

<b>TYPE OF SERVICES</b>	Phase I Environmental Site Assessment
<b>LOCATION</b>	101 South Jackson Avenue San Jose, California
<b>CLIENT</b>	Habitat for Humanity
<b>PROJECT NUMBER</b>	383-7-1
<b>DATE</b>	January 31, 2018

**ENVIRONMENTAL**

<b>Type of Services</b>	<b>Phase I Environmental Site Assessment</b>
<b>Location</b>	<b>101 South Jackson Avenue San Jose, California</b>
<b>Client</b>	<b>Habitat for Humanity</b>
<b>Client Address</b>	<b>2619 Broadway Oakland, California 94612</b>
<b>Project Number</b>	<b>383-7-1</b>
<b>Date</b>	<b>January 31, 2018</b>

**Prepared by**



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### FIGURE 1 – VICINITY MAP

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**APPENDIX C – HISTORICAL AERIAL PHOTOGRAPHS AND MAPS**

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**APPENDIX E – QUESTIONNAIRE AND PRIOR REPORTS**

**Type of Services**  
**Location**

**Phase I Environmental Site Assessment**  
**101 South Jackson Avenue**  
**San Jose, California**

## **SECTION 1: INTRODUCTION**

This report presents the results of the Phase I Environmental Site Assessment (ESA) performed at 101 South Jackson Avenue in San Jose, California (Site) as shown on Figures 1 and 2. This work was performed for Habitat for Humanity in accordance with our January 16, 2018 Agreement (Agreement).

### **1.1 PURPOSE**

The scope of work presented in the Agreement was prepared in general accordance with ASTM E 1527-13 titled, “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process” (ASTM Standard). The ASTM Standard is in general compliance with the Environmental Protection Agency (EPA) rule titled, “Standards and Practices for All Appropriate Inquiries; Final Rule” (AAI Rule). The purpose of this Phase I ESA is to strive to identify, to the extent feasible pursuant to the scope of work presented in the Agreement, Recognized Environmental Conditions at the property.

As defined by ASTM E 1527-13, the term Recognized Environmental Condition means the presence or likely presence of any hazardous substances or petroleum products in, on, or at a property: (1) due to any release to the environment; (2) under conditions indicative of a release to the environment; or (3) under conditions that pose a material threat of a future release to the environment. De minimis conditions are not Recognized Environmental Conditions.

Cornerstone Earth Group, Inc. (Cornerstone) understands that Habitat for Humanity intends to acquire the Site for residential development. We performed this Phase I ESA to support Habitat for Humanity in evaluation of Recognized Environmental Conditions at the Site. This Phase I ESA is intended to reduce, but not eliminate, uncertainty regarding the potential for Recognized Environmental Conditions at the Site.

### **1.2 SCOPE OF WORK**

As presented in our Agreement, the scope of work performed for this Phase I ESA included the following:

- A reconnaissance of the Site to note readily observable indications of significant hazardous materials releases to structures, soil or ground water.
- Drive-by observation of adjoining properties to note readily apparent hazardous materials activities that have or could significantly impact the Site.

- Acquisition and review of a regulatory agency database report of public records for the general area of the Site to evaluate potential impacts to the Site from reported contamination incidents at nearby facilities.
- Review of readily available information on file at selected governmental agencies to help evaluate past and current Site use and hazardous materials management practices.
- Review of readily available maps and aerial photographs to help evaluate past and current Site uses.
- Interviews with persons reportedly knowledgeable of existing and prior Site uses.
- Preparation of a written report summarizing our findings and recommendations.

The limitations for the Phase I ESA are presented in Section 10; the terms and conditions of our Agreement are presented in Appendix A.

### **1.3 ASSUMPTIONS**

In preparing this Phase I ESA, Cornerstone assumed that all information received from interviewed parties is true and accurate. In addition, we assumed that all records obtained by other parties, such as regulatory agency databases, maps, related documents and environmental reports prepared by others are accurate and complete. We also assumed that the boundaries of the Site, based on information provided by Habitat for Humanity, are as shown on Figure 2. We have not independently verified the accuracy or completeness of any data received.

### **1.4 ENVIRONMENTAL PROFESSIONAL**

This Phase I ESA was performed by Stason I. Foster, P.E. and Ron L. Helm, C.E.G., Environmental Professionals who meet the qualification requirements described in ASTM E 1527-13 and 40 CFR 312 § 312.10 based on professional licensing, education, training and experience to assess a property of the nature, history and setting of the Site.

## **SECTION 2: SITE DESCRIPTION**

This section describes the Site as of the date of this Phase I ESA. The location of the Site is shown on Figures 1 and 2. Tables 1 through 3 summarize general characteristics of the Site and adjoining properties. The Site is described in more detail in Section 7, based on our on-Site observations.

### **2.1 LOCATION AND OWNERSHIP**

Table 1 describes the physical location and ownership of the property, based on information provided by Habitat for Humanity.

**Table 1. Location and Ownership**

<b>Assessor's Parcel No. (APN)</b>	481-22-067
<b>Reported Address/Location</b>	101 South Jackson Avenue, San Jose, California
<b>Owner</b>	Carolyn Wissmath, trustee of the Trust for James
<b>Approximate Lot Size</b>	0.9 acres

**2.2 CURRENT/PROPOSED USE OF THE PROPERTY**

The current and proposed uses of the property are summarized in Table 2.

**Table 2. Current and Proposed Uses**

<b>Current Use</b>	Residential
<b>Proposed Use</b>	Residential

**2.3 SITE SETTING AND ADJOINING PROPERTY USE**

Land use in the general Site vicinity appears to be primarily residential. Based on our Site vicinity reconnaissance, adjoining Site uses are summarized below in Table 3.

**Table 3. Adjoining Property Uses**

<b>North</b>	Cosmopolitan Evangelical Church
<b>South</b>	Residential
<b>East</b>	Parking lot (across S. Jackson Avenue)
<b>West</b>	Residential

**SECTION 3: USER PROVIDED INFORMATION**

The ASTM standard defines the User as the party seeking to use a Phase I ESA to evaluate the presence of Recognized Environmental Conditions associated with a property. For the purpose of this Phase I ESA, the User is Habitat for Humanity. The "All Appropriate Inquiries" Final Rule (40 CFR Part 312) requires specific tasks be performed by or on behalf of the party seeking to qualify for Landowner Liability Protection under CERCLA (*i.e.*, the User).

Per the ASTM standard, if the User has information that is material to Recognized Environmental Conditions, such information should be provided to the Environmental Professional. This information includes: 1) specialized knowledge or experience of the User, 2) commonly known or reasonably ascertainable information within the local community, and 3) knowledge that the purchase price of the Site is lower than the fair market value due to contamination. A search of title records for environmental liens and activity and use limitations also is required.

**3.1 ENVIRONMENTAL LIENS OR ACTIVITY AND USE LIMITATIONS**

An environmental lien is a financial instrument that may be used to recover past environmental cleanup costs. Activity and use limitations (AULs) include other environmental encumbrances, such as institutional and engineering controls. Institutional controls (ICs) are legal or regulatory

restrictions on a property's use, while engineering controls (ECs) are physical mechanisms that restrict property access or use.

The regulatory agency database report described in Section 4.1 did not identify the Site as being in 1) US EPA databases that list properties subject to land use restrictions (*i.e.*, engineering and institutional controls) or Federal Superfund Liens or 2) lists maintained by the California Department of Toxic Substances Control (DTSC) of properties that are subject to AULs or environmental liens where the DTSC is a lien holder.

A Preliminary Title Report by Old Republic Title Company (dated November 6, 2017) was provided for our review. No environmental liens were listed in the title report.

### **3.2 SPECIALIZED KNOWLEDGE AND/OR COMMONLY KNOWN OR REASONABLY ASCERTAINABLE INFORMATION**

Based on information provided by or discussions with Habitat for Humanity, we understand that Habitat for Humanity does not have specialized knowledge or experience, commonly known or reasonably ascertainable information regarding the Site, or other information that is material to Recognized Environmental Conditions.

## **SECTION 4: RECORDS REVIEW**

### **4.1 STANDARD ENVIRONMENTAL RECORD SOURCES**

Cornerstone conducted a review of federal, state and local regulatory agency databases provided by Environmental Data Resources (EDR) to evaluate the likelihood of contamination incidents at and near the Site. The database sources and the search distances are in general accordance with the requirements of ASTM E 1527-13. A list of the database sources reviewed, a description of the sources, and a radius map showing the location of reported facilities relative to the project Site are attached in Appendix B.

The purpose of the records review was to obtain reasonably available information to help identify Recognized Environmental Conditions. Accuracy and completeness of record information varies among information sources, including government sources. Record information is often inaccurate or incomplete. The Environmental Professional is not obligated to identify mistakes or insufficiencies or review every possible record that might exist with the Site. The customary practice is to review information from standard sources that is reasonably available within reasonable time and cost constraints.

#### **4.1.1 On-Site Database Listings**

The Site was not identified in the researched regulatory agency databases.

#### **4.1.2 Nearby Spill Incidents**

Ryland Homes was identified at 115 South Jackson Avenue (adjacent to the south) as a closed case on the leaking underground storage tank (LUST) database. To obtain additional information regarding this LUST case, a cursory review of readily available documents obtained from the state Geotracker (<http://geotracker.waterboards.ca.gov>) databases was performed. Geotracker is a database and geographic information system (GIS) that provides online access



to environmental data. It tracks regulatory data about leaking underground storage tank (LUST), Department of Defense, Site Cleanup Program and Landfill sites.

The Geotracker database additionally listed Mayfair Nurseries as a second closed LUST case at 115 South Jackson Avenue. Based on our review of the available documents, the two LUST cases resulted from the removal of diesel and gasoline USTs in 1991 and 2000. In general, significant impacts to soil were not identified below the USTs. Total petroleum hydrocarbons as diesel (TPHd) were detected at up to 226 milligrams per kilogram (mg/kg) in soil below the fuel dispensers. Approximately 935 cubic yards of impacted soil subsequently were removed from the property, and the LUST cases were closed by the Santa Clara Valley Water District. The former USTs at 115 South Jackson Avenue appear unlikely to have significantly impacted the Site. Copies of the case closure documents are attached in Appendix E.

Based on the information presented in the agency database report, no other off-Site spill incidents were reported that appear likely to significantly impact soil, soil vapor or ground water beneath the Site. The potential for impact was based on our interpretation of the types of incidents, the locations of the reported incidents in relation to the Site and the assumed ground water flow direction.

#### 4.2 ADDITIONAL ENVIRONMENTAL RECORD SOURCES

The following additional sources of readily ascertainable public information for the Site also were reviewed during this Phase I ESA.

##### 4.2.1 City and County Agency File Review

Cornerstone requested available files pertaining to 101 South Jackson Avenue at the following public agencies: the San Jose Building Department (BD), San Jose Fire Department (FD), and the Santa Clara County Department of Environmental Health (DEH). The information reviewed at the Building Department is summarized in Table 4. The Fire Department and DEH had no files pertaining to the Site.

**Table 4. File Review Information**

Agency Name	Date	Occupant	Remarks
BD	1974	Residence	Permit for an addition
BD	1974 and 1975	Residence	Electrical permits

Several documents also were reviewed at the BD that pertained to redevelopment of adjacent parcels (former Mayfair Nursery property) by Ryland Homes during the late 1990s. An October 5, 1998 report by Lowney Associates identified elevated concentrations of arsenic, lead and organochlorine pesticides in soil on the Mayfair Nurseries property. Mitigation measures, such as capping the property with “clean” fill, were recommended prior to residential redevelopment of the property. The elevated arsenic concentrations were noted to possibly be naturally occurring in the Site vicinity. A copy of the Lowney Associates report is attached in Appendix E.

## SECTION 5: PHYSICAL SETTING

We reviewed readily available geologic and hydrogeologic information to evaluate the likelihood that chemicals of concern released on a nearby property could pose a significant threat to the Site and/or its intended use.

### 5.1 RECENT USGS TOPOGRAPHIC MAP

A 1980 USGS 7.5 minute topographic map was reviewed to evaluate the physical setting of the Site. The Site's elevation is approximately 100 feet above mean sea level; topography in the vicinity of the Site slopes downward gently to the northwest towards the San Francisco Bay.

### 5.2 HYDROGEOLOGY

Based on information presented in the California Geotracker database pertaining to nearby properties and our review of a provided geotechnical investigation report for adjacent parcels<sup>1</sup>, the shallow ground water beneath the Site is likely present at depths of approximately 10 to 20 feet. Variable ground water flow directions have been reported in the Site vicinity.

## SECTION 6: HISTORICAL USE INFORMATION

The objective of the review of historical use information is to develop a history of the previous uses of the Site and surrounding area in order to help identify the likelihood of past uses having led to Recognized Environmental Conditions at the property. The ASTM standard requires the identification of all obvious uses of the property from the present back to the property's first developed use, or back to 1940, whichever is earlier, using reasonably ascertainable standard historical sources.

### 6.1 HISTORICAL SUMMARY OF SITE

The historical sources reviewed are summarized below. The results of our review of these sources are summarized in Table 5.

- **Historical Aerial Photographs:** We reviewed aerial photographs dated between 1939 and 2012 obtained from EDR of Shelton, Connecticut; copies of aerial photographs reviewed are presented in Appendix C.
- **Historical Topographic Maps:** We reviewed USGS 15-minute and 7.5-minute historical topographic maps dated 1889, 1897, 1899, 1953, 1961, 1968, 1973, 1980, and 2012; copies of historical topographic maps reviewed are presented in Appendix C.
- **Historical Fire Insurance Maps:** EDR reported that the Site was not within the coverage area of fire insurance maps.
- **Local Street Directories:** We reviewed city directories obtained from EDR that were researched at approximately 5 year intervals between 1922 and 2014 to obtain information pertaining to past Site occupants. City directories dated between 1950 and

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<sup>1</sup> Lowney Associates. September 11, 1998. Geotechnical Investigation, Jackson Avenue Residential Development, San Jose, California.

2000 list members of the Ezaki family as occupants, suggesting residential Site use. The city directory summary is presented in Appendix D.

**Table 5. Summary of Historical Source Information for Site**

<b>Date</b>	<b>Source</b>	<b>Comment</b>
1889, 1897 and 1899	Topographic maps	No structures are shown on-Site.
1939 to 2012	Aerial photographs	What appears to be the existing residence is shown on the eastern portion of the Site. The existing detached garage and possibly other outbuildings are shown to have been added by 1948. The western portion of the Site appears undeveloped; possible agricultural use (row crops) is apparent during the 1930s and 1940s.
1953	Topographic maps	A small structure typical of a residence is depicted on-Site.
1961 to 2012	Topographic map	The Site is shown within the urban developed area of San Jose

## 6.2 HISTORICAL SUMMARY OF SITE VICINITY

Based on our review of the information described in Section 6.1, the general Site vicinity historically consisted mainly of agricultural land (orchards and row crops) with widely spaced residences. Beginning by the late 1940s, an increase in mainly residential development is apparent in the general Site vicinity. Greenhouses and exterior plant nursery areas were located on the adjacent Mayfair Nursery property from the 1940s through the late 1990s; these were replaced by the existing residences by the early 2000s.

## SECTION 7: SITE RECONNAISSANCE

We performed a Site reconnaissance to evaluate current Site conditions and to attempt to identify Site Recognized Environmental Conditions. The results of the reconnaissance are discussed below. Additional Site observations are summarized in Table 6. Photographs of the Site are presented in Section 7.2.1.

### 7.1 METHODOLOGY AND LIMITING CONDITIONS

To observe current Site conditions (readily observable environmental conditions indicative of a significant release of hazardous materials), Cornerstone staff Stason I. Foster, P.E. visited the Site on January 29, 2018. The Site reconnaissance was conducted by walking representative areas of the Site, including the interiors of the on-Site structures, the periphery of the structures and the Site periphery. Cornerstone staff only observed those areas that were reasonably accessible, safe, and did not require movement of equipment, materials or other objects.

### 7.2 OBSERVATIONS

At the time of our visit, the Site was developed with a single story, wood framed residence and a detached garage. The residence had a partial basement with a concrete floor slab. The residence was unoccupied and located on the eastern portion of the Site. The western portion of the Site was observed to be undeveloped and covered by low grass and weeds. No hazardous materials were observed on-Site.

Electricity and/or natural gas fuel sources appeared to be used for building heating/cooling purposes. Potable water appeared to be supplied by the local water service provider. The building presumably is connected to the publically owned sanitary sewer system; no on-Site septic systems were obvious.

**Table 6. Summary of Readily Observable Site Features**

<b>General Observation</b>	<b>Comments</b>
Aboveground Storage Tanks	Not Observed
Agricultural Wells	Not Observed
Air Emission Control Systems	Not Observed
Boilers	Not Observed
Burning Areas	Not Observed
Chemical Mixing Areas	Not Observed
Chemical Storage Areas	Not Observed
Clean Rooms	Not Observed
Drainage Ditches	Not Observed
Elevators	Not Observed
Emergency Generators	Not Observed
Equipment Maintenance Areas	Not Observed
Fill Placement	Not Observed
Ground Water Monitoring Wells	Not Observed
High Power Transmission Lines	Not Observed
Hoods and Ducting	Not Observed
Hydraulic Lifts	Not Observed
Incinerator	Not Observed
Petroleum Pipelines	Not Observed
Petroleum Wells	Not Observed
Ponds or Streams	Not Observed
Railroad Lines	Not Observed
Row Crops or Orchards	Not Observed
Stockpiles of Soil or Debris	Not Observed
Sumps or Clarifiers	Not Observed
Transformers	Not Observed
Underground Storage Tanks	Not Observed
Vehicle Maintenance Areas	Not Observed
Vehicle Wash Areas	Not Observed
Wastewater Neutralization Systems	Not Observed

The comment "Not Observed" does not warrant that these features are not present on-Site; it only indicates that these features were not readily observed during the Site visit.

### 7.2.1 Site Photographs



Photograph 1. View of the on-Site residence looking southwest.



Photograph 2. View of the on-Site residence looking east.



Photograph 3. View of the detached garage looking west.



Photograph 4. View the western, undeveloped portion of the Site, looking west.

## SECTION 8: ENVIRONMENTAL QUESTIONNAIRE AND INTERVIEWS

### 8.1 ENVIRONMENTAL QUESTIONNAIRE / OWNER INTERVIEW

To help obtain information on current and historical Site use and use/storage of hazardous materials on-Site, we provided an environmental questionnaire to the Site owner for completion. The completed questionnaire is attached in Appendix E. Based on our review of the completed questionnaire, the Site was acquired by the current owner in 2011 from the Ezaki family, who had owned it since 1943. Since 1943, the Site reportedly has been used for residential purposes. No information indicative of Recognized Environmental Conditions was indicated on the questionnaire.

## **8.2 INTERVIEWS WITH PREVIOUS OWNERS AND OCCUPANTS**

Contact information for previous Site owners and occupants was not provided to us. Therefore, interviews with previous Site owners and occupants could not be performed.

## **SECTION 9: FINDINGS, OPINIONS AND CONCLUSIONS (WITH RECOMMENDATIONS)**

Cornerstone performed this Phase I ESA in general accordance to ASTM E1527-13 to support Habitat for Humanity in evaluation of Recognized Environmental Conditions. Our findings, opinions and conclusions are summarized below.

### **9.1 HISTORICAL SITE USAGE**

Based on the information obtained during this study, the existing residence on the eastern portion of the Site appears to have been present since at least 1939. The detached garage was added by 1948. Based on review of historical aerial photographs, possible agricultural use (row crops) is apparent during the 1930s and 1940s on the western portion of the Site.

### **9.2 CHEMICAL STORAGE AND USE**

No hazardous materials were observed on-Site during our visit. Additionally, the Site does not appear to have historically been occupied by businesses that would typically be associated with the use or storage of hazardous materials.

### **9.3 AGRICULTURAL USE**

Although the available historical aerial photographs are not definitive, the Site may have historically been used for agricultural purposes. Additionally, adjacent parcels were historically occupied by Mayfair Nursery. Studies conducted during the late 1990s at the adjacent Mayfair Nursery property identified elevated concentrations of arsenic, lead and organochlorine pesticides in soil.

The elevated arsenic concentrations were noted to possibly be naturally occurring in the Site vicinity. If so, elevated arsenic concentrations may also be present on-Site; however, based on our experience, some Bay Area laboratories were erroneously reporting elevated arsenic concentrations during the 1990s caused by interference with other metals and incorrectly applied correction factors.

To evaluate potential impacts to the Site associated with past agricultural activities (in the Site vicinity and possibly on-Site), and to further evaluate arsenic concentrations in soil, we recommend performing soil sampling to evaluate if agricultural chemicals, including lead and arsenic, are present prior to acquiring the Site for residential development. If elevated concentrations of agricultural chemicals are present, mitigation or soil management measures may be required during construction/earthwork activities.

### **9.4 POTENTIAL ENVIRONMENTAL CONCERNS WITHIN THE SITE VICINITY**

Based on the information obtained during this study, no hazardous material spill incidents have been reported in the Site vicinity that would be likely to significantly impact the Site.

## **9.5 ASBESTOS CONTAINING BUILDING MATERIALS (ACBMS)**

Due to the age of the on-Site structures, building materials may contain asbestos. Because demolition the buildings is planned, an asbestos survey is required by local authorities and/or National Emissions Standards for Hazardous Air Pollutants (NESHAP) guidelines. NESHAP guidelines require the removal of potentially friable ACBMs prior to building demolition or renovation that may disturb the ACBM.

## **9.6 LEAD-BASED PAINT AND TERMITE CONTROL PESTICIDES**

The Consumer Product Safety Commission banned the use of lead as an additive in paint in 1978. Based on the age of the buildings, lead-based paint may be present. The removal of lead-based paint is not required prior to building demolition if the paint is bonded to the building materials. However, if the lead-based paint is flaking, peeling, or blistering, it should be removed prior to demolition. In either case, applicable OSHA regulations must be followed; these include requirements for worker training, air monitoring and dust control, among others. Any debris containing lead must be disposed appropriately.

Additionally, soil adjacent to structures that are painted with lead-containing paint can become impacted with lead as a result of the weathering and/or peeling of painted surfaces. Soil near wood framed structures also can be impacted by pesticides historically used to control termites. No information was identified during this study documenting the use of lead based paint or termite control pesticides on-Site; however, if used, residual pesticide and lead concentrations may remain in on-Site soil. Prior to acquiring the Site for residential development, we recommend that shallow soil at the structure locations be evaluated for the possible presence of lead and pesticides.

## **9.7 IMPORTED SOIL**

If the planned development will require importing soil for Site grading, we recommend documenting the source and quality of imported soil. The DTSC's October 2001 Clean Fill Advisory (or most recent edition) provides useful guidance on evaluating imported fill.

## **9.8 DATA GAPS**

ASTM Standard Designation E 1527-13 requires the Environmental Professional to comment on significant data gaps that affect our ability to identify Recognized Environmental Conditions. A data gap is a lack of or inability to obtain information required by ASTM Standard Designation E 1527-13 despite good faith efforts by the Environmental Professional to gather such information. A data gap by itself is not inherently significant; it only becomes significant if it raises reasonable concerns. No significant data gaps were identified during this Phase I ESA.

## **9.9 DATA FAILURES**

As described by ASTM Standard Designation E 1527-13, a data failure occurs when all of the standard historical sources that are reasonably ascertainable and likely to be useful have been reviewed and yet the historical research objectives have not been met. Data failures are not uncommon when attempting to identify the use of a Site at five year intervals back to the first use or to 1940 (whichever is earlier). ASTM Standard Designation E 1527-13 requires the Environmental Professional to comment on the significance of data failures and whether the data failure affects our ability to identify Recognized Environmental Conditions. A data failure

by itself is not inherently significant; it only becomes significant if it raises reasonable concerns. No significant data failures were identified during this Phase I ESA.

## 9.10 RECOGNIZED ENVIRONMENTAL CONDITIONS

Cornerstone has performed a Phase I ESA in general conformance with the scope and limitations of ASTM E 1527-13 of 101 South Jackson Avenue, San Jose, California. This assessment identified the following Recognized Environmental Conditions<sup>2</sup>.

- The Site historically may have been used for agricultural purposes, and elevated concentrations of arsenic, lead and organochlorine pesticides were previously identified in soil on adjacent property formerly occupied by Mayfair Nursery. There is a potential that residual pesticides could remain in Site soil. If present, this soil may require appropriate management.
- Soil adjacent to structures that are painted with lead-containing paint can become impacted with lead as a result of the weathering and/or peeling of painted surfaces. Soil near wood framed structures also can be impacted by pesticides historically used to control termites. There is a potential that residual lead and pesticide concentrations could remain in on-Site soil resulting from on-Site structures.

## SECTION 10: LIMITATIONS

Cornerstone performed this Phase I ESA to support Habitat for Humanity in evaluation of Recognized Environmental Conditions associated with the Site. Habitat for Humanity understands that no Phase I ESA can wholly eliminate uncertainty regarding the potential for Recognized Environmental Conditions to be present at the Site. This Phase I ESA is intended to reduce, but not eliminate, uncertainty regarding the potential for Recognized Environmental Conditions. Habitat for Humanity understands that the extent of information obtained is based on the reasonable limits of time and budgetary constraints.

Findings, opinions, conclusions and recommendations presented in this report are based on readily available information, conditions readily observed at the time of the Site visit, and/or information readily identified by the interviews and/or the records review process. Phase I ESAs are inherently limited because findings are developed based on information obtained from a non-intrusive Site evaluation. Cornerstone does not accept liability for deficiencies, errors, or misstatements that have resulted from inaccuracies in the publicly available information or from interviews of persons knowledgeable of Site use. In addition, publicly available information and field observations often cannot affirm the presence of Recognized Environmental Conditions; there is a possibility that such conditions exist. If a greater degree of confidence is desired, soil, ground water, soil vapor and/or air samples should be collected by Cornerstone and analyzed by a state-certified laboratory to establish a more reliable assessment of environmental conditions.

Cornerstone acquired an environmental database of selected publicly available information for the general area of the Site. Cornerstone cannot verify the accuracy or completeness of the

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<sup>2</sup> The presence or likely presence of hazardous substances or petroleum products on the Site: 1) due to any release to the environment; 2) under conditions indicative of a release to the environment; or 3) under conditions that pose a material threat of a future release to the environment.



database report, nor is Cornerstone obligated to identify mistakes or insufficiencies in the information provided (ASTM E 1527-13, Section 8.1.3). Due to inadequate address information, the environmental database may have mapped several facilities inaccurately or could not map the facilities. Releases from these facilities, if nearby, could impact the Site.

Habitat for Humanity may have provided Cornerstone environmental documents prepared by others. Habitat for Humanity understands that Cornerstone reviewed and relied on the information presented in these reports and cannot be responsible for their accuracy.

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Cornerstone makes no warranty, expressed or implied, except that our services have been performed in accordance with the environmental principles generally accepted at this time and location.



**Vicinity Map**

**101 South Jackson Avenue  
San Jose, CA**

Project Number

383-7-1

Figure Number

Figure 1

Date

January 2018

Drawn By

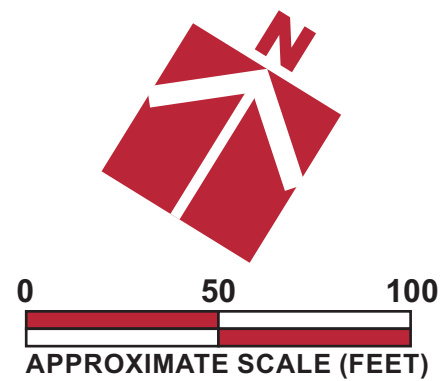
RRN



**CORNERSTONE  
EARTH GROUP**



Base by Google Earth, dated 4/15/2017



<b>Site Plan</b>  101 South Jackson Avenue San Jose, CA	Project Number 383-7-1
	Figure Number Figure 2
Date January 2018     Drawn By RRN	



**APPENDIX A – TERMS AND CONDITIONS**

**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
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- 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.