

CONVERSE CONSULTANTS

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AGREEMENT AND AUTHORIZATION FOR SERVICES

CLIENT:

Company Name: Nevada State Public Works Date: April 28, 2018
Address: 515 East Musser, Room 102 Project No. 17-23121-21
City: Carson City State: NV Zip: 89701 Project Name: Stewart Facility Building #1 & #2
Contact Name.: Mr. Ken Scarbrough Project Location: 5500 Snyder Avenue
E mail address: kscarbrough@admin.nv.gov Carson City, Nevada
Telephone: 775-720-0473 Fax: _____
Purchase Order No. (if applicable): _____

Signing of this Authorization by CLIENT and CONSULTANT (Converse) authorizes CONSULTANT to complete the services as described below in consideration of the mutual terms and conditions set forth on this the Authorization and the attached General Conditions, GC 99-1

SCOPE OF SERVICES: CONSULTANT will perform the services indicated below:

Services described below:

Work is scheduled for Building #1 & Building #2. Services will consist of the following:

Building #1, Area #1 (Basement) Converse will perform a pre-abatement visual inspection after containment is established. Conduct Final Air Quality visual inspection and air sampling post-abatement, to include the visual inspection and the collection of PCM air samples, laboratory analysis and a letter report. The removal will consist of wall board with asbestos containing surfacing material.

Building #1, Area #2 (Upper Level), Converse will perform a visual inspection after the scraping of asbestos containing mastic on wood.

Building #2, Converse will perform a pre-abatement visual inspection after containment is established. Final Air Quality visual inspection and air sampling post-abatement, to include the visual inspection and the collection of PCM air samples, laboratory analysis and a letter report. The removal will consist of asbestos containing mastic.

FEES FOR SERVICES: CONSULTANT's fee for Services identified above shall be as indicated below:

A lump sum fee of \$ 2,548.00

TIME SCHEDULE:

Services Completed By: The visual inspections and the Final Air Quality sampling will be coordinated with the abatement company.

CLIENT and CONSULTANT acknowledge that they are in agreement with the terms and conditions as set forth on this Authorization and the Attachments.

APPROVED FOR CLIENT

ACCEPTED FOR CONSULTANT

Signature: _____

Signature: 

Name: _____

Name: Frank M. Reynolds III

Title: _____

Title: Inspector/Estimator

Date: _____

Date: April 28, 2018

File ♦ Client ♦ Project Manager

CONVERSE CONSULTANTS

General Conditions –

Right of Entry

Client warrants to Converse that it has full legal right to authorize Converse's entry upon the real property where Converse's services are to be performed ("Site" herein) and upon all property, if any, required for ingress and egress to the Site.

Client authorizes Converse to enter upon the Site and such adjoining property as is necessary to allow Converse to perform its services.

Converse will take reasonable precautions to minimize any damage to the Site; however, Client acknowledges that during the normal course of the performance of Converse's services, some damage to the Site may occur. The correction of any damage to the Site (surface or subterranean) shall be the obligation of the Client.

Information Supplied by Client

Client warrants the accuracy of any information supplied by it to Converse, acknowledges that Converse will not verify the accuracy of such information, and agrees that Converse is entitled to rely upon any such information.

Client shall immediately notify Converse in writing of any data, information or knowledge in the possession of or known to Client relating to conditions existing at the Site and shall provide Converse with the location, size and depth of any and all underground tanks, piping or structures existing upon the Site.

Client shall defend, indemnify and save harmless Converse, its officers, agents and employees from and against any and all claims, costs, suits and damages, including attorneys' fees, arising out of errors, omissions and inaccuracies in documents and information provided to Converse by Client.

Ownership of Data and Documents; Samples

All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates and other documents prepared by Converse shall remain the sole property of Converse.

Client shall have the right to the use of all data, recommendations, proposals, reports, design criteria and similar information provided to it by Converse ("information" herein); provided, however, that the information shall not be used or relied upon by any party other than Client, save and except as may be required by the design and licensing requirements of the project for which the information is provided; further, such use shall be limited to the particular site and project for which the information is provided. To the extent Client utilizes Converse's information by providing or making the same available to any third party (a) Client agrees to give written notice to any such third party that it may not utilize or rely on any aspect of Converse's information and (b) Client agrees to defend, indemnify and hold Converse harmless against any and all claims, demands, costs, losses, damages and expenses, including attorneys fees, that may be asserted against or sought from Converse by any such third party.

Client's right to the use of the information is expressly conditioned upon Client's prompt payment to Converse of all sums due under the Client/Converse agreement. In the event of Client's nonpayment or partial payment of said amounts, Client agrees that it shall not use any of the information for any purpose whatsoever and shall return the same to Converse within 2 business days upon demand.

Converse will retain all samples of soil, rock or other materials obtained in the course of performing its services for a period of thirty (30) days. Thereafter, further storage or transfer of samples to Client may be made at Client's expense upon written request from Client to Converse received by Converse prior to the expiration of the 30-day period.

Converse shall retain permanent records relating to the Converse services for a period of five (5) years following submittal of Converse's report, during which period the records will be made available to Client upon reasonable notice given by Client and upon payment to Converse of an amount sufficient to reimburse Converse for its necessary and reasonable expenses in making said records available.

Standard of Care and Professional Responsibility

Client acknowledges that the services to be performed by Converse involve the use of tests, calculations, analyses and procedures which are in a constant state of development, improvement and refinement and that, as such, improvements, changes in methods, and modifications of procedures have been made in the past, are now being made, and are expected to continue to be made in the future.

Further, Client recognizes that, while necessary for investigations, commonly used exploration methods, such as drilling borings or excavating trenches, involve an inherent risk. For example, exploration on a site containing contaminated materials may result in inducing cross-contamination, the prevention of which may not be complete using presently recognized sealing methods.

Client recognizes that the state of practice, including but not limited to the practice relating to contamination or hazardous waste conditions, is changing and evolving and that standards existing at the present time may subsequently change as knowledge increases and the state of the practice continues to improve.

Client recognizes that projects containing contaminated materials may not perform as anticipated by Client, even though Converse's services are performed in accordance with the level of care and skill required of it. Further, certain governmental regulations relating to hazardous waste sites may purport to require achievement of results which cannot be accomplished in an absolute sense. It is recognized that a satisfactorily designed, constructed and maintained monitoring system may assist in the early detection of environmental changes allowing for early correction of problems. Unless it is specifically included in the scope of services to be performed by Converse, Client understands that Converse shall not perform such monitoring.

The services to be provided by Converse pursuant to the agreement to which these General Conditions are a part shall be provided in accordance with generally accepted professional engineering, environmental, and geologic practice in the area where these services are to be rendered and at the time that services are rendered. Client acknowledges that the present standard in the engineering and environmental professions does not include, and Converse does not extend to Client, a guarantee of perfection of the work contemplated hereby; further, that even in the exercise of normal and reasonable care, errors or omissions may from time to time occur. Except as expressly set forth in these General Conditions, no other warranty, express or implied, is extended by Converse.

Converse shall have no duty to supervise, coordinate or otherwise be involved in the performance of services or work by any third party consultant, contractor or subcontractor.

Where Converse's services involve field observation of grading, filling and compaction (or any of them), it is agreed:

- That Converse shall in no way be responsible for the manner in which such work is performed by any third party.
- That in the event Converse is to provide periodic observation, Client acknowledges that Converse cannot be responsible for any work performed at a time or times when Converse was not performing its observation services. Converse will not provide an opinion concerning the performance of any third party, save and except to the extent that said work was in fact observed and tested by Converse during the course of construction.
- That where Converse's services include continuous observation, Client agrees not to allow grading, filling or compaction to be performed at any time or times when Converse is not physically present upon the Site and shall restrict the amount and extent of such grading, filling and compaction to that which can be properly observed by Converse personnel present on the Site.
- That in the event Converse is to conduct test borings for Client, Client acknowledges that the accuracy of said test borings relates only to the specific location in which the boring itself was performed and that the nature of many sites is such that differing subsurface soil characteristics can be experienced within a small distance. As such, Client acknowledges that greater accuracy is obtained when the number of test borings is increased.

Technical Limitations

Client acknowledges and agrees that: (1) it is unreasonable to expect Converse to be able to completely evaluate subsurface conditions, even after the most comprehensive exploratory program; (2) site conditions change frequently due to the passage of time, human activities, and climatic conditions and uncertainties are therefore inherent in the nature of Converse's services and impossible to avoid; (3) the identification of geotechnical and environmental conditions and the prediction of future or concealed conditions is an inexact scientific endeavor; (4) the state of the art of geotechnical and environmental practice is such that Converse cannot guarantee that its recommendations will prove adequate on this project and the Client assumes the risk of any such failure, except as otherwise provided in these General Conditions and that (5) these General Conditions contains specific LIMITATIONS OF LIABILITY.

Indemnity of Client and Limitation of Liability

Converse shall indemnify Client, its officers, directors, agents or employees from any claim, demand or liability arising from personal injury or property loss or damage caused by the sole negligence or willful misconduct of Converse.

Anything to the contrary in the agreement to which these General Conditions are attached or in these General Conditions notwithstanding, Converse's liability shall be limited to the lesser of the fees charged to Client by Converse for the services performed for Client, or the sum of fifty thousand dollars. Client may, at its option, increase the maximum amount for which Converse shall be liable by payment of an additional fee. For the maximum liability sum of one hundred thousand dollars, the additional amount to be paid shall be four percent of the total Converse fee charged hereunder; for the maximum liability sum of one million dollars, the additional amount to be paid shall be five percent of the total Converse fees charged hereunder Client acknowledges and agrees that its recovery, if any, shall be satisfied, in the first instance, from the proceeds of Converse's insurance, and to the extent of any deficiency in the available insurance proceeds, then and only then, by Converse.

Client acknowledges that Converse has agreed to charge Client a reduced fee for services in exchange for the above limitation of liability and that said reduction in fees is consideration for said limitation.

Client shall defend and save harmless Converse, its officers, directors, agents and employees from all liability, claims and demands, including expenses of suit and reasonable attorneys' fees arising from personal injuries, including disease and death, property loss or damage, injury to others (including personnel of Client, Converse or subcontractors performing work hereunder), and air or ground pollution or environmental impairment arising out of or in any manner connected with or related to the performance of Converse's services, except where there is a judicial determination that such injury, loss or damage shall have been caused by the sole negligence or willful misconduct of Converse. Client acknowledges that Converse has charged Client a reduced fee for services to be performed by it in exchange for this hold harmless and that the reduction in fees is consideration for said hold harmless provision.

Converse will not be liable for consequential damages of any kind, nature or description.

Hazardous Waste, Pollution and Health Hazard Projects ("Hazardous Projects" Herein)

Prior to the commencement of services by Converse on any hazardous project, Client agrees to advise Converse in writing of any known hazardous waste or materials existing on or near the Site or if any of said services are to be performed in an area where dust, fumes, gas, noise, vibrations or other particulate or no particulate matter is in the atmosphere where it raises a potential or possible health hazard or nuisance to anyone working within the area.

Anything in these General Conditions notwithstanding, Client shall indemnify and hold Converse, its officers, directors, agents, servants and employees, harmless from any claim, demand or action brought by any party whomsoever, including employees of Converse which claim, demand or action is based upon injury or damage caused or alleged to have been caused by hazardous wastes or hazardous materials whether or not such waste or materials were known to exist prior to the commencement of services.

Client agrees to be responsible for the removal and disposal of any hazardous waste uncovered as a result of the site investigation, including drill cuttings, unless specifically included within the scope of work.

It is agreed that the discovery of unanticipated hazardous materials constitutes a changed condition mandating an immediate renegotiation of the scope of services or termination of services. Converse will at all times endeavor to perform in a faithful and trustworthy manner. Client understands that Client or Converse may be required by local and/or state and/or federal statute to report the discovery of hazardous materials to a government agency. Client also understands that Converse may be required by local and/or state and/or federal statute to report the discovery of hazardous materials to a government agency, and that Converse, when practical, will do so only after notifying Client. In the event Converse discovers hazardous material that we believe poses an immediate threat to public health and safety, Converse will use its best judgment to notify appropriate emergency personnel for immediate containment. Client agrees to take no action of any kind against Converse when Converse makes a good-faith effort to fulfill its obligations.

Client's Responsibilities

Client shall immediately provide Converse with full information in writing as to Client's requirements for the services to be provided by Converse and shall designate in writing within five (5) days of the effective date of the agreement to which these General Conditions are a part, a representative to act on Client's behalf in conjunction with the services to be provided hereunder. Client shall promptly review all documents, reports, data and recommendations submitted by Converse and shall communicate with Converse concerning such reviews for the purpose of avoiding delay in the performance of the services to be rendered by Converse.

Client shall notify any third party who may perform on the Site of the standard of care being undertaken by Converse pursuant hereto and of the limitations of liability contained herein. Client shall require as a condition to the performance of any such third party a like indemnity and limitation of liability on their part against Converse.

Confidentiality

Converse shall hold all information provided to it by Client and the results of the work performed by it confidential and shall not disclose the same to any third party except where required by Governmental regulatory agencies or as otherwise required by law.

Disputes

Converse shall have the right to bring a legal action in a state or federal court against Client for any sums due or alleged to be due to it or for services rendered. Except for this right, Converse and Client agree that as an express condition to the right of either party to bring a legal action against the other, they shall first submit any dispute to mediation by a neutral person acceptable to both parties.

Each party shall bear its own attorneys' fees, costs and other expenses, except that each party shall be responsible and pay for one-half of the costs and expenses of the mediator. In the event that legal action is required, the prevailing party shall be entitled to recover all of its costs incurred in connection therewith including, without limitation, staff time, court costs, attorneys' fees, consultant and expert witness fees and any other related expenses. In this regard, in order to make the prevailing party whole, the parties acknowledge and agree that the prevailing party shall be entitled to recover all of its costs incurred in connection with the legal action and shall not be limited to "reasonable attorneys fees" as defined in any statute or rule of court.

The obligations, responsibilities, warranties and liabilities of the parties shall be solely those expressly set forth herein. Remedies and limitations of liability shall apply regardless of whether an action is brought in contract, or is based on either party's negligence, or another theory of law. All of the rights, remedies, obligations, terms, conditions and limitations of liability stated herein shall extend collectively to and be binding upon the parties' partners, joint ventures, licensors, successors, assigns, insurers, and affiliates. Client and Converse agree that any legal action with respect to the services to be performed under these General Conditions shall be brought against the parties, and not against individual officers, employees or former employees of the parties. All legal actions by either party against the other for breach of these General Conditions or for the failure to perform in accordance with the applicable standard of care, however framed, that are essentially based upon such breach or failure shall be barred two (2) years from the time claimant knew or should have known of its right to make a claim, but, in any event, not later than four (4) years from substantial completion of Converse's services.

Jobsite Safety

Converse shall be responsible for its activity and that of its employees on the Site. This shall not be construed to relieve the Client, its general contractor or any subcontractor of their obligation to maintain a safe jobsite.

Neither the professional activities nor the presence of Converse or its employees and subcontractors shall be understood to control the operations of others, nor shall it be construed to be an acceptance of the responsibility for jobsite safety.

Converse will not direct, supervise or lay out the work of the Client, contractor, or any subcontractors. Converse's services will not include a review or evaluation of the adequacy of the contractor's safety measures on or near the Site.

Schedules

Unless otherwise specified in the agreement, Converse shall be obligated to perform within a reasonable period of time. Converse shall not be responsible for delays in the completion of its services created by reason of any unforeseeable cause or causes beyond the control and/or without the fault or negligence of Converse, including but not restricted to acts of God or the public enemy, acts of the Government of the United States or of the several states, or any foreign country, or any of them acting in their sovereign capacity, acts of other contractors with Client, fire, floods, epidemics, riots, quarantine restrictions, strikes, civil insurrections, freight embargoes, and unusually severe weather.

Should completion of any portion of the services to be rendered by Converse be delayed beyond the estimated date of completion for any reason which is beyond the control of or without default or negligence of Converse, then and in that event Client and Converse shall mutually agree on the terms and conditions upon which the services may be continued or terminated.

Invoices

Converse shall submit monthly progress invoices to Client, and a final bill shall be submitted upon completion of the services. Within thirty (30) days after receipt of an invoice, Client shall pay the full amount of the invoice. If Client objects to all or any portion of any invoice, it shall so notify Converse of the same within fifteen (15) days from the date of receipt of said invoice and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion of the invoice.

If Client fails to make payment within thirty (30) days after receipt of an invoice, then Client shall pay an additional monthly service charge of one and one-half percent (1½ %) on all such amounts outstanding. The additional charge shall not apply to any disputed portion of any invoice resolved in favor of Client. In the event Client fails to pay any undisputed amount to Converse when due, Converse may immediately cease work until said payment together with a service charge at the rate of 1½ % per month, as specified above, from the due date has been received. Further, Converse may, at its sole option and discretion, refuse to perform any further work irrespective of payment from Client.

In the event that all or any portion of the 1½ % service charge provided for herein is deemed to be an interest charge, then and in that event said interest charge shall be limited to the maximum amount legally allowed by law.

Client acknowledges Converse's fee schedules are revised annually and agrees that the fee schedule in effect at the time the services are performed shall apply to such services.

Insurance

Converse represents that it now carries, and will continue to carry during the term of the contract to which these General Conditions are a part, Workers Compensation insurance and that, if requested, Converse shall provide to Client certificates as evidence of the aforementioned insurance.

Assignments

Client shall not assign this contract or any portion thereof to any other person or entity without the express written consent of Converse. Nothing contained in this contract or any part thereof shall be construed to create a right in any third party whomsoever, and nothing herein shall inure to the benefit of any third party.

Severability

If any provision of these General Conditions is finally determined to be contrary to, prohibited by, or invalid under applicable laws or regulations, such provision will be renegotiated so as to give effect to the intent of the parties to the maximum possible extent. Such determination and renegotiation shall not affect or invalidate the remaining provisions or these General Conditions.

Governing Law

These General Conditions shall be governed by and construed under the laws of the State of Nevada.