State Architect (DSA) oversight and the California Geological Survey (CGS) review; therefore, our scope discussed within this proposal was developed based on the requirements for geology and seismology reports for public schools in California (CGS Note 48). The following describes our understanding of the project and presents our proposed scope of work and our estimated cost and schedule for completing the work. This document will serve as our agreement to work together.

The Project

The project site is within the Milpitas High School campus located at 1285 Escuela Parkway in Milpitas, California. We have discussed the site with you and reviewed conceptual site plans and relatively recent aerial images of the site. The site is currently occupied by a gymnasium (Building A), an auxiliary gymnasium and locker room buildings (Buildings B and C), a performing arts building (Building D), classroom buildings (Buildings E through H and K), a cafeteria/library building (Building J), a math and science building (Building L), several relocatable classrooms, artificial turf sports fields, a running track and bleachers, a swimming pool and locker/restroom building, paved sports courts, paved flatwork, and parking areas, parking photovoltaic/shade structures, and landscape features. We understand that a one-story, at-grade performing arts center, a one-story, at-grade gymnasium, a one-story, at-grade fitness center, new photovoltaic/shade structures, and relocated paved parking and basketball courts are currently planned for the site.

The new performing arts center, gymnasium, and fitness center will have footprints of approximately 36,000, 20,000, and 7,000 square feet, respectively and be located in the northeastern and central portions of the campus, respectively. We anticipate the new buildings

will consist of wood, concrete, and/or steel frame construction. The new photovoltaic/shade structures will be located in the northwestern portion of the campus and is currently occupied by paved basketball courts. Appurtenant utilities, landscaping, and other improvements necessary for site development are also planned.

The site is bounded by Escuela Parkway to the east, Arizona Avenue to the west, residential development and an elementary school to the north, and Calera Creek to the south.

Structural loads are not currently known for the proposed structures; however, structural loads are expected to be typical of similar type structures. Grading is anticipated to include minor cuts and fills of 1 to 3 feet for construction of the building pads and other site development.

Our Experience

Our principal geotechnical group has over 120 years of combined geotechnical experience and has completed thousands of projects throughout the Bay Area and California. Our breadth of experience in the Bay Area will add value to your project in design and construction. Services we can provide include the following.

- | | |
|--|--|
| <input checked="" type="checkbox"/> Foundation Investigations | <input checked="" type="checkbox"/> Soil Stabilization |
| <input checked="" type="checkbox"/> Liquefaction Analysis | <input checked="" type="checkbox"/> Fault Investigations |
| <input checked="" type="checkbox"/> Pavement Evaluation and Design | <input checked="" type="checkbox"/> Subsurface Exploration |
| <input checked="" type="checkbox"/> Levee Evaluations | <input checked="" type="checkbox"/> Site Selection/EIR input |
| <input checked="" type="checkbox"/> Slope Stability Evaluation | <input checked="" type="checkbox"/> Sustainable Development Input |
| <input checked="" type="checkbox"/> Geologic/Seismic Hazards Clearance | <input checked="" type="checkbox"/> Failure Investigations |
| <input checked="" type="checkbox"/> Earthquake Engineering | <input checked="" type="checkbox"/> Dewatering Review |
| <input checked="" type="checkbox"/> Retaining Structures | <input checked="" type="checkbox"/> Field, Laboratory & InSitu Testing |

If desired, our firm also provides a wide variety of environmental engineering services to help protect your investment during property development and property transfers. Please contact us should you need assistance in environmental assessment or mitigation of your property.

Project Team

Our project team will be led by Mr. Nicholas S. Devlin, P.E., Senior Project Engineer. Mr. Devlin will be assisted by other members of our staff to complete the project. Mr. Devlin's contact information is shown here.

Project Manager	Nicholas S. Devlin, P.E.
Email	ndevlin@cornerstoneearth.com
Office	(408) 245-4600 x 128
Cell	(408) 470-9891

Mr. Scott E. Fitinghoff, P.E., G.E. will provide our internal quality assurance reviews on the project. Mr. Craig Harwood, CEG, will be the project engineering geologist.

Anticipated Subsurface Conditions

Based on our review of available geologic maps and previous reports, the site is not located within an Alquist-Priolo Earthquake Hazard Zone. However, the site is located in an area where historical occurrences of liquefaction have occurred, or where geotechnical and groundwater conditions indicate a potential for permanent ground displacements, such that mitigation would be required (California Geologic Survey, Milpitas 7.5-Minute Quadrangle, 2004). Based on our initial cursory review, historic high groundwater is anticipated to be at a depth of about 5 to 10 feet below existing site grades. In general, the site is underlain by native alluvial soils consisting of interbedded clay, silt, sand and gravel. Our scope of services was developed to address potential liquefaction concerns and evaluate potential seismic settlement, as required by the California Geologic Survey (CGS).

Geotechnical Services

As discussed, we assume this project is subject to DSA oversight and CGS review; therefore, the quantity and locations of our explorations (i.e. CPTs and borings) were selected in accordance with CGS Note 48 (i.e. one exploration per 5,000 square feet of building footprint with a minimum of two explorations per building).

File Review

Prior to our investigation, we will review select information available in our files pertinent to the site conditions in the vicinity of the project. In addition, should prior site information be available, including geotechnical reports, subsurface information, grading information, test data, etc., please forward a copy for our review.

Field Exploration

Health and Safety Plan

We will prepare a project-specific Health and Safety Plan (HSP) for the site pertaining to the specific geotechnical on-site field activities. The HSP will provide information including the proper personal safety equipment to be worn on-site, directions to the nearest public emergency room, and information for the key contact personnel involved in the project.

Geologic Reconnaissance

We will perform a reconnaissance of the site and the nearby site vicinity to evaluate the potential presence of geologic hazards, including fault rupture, slope instability, springs, expansive soils, and other features indicative of potential geologic hazards.

Exploratory Borings

To explore the subsurface conditions, we will drill, log and sample six exploratory borings at the site using conventional truck-mounted, hollow-stem auger drilling equipment. Two borings will

extend to depths of 20 to 30 feet for the new photovoltaic/shade structures and four of our conventional borings will extend to depths of 30 to 40 feet within the proposed building footprints. We will collect soil samples from our borings for visual classification and laboratory testing. Additionally, we will perform environmental testing of samples collected from four of our five geotechnical borings as discussed in our environmental services presented below. The approximate locations of our borings are shown on the attached Proposed Exploration Location Plan; final location of all explorations may be modified in the field, as needed.

Cone Penetration Tests (CPT)

To supplement our exploratory borings, we will perform ten Cone Penetration Tests (CPTs) using 30-ton truck-mounted CPT equipment. Our CPTs will extend to depths of approximately 50 to 100 feet. The approximate locations of our exploratory CPTs are shown on the attached Proposed Exploration Location Plan; final location of all explorations may be modified in the field, as needed.

Cone Penetration Tests (CPT) are a method of providing rapid data collection and correlation with soil classification and characterization. A CPT consists of hydraulically pushing a steel cone equipped with load cells to collect information regarding the soil profile. CPTs give a near continuous subsurface profile, which make them ideal for certain engineering analyses, including liquefaction analysis.

Utility Clearance

We will mark our boring locations at least two working days prior to beginning our explorations as required by law and 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 locations 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. California law requires that we receive notification that our marked exploration locations have been cleared by each subscribing utility operator with nearby facilities before we proceed with our exploration. Failure of these utility operators to respond with the status of their facilities may result in delays to our schedule that is outside of our control.

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 also request that you forward a copy of utility location plans or drawings, if available, to aid in determining our exploration locations.

Permits and Site Access

Our explorations will be permitted and backfilled with cement grout in accordance with Santa Clara Valley Water District guidelines.

We assume that clear site access will be provided for our equipment at the time of drilling. Exploration equipment is typically heavy, and drilling is a destructive process that disturbs surface soils and other improvements. For the purpose of this proposal, site restoration is limited to general clean-up and does not include the restoration of the site.

Environmental Conditions

If environmental contamination or other specific conditions exist at the site, please notify us prior to exploration so that we can take the proper health and safety precautions during our exploration of the site. This proposal specifically excludes the assessment of environmental characteristics at the site, particularly those involving hazardous substances. If obviously impacted materials are encountered during our geotechnical exploration, we will discontinue our work and notify you of the condition encountered. We will proceed with our geotechnical scope of work, once we mutually agree to do so. Added costs incurred because of suspected hazardous substances will be charged on a time-and-expense basis over and above the established fees for the site investigation.

Laboratory Testing

To evaluate the index and engineering properties of site soils, the following laboratory tests are anticipated:

- In-situ Moisture/Density tests, American Society for Testing and Materials (ASTM) D2216 and D7263 Test Procedures
- Grain Size Distribution tests, ASTM D1140 and D422
- Atterberg Limits, ASTM D4318
- Unconfined, Unconsolidated Triaxial Shear tests, ASTM D2850
- One-Dimensional Consolidation tests, ASTM D2435
- Soil Corrosion (pH, resistivity, chlorides, and sulfates)

Engineering Analysis and Report Preparation

Our certified engineering geologist will perform a geologic hazards evaluation in accordance with DSA and CGS requirements. Our geologic hazards review will include the following:

- Review of site historical aerial photographs, published and unpublished geologic reports and maps
- Summary of aerial photograph study and site visit
- Summary the project site geology and prepare site geologic hazard map and representative geologic cross sections, as required.
- Evaluation of geologic hazards including fault rupture, landslide hazards, strong ground shaking, liquefaction potential, and flooding.

The engineering analysis phase of work will focus on developing site grading recommendations and geotechnical design parameters for foundations, retaining structures and pavement areas. The data obtained from the field investigation and the laboratory testing program will be utilized in the engineering analysis.

Following the completion of the engineering analysis, a report will be prepared with our conclusions and recommendations. The report will include the following items:

- Site plan showing exploratory boring locations
- Logs of exploratory borings, including depth to groundwater, if encountered
- Laboratory test results
- A detailed discussion of our findings and recommendations, including:
 - ✓ Site conditions
 - ✓ Subsurface conditions
 - ✓ Geologic hazards and seismicity
 - ✓ Seismic Design Parameters in accordance with the 2019 CBC Chapters 11.4, and ASCE 7-16 Chapters 20, and 21.2 (Ground Motion hazard Analysis)
 - ✓ Site preparation and earthwork recommendations
 - ✓ Recommendation for preparation of subgrade and sub drainage of synthetic turf
 - ✓ Foundation type and design recommendations for the proposed buildings and photovoltaic/shade structures including:
 - Allowable vertical capacity and skin friction
 - Allowable lateral bearing value
 - Effective width for lateral bearing
 - Ground water elevation
 - Concrete durability requirements
 - Construction considerations for drilled piers in shallow groundwater conditions
 - ✓ Lateral earth pressures for retaining wall design
 - ✓ Interior and exterior slab-on-grade recommendations
 - ✓ Pavement and flatwork recommendations

Schedule

We are prepared to begin scheduling our work upon receiving your written approval of this agreement.

The permitting process prior to exploration for Santa Clara Valley Water District will take up to two weeks prior to site exploration. Our schedule is based on obtaining a permit within two weeks but may vary based agency workload and processing time. Our approximate schedule is as follows:

- Weeks 1-2: Permitting, Mark Boring/CPT Locations, USA Notification
- Weeks 3-4: Field Exploration, File Review, Laboratory Testing
- Weeks 5-6: Engineering Analysis, Report Preparation
- Week 7: Internal QA Review, Issue Report

CGS Reviews

Cornerstone recognizes that the geotechnical investigation and geologic hazards evaluation report will be reviewed by CGS. Our base fee includes an allotment of time to respond to CGS review comments of our geotechnical report.

Cornerstone will assist the project Architect in completing the work order application for the review process. The District will be responsible to pay the fee associated with the review (currently \$3,600) and submitting the report and work application.

Contract Document Coordination and Review

We will provide supplemental consultation on an as-needed basis with the Milpitas Unified School District and design team during the design and contract document preparation process. We will attend meetings with the design team and DSA, as required, to facilitate design approval. We will review the foundation, civil, and landscape plans for conformance with the recommendation in our geotechnical report. We will prepare draft plan review letters indicating any inconsistencies with our recommendations. Once inconsistencies have been addressed, we will provide final letters for submittal to the reviewing agencies indicating the design's conformance with our geotechnical recommendations. We estimate that approximately 5 hours of Senior Project Engineer or Principal Engineer time may be required.

Environmental Services

Our environmental team for your project will be managed by Mr. Christopher J. Heiny, P.G., Principal Engineer, whose contact information is shown below. Mr. Heiny will be supported by various technical and administrative staff as required.

Project Manager	Christopher Heiny, P.G.
Email	cheiny@cornerstoneearth.com
Office	(925) 988-9500 ext. 214
Cell	(925) 705-5063

Preliminary Soil Quality Evaluation

A Cornerstone staff geologist or engineer will collect soil samples for laboratory analyses from depths of up to approximately 5 feet from four of the planned exploratory borings advanced under the geotechnical scope of work. The samples will be collected from the upper approximately 1 foot of soil and from depths of approximately 3 feet and 5 feet for laboratory analyses. The samples will be analyzed at a state-certified laboratory for the tests presented in Table 1. Note that we may recommend additional analyses and/or boring locations based on the initial laboratory results obtained under this task. Cornerstone will obtain your authorization prior to collecting or analyzing any additional samples.

Table 1: Sampling Plan

Depth of Samples	Analysis and Test Method
Upper 1 foot	<ul style="list-style-type: none"> ▪ 17 California Assessment Manual (CAM) metals (EPA Test Method 6010B/7471A) ▪ Organochlorine Pesticides (OCPs) (EPA Test Method 8081) ▪ Polychlorinated Biphenyls (PCBs) (EPA Test Method 8082) ▪ Total Petroleum Hydrocarbons in the diesel range (TPHd) and motor oil range (TPHo) (EPA Test Method 8015M) ▪ Volatile Organic Compounds (VOCs) and TPH in the gasoline range (TPHg) (EPA Test Method 8260B) ▪ Semi-VOCs (EPA Test Method 8270C) ▪ Asbestos (CARB 435; Polarized light microscopy using a 400-point counting grid)*
3 feet	<ul style="list-style-type: none"> ▪ 17 CAM metals (EPA Test Method 6010B/7471A) ▪ TPHd and TPHo (EPA Test Method 8015M) ▪ VOCs and TPHg (EPA Test Method 8260B) ▪ Semi-VOCs (EPA Test Method 8270C) ▪ Asbestos (CARB 435; Polarized light microscopy using a 400-point counting grid)*
5 feet	<ul style="list-style-type: none"> ▪ 17 CAM metals (EPA Test Method 6010B/7471A) ▪ TPHd and TPHo (EPA Test Method 8015M) ▪ VOCs and TPHg (EPA Test Method 8260B) ▪ Asbestos (CARB 435; Polarized light microscopy using a 400-point counting grid)*

* Asbestos analysis will be performed on four of the samples collected from randomly-selected depths.

Please note that our scope of work does not include the preparation of a Phase I Environmental Site Assessment (ESA). Our scope of work is based on professional judgment without the site background/history typically presented by a Phase I ESA. Cornerstone also recommends forwarding this scope of work to the selected soil receiving facility for their review prior to sample collection. Additional samples and/or analyses may be required based on the selected facility.

We will request a standard one-week laboratory response. Actual laboratory response will depend on the laboratory's availability.

Report

We will prepare a Preliminary Soil Quality Evaluation letter presenting the analytical results and our conclusions and recommendations. The report will include a site plan showing the sampling locations, a description of sampling protocols, and copies of the analytical reports. The conclusions and recommendations presented in the letter will be based on our interpretation of the readily available information reviewed, the analytical data, and the conditions observed.

Optional Services

Weekend Field Explorations

We understand the are impacts to students on campus when we perform our field explorations during school hours. Therefore, as an option, we can perform our field explorations (i.e. CPTs and borings) on weekend days, and have provided a cost for performing the work on weekend days in Table 2 of this proposal.

Disposal of Soil Cuttings

Drill spoils generated during our investigation will be placed in a 55-gallon drums, sampled, tested, and off hauled from the site for disposal. The drums will be stored on-site at a location designated by you and will remain in place while the laboratory analysis of the soil samples collected from the drums is being performed. The cost for this optional service as presented in this proposal assumes the soil cuttings are non-hazardous and can be disposed of as such. If analytical testing indicates the drummed soil is hazardous, costs not included in this proposal, may be incurred for additional testing and/or disposal of the drummed soil.

A District representative will be required to sign the manifest prior to removal of the drums. We will contact you immediately if the materials will not be accepted by a nonhazardous disposal facility and will update you with the additional costs prior to removing the drums from your property. We note that drummed soil disposal coordination and off haul have become increasingly challenging and several vendors have recently left the marketplace and are not providing off haul services. We also note that landfill operators have recently been requesting significantly increased amounts of testing which results in increased time to get approval to dispose of these materials. Therefore, the owner and project team should plan for the drums to be stored on-site for a period of at least 1 to 2 months to allow the testing to be performed and off haul coordinated and scheduled. The cost to perform these surfaces is presented in Table 2 of this proposal and assumes up to eight drums for disposal.

Future Services

Geotechnical Observation and Testing During Construction

Once final design plans and/or a detailed project schedule are available, we will prepare a scope of work to observe the geotechnical aspects of construction, including temporary shoring, foundation excavations, utility trench backfill, mass grading, and flatwork and pavement subgrade and aggregate base compaction, as required.

Proposal Fees

We will perform our services for the fees shown in Table 2. Our services will be provided in accordance with the 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 upon 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.

Additional services that are not outlined in this proposal shall be charged on a time-and-expense (T&E) basis.

TABLE 2 – GEOTECHNICAL SERVICES

Task	Fee	Initial to Authorize
Geotechnical Investigation & Geologic Hazards Evaluation (Fixed Fee)	\$41,900	_____
Preliminary Soil Quality Evaluation (Fixed-Fee)	\$12,400	_____
Contract Document Coordination & Review (T&E)	\$1,200	_____
Optional – Weekend Field Explorations (Fixed-Fee)	\$7,800	_____
Optional – Disposal of Soil Cuttings (T&E)	\$5,500	_____

Assumptions and Limitations

- The Client will coordinate site access/permission to enter.
- The site is accessible to rubber-tired, truck-mounted drill rig and CPT equipment.
- This project is subject to DSA oversight, CGS reviews, and California Prevailing Wage Law.
- If available, site plans provided for our use will show the locations of all underground utility lines and structures. We will not be responsible for damage to any such lines or structures that are not shown accurately on the plans provided to us or properly marked by USA subscriber companies.
- Some disturbance to the ground surface and vegetation 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 re-grade, re-vegetate, landscape or otherwise repair disturbed areas.
- This proposal includes disposal of excess soil cuttings that may be generated during drilling as an optional service.
- This proposal assumes the environmental sampling will be performed during the same mobilizations as the geotechnical borings.



- The buildings will be subject to the provisions in the 2019 CBC including seismic ground motion values in accordance with Chapter 11; Section 11.4, and ASCE 7-16 Chapters 20 and 21. This proposal includes a ground motion hazard analysis in accordance with Chapter 21.2 of the ASCE 7-16. If a site response analysis is desired or required by Chapter 21.1 of the ASCE 7-16, we will provide a supplemental work scope and fee to perform this analysis.
- Insitu percolation testing is not included in the scope of work discussed in this proposal and can be provided upon request.

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.

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.

Nicholas S. Devlin, P.E. 75613
Senior Project Engineer

Scott E. Fitinghoff, P.E., G.E. 2379
Principal Engineer

SEF:NSD:BCG

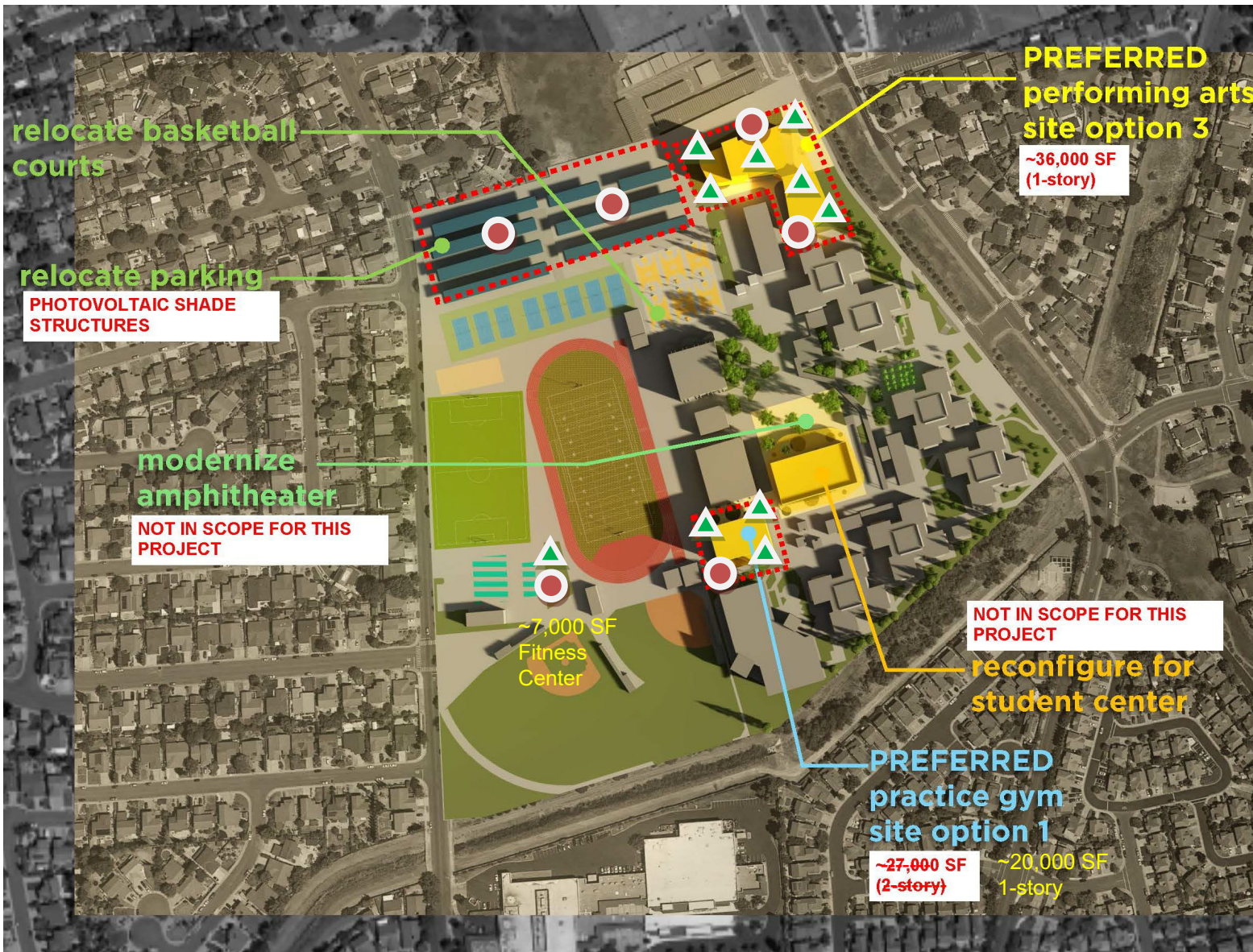
Copies: Addressee (email)

Attachments: Proposed Exploration Plan
Schedule of Hourly Rates
Terms and Conditions

Milpitas Unified School District

Name _____
Date _____

Please Print Name and Title



- Proposed boring location
- Proposed CPT location

Prevailing Wage Hourly Fee Rates and Equipment Charges

Through August 31, 2020

Administrative Assistant	\$90
Construction Services Administrator	\$120
Technical Illustrator/CAD Operator	\$135
Engineering Technician	\$165
Supervisory Technician	\$165
Staff Engineer or Geologist	\$165
Senior Supervisory Technician	\$175
Senior Staff Engineer or Geologist	\$175
Project Engineer or Geologist	\$190
Principal Construction Services	\$190
Senior Project Engineer or Geologist	\$210
Principal Engineer or Geologist	\$250
Senior Principal Engineer or Geologist	\$275

Charges for personnel will be made in accordance with the above rates. For field engineers, geologists and technicians, regular rates are normal workday construction hours (Monday through Friday). For time spent over 8 hours in a day, time spent after 5 p.m., time spent on swing shifts, and time spent on Saturdays by field personnel, overtime rates will be charged at 1.5 times the hourly rate. Work on Sundays and holidays and work in excess of 12 hours in one day will be charged at 2.0 times the hourly rate. Field rates are based on a 48-hour notice. For less than a 48-hour notice, a 10 percent surcharge will be added. All field personnel, vehicle and equipment charges are portal to portal. Reproduction of project documents will be charged as a project expense. The hourly rate for professional staff to attend legal proceedings will be 2.0 times the hourly rate specified above.

Equipment Charges		Geotechnical Laboratory Tests		
			Tests Run During Normal Workday Hours	Tests Run Outside Workday Hours
Vehicle	\$17 per hour			
Nuclear Density Gauge	\$10 per test			
55-Gallon Drum	\$95 per drum			
GPS Unit	\$30 per day			
Hand Auger Equipment	\$45 per day	Compaction Curve	\$310 each	\$465 each
Power Auger	\$100 per day	Compaction Check Point	\$155 each	\$235 each
PDR-1000 Dust Meter (3)	\$300 per day, \$1000 per week, \$3500 per month	Plasticity Index	\$220 each	\$330 each
PID ppm_v or PID ppb_v	\$125 per day, \$550 per week, \$1750 per month	Sieve/Hydrometer	\$220 each	\$330 each
Air Pump	\$75 per day, \$350 per week, \$1000 per month	Moisture Content	\$6 each	\$9 each
Weather Station	\$75 per day, \$350 per week, \$1000 per month	Moisture/Density	\$25 each	\$38 each
Benkelman Beam	\$150 per day, \$700 per week, \$2500 per month	#200 Wash	\$50 each	\$75 each
Double Ring Infiltrometer	\$100 per day	Sieve < ¼ inch Liner (small)	\$115 each	\$170 each
Dynamic Cone	\$100 per day	Sieve > ¾ inch Bucket (Large)	\$200 each	\$300 each
Differential Pressure Gauge	\$45 per day	Lime Stability	\$330 each	\$495 each
Air Flow Sensors	\$45 per day	Consolidation	\$400 each	\$600
Pressure Control Testing	\$250 per day			
Depth Sounder	\$40 per day			
Liner and Two Caps	\$10 each			
Core N One Sampler	\$45 each triplicate sample			
Core N One Handle	\$50 each			
Modeling Software	\$25 per hour			
Plotter	\$5 per plot			

Direct Expenses

Reimbursement for the direct expenses listed below incurred in connection with the Work will be billed at cost plus 18 percent.

- 1) Drillers, utility locators, laboratories, contractors, hygienists, and consultants
- 2) Rented vehicles, public transportation, tolls, and air flights
- 3) Permits and special fees, insurances and licenses required to perform Work
- 4) Computer programs and rented field equipment
- 5) Large volume copying of project documents
- 6) Maps, photographs, and environmental databases
- 7) Overnight or same day delivery charges
- 8) Copying or production of over-sized figures and plans

If personnel are assigned to a project 100 miles or more from an office, \$125 per diem per person allowance will be charged. Unless mutually agreed in writing, Cornerstone will hold samples collected during the performance of the Work no longer than thirty (30) calendar days after their date of collection; project samples requested to be held greater than thirty (30) calendar days will be billed at \$100 per every ninety (90) calendar days. If payment is not received within 30 days of invoice date, the samples will be discarded.

Payment

Payment for Work completed is due upon receipt of Cornerstone's statement. Fixed fee or lump sum services will be billed for the agreed fixed fee. A service charge of 1.5 percent per month will be charged on accounts not paid within 30 days.

Prevailing Wage

Client must notify Cornerstone in writing if the Work is subject to "prevailing wage" under local, state or federal laws.

**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 and waste materials 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.