

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) is dated February 6, 2024 (“Effective Date”) and is between the City of Covina, a California municipal corporation (“City”) and Converse Consultants, a California corporation (“Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

RECITALS

A. City desires to utilize the services of Consultant as an independent contractor to perform an Asbestos and Lead Based Paint survey as well as a Phase II Environmental Site Assessment at 175 E. Center Street and 176 E. Badillo Street.

B. Consultant represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

C. City desires to retain Consultant and Consultant desires to serve City to perform these services in accordance with the terms and conditions of this Agreement.

The parties therefore agree as follows:

1. Term of Agreement. The term of this Agreement shall be from the Effective Date through June 30, 2024 unless sooner terminated as provided in Section 14 of this Agreement. The City may, upon mutual agreement, extend the contract for one (1) additional one-year term. In no event shall the contract be extended beyond June 30, 2025.

2. Compensation.:

A. Compensation. As full compensation for Consultant’s services provided under this Agreement, City shall pay Consultant the total flat sum of Twenty-Five Thousand Nine Hundred Dollars (\$25,900) (the “maximum compensation”), as set forth in the Approved Fee Schedule, attached hereto as **Exhibit A**. Any terms in Exhibit A, other than the payment rates and schedule of payment, are null and void.

B. Expenses. The amount set forth in paragraph A shall include reimbursement for all actual and necessary expenditures reasonably incurred in the performance of this Agreement.

A. Additional Services. City shall not allow any claims for additional services performed by Consultant, unless the City Council and the Consultant Representative authorize the additional services in writing prior to Consultant’s performance of the additional services or incurrence of additional expenses. Any additional services or expenses authorized by the City Council shall be compensated at the rates set forth in **Exhibit A**, or, if not specified, at a rate mutually agreed to by the parties. City shall make payment for additional services and expenses in accordance with Section 4 of this Agreement.

3. Consultant's Services.

A. Scope of Services. Consultant shall perform the services described in the Scope of Services, attached as **Exhibit B**. City may request, in writing, changes in the scope of services to be performed. Any changes mutually agreed upon by the parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

B. Party Representatives. For the purposes of this Agreement, the City Representative shall be the City Manager, or such other person designated in writing by the City Manager (the "City Representative"). For the purposes of this Agreement, the Consultant Representative shall be Laura Tanaka, CDPH Lead Inspector/Assessor, Principal Environmental Scientist (the "Consultant Representative"). The Consultant Representative shall directly manage Consultant's services under this Agreement. Consultant shall not change the Consultant Representative without City's prior written consent.

C. Time for Performance. Consultant shall commence the services on the Effective Date and shall perform all services by the deadline established by the City Representative or, if no deadline is established, with reasonable diligence.

C. Standard of Performance. Consultant shall perform all services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to City.

D. Personnel. Consultant has, or will secure at its own expense, all personnel required to perform the services required under this Agreement. All of the services required under this Agreement shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Consultant shall determine the means, methods, and details by which Consultant's personnel will perform the services under this Agreement. Consultant shall be solely responsible for the satisfactory work performance of all personnel engaged in performing the services and compliance with the customary professional standards.

E. Compliance with Laws. The Consultant shall keep itself informed of all local, state and federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such ordinances, laws and regulations. The City and its agents shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this section.

F. Permits and Licenses. Consultant shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of services under this Agreement, including a business license.

4. Method of Payment.

A. Invoices. Consultant shall submit to City an invoice, on a monthly basis or less frequently, for actual services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period, hourly rates charged, if applicable, and the amount due. If City disputes any of Consultant's fees, it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

B. Payment. City shall pay all undisputed invoice amounts within thirty (30) calendar days after receipt up to the maximum compensation set forth in Section 2 of this Agreement. City shall not withhold federal payroll, state payroll or other taxes, or other similar deductions, from payments made to Consultant. For all reimbursements authorized by this Agreement, Consultant shall provide receipts on all reimbursable expenses in excess of Fifty Dollars (\$50) in such form as approved by the Finance Director.

C. Audit of Records. Consultant shall make all records, invoices, time cards, cost control sheets and other records maintained by Consultant in connection with this agreement available during Consultant's regular working hours to City for review and audit by City.

5. Ownership of Documents. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the work, surveys, notes, and other documents prepared in the course of providing the services to be performed ("written products") pursuant to this Agreement shall become the sole property of the City without restriction or limitation upon its use and may be used, reused, disseminated or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files containing data generated for the work, Consultant shall make available to the City, upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files. Consultant may take and retain copies of the written products as desired, but the written products shall not be the subject of a copyright application by Consultant.

6. Independent Contractor.

A. Consultant is, and shall at all times remain as to City, a wholly independent contractor and not an employee of City. The personnel performing the services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees. Consultant shall not, at any time, or in any manner, represent that it or any of its officers, agents or employees are in any manner employees of City. Consultant and Consultant's personnel shall not supervise any of City's employees; and City's employees shall not supervise Consultant's personnel. Consultant's personnel shall not wear or display any City uniform, badge, identification number, or other information identifying such individual as an employee of City; and Consultant's personnel shall not use any City e-mail address or City telephone number in the performance of any of the services under this Agreement. Consultant shall acquire and maintain, at its sole cost and expense, such

vehicles, equipment, and supplies as Consultant's personnel require to perform any of the services required by this Agreement. Consultant shall perform the services off of City premises at locations of Consultant's choice, except as otherwise may from time to time be necessary in order for Consultant's personnel to receive projects from City, review plans on file at City, pick up or deliver any work product related to Consultant's performance of the services under this Agreement, or as may be necessary to inspect or visit City locations and/or private property to perform the services. City may make a computer available to Consultant from time to time for Consultant's personnel to obtain information about or to check on the status of projects pertaining to the services under this Agreement.

B. No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder. Consultant shall be responsible for and pay all wages, salaries, benefits and other amounts due to Consultant's personnel in connection with their performance of the services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: Social Security taxes, other retirement or pension benefits, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance. Notwithstanding any other agency, state, or federal policy, rule, regulation, statute or ordinance to the contrary, Consultant and any of its officers, employees, agents, and subcontractors providing any of the services under this Agreement shall not become entitled to, and hereby waive any claims to, any wages, salaries, compensation, benefit or any incident of employment by City, including, but not limited to, eligibility to enroll in, or reinstate to membership in, the California Public Employees Retirement System ("PERS") as an employee of City, and entitlement to any contribution to be paid by City for employer contributions or employee contributions for PERS benefits.

C. Consultant shall indemnify and hold harmless City and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs, and expenses of any nature to the extent arising from, caused by, or relating to Consultant's personnel practices. or to the extent arising from, caused by, or relating to the violation of any of the provisions of this Section 6. In addition to all other remedies available under law, City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this Section 6. This duty of indemnification is in addition to Consultant's duty to defend, indemnify, and hold harmless as set forth in any other provision of this Agreement.

7. PERS Compliance and Indemnification.

A. General Requirements. The parties acknowledge that City is a local agency member of PERS, and as such has certain pension reporting and contribution obligations to PERS on behalf of qualifying employees. Consultant agrees that, in providing its employees and any other personnel to City to perform the services under this Agreement, Consultant shall assure compliance with the Public Employees' Retirement Law, commencing at Government Code Section 20000, the regulations of PERS, and the Public Employees' Pension Reform Act of 2013, as amended. Without limitation to the foregoing, Consultant shall assure compliance with regard to personnel who have active or inactive membership in PERS and to those who are retired annuitants and in performing this Agreement shall not assign or utilize any of its personnel in a manner that will cause City to be in violation of the applicable retirement laws and regulations.

B. Indemnification. Consultant shall defend (with legal counsel approved by City, whose approval shall not be unreasonably withheld), indemnify, and hold harmless City, and its City and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs, and expenses of any nature to the extent arising from, caused by, or relating to Consultant's violation of any provisions of this Section 7. This duty of indemnification is in addition to Consultant's duty to defend, indemnify, and hold harmless as set forth in any other provision of this Agreement.

8. Confidentiality. All data, documents, discussion, or other information (collectively "data") developed or received by Consultant or provided for performance of this Agreement are deemed confidential. Consultant shall keep all data confidential and shall not disclose any data to any person or entity without City's prior written consent. City shall grant such consent if disclosure is legally required. Consultant shall return all data to City upon the expiration or termination of this Agreement. Consultant's covenant under this Section 8 shall survive the expiration or termination of this Agreement.

9. Conflicts of Interest. Consultant and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this Agreement, including the Political Reform Act (Gov. Code, § 81000 *et seq.*) and Government Code Section 1090. During the term of this Agreement, Consultant may perform similar services for other clients, but Consultant and its officers, employees, associates and subcontractors shall not, without the City Representative's prior written approval, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Consultant shall incorporate a clause substantially similar to this Section 9 into any subcontract that Consultant executes in connection with the performance of this Agreement.

10. Indemnification.

A. Indemnities for Third Party Claims.

1) To the fullest extent permitted by law, Consultant shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively “Indemnitees”), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens and losses of any nature whatsoever, including fees of accountants, attorneys or other professionals, and all costs associated therewith, and the payment of all consequential damages (collectively “Liabilities”), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees’ active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the parties. Consultant shall defend the Indemnitees in any action or actions filed in connection with any Liability with counsel of the Indemnitees’ choice, and shall pay all costs and expenses, including all attorneys’ fees and experts’ costs actually incurred in connection with such defense. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

2) Consultant shall pay all required taxes on amounts paid to Consultant under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant shall fully comply with the workers’ compensation law regarding Consultant and Consultant’s employees. Consultant shall indemnify and hold City harmless from any failure of Consultant to comply with applicable workers’ compensation laws. City may offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant’s failure to promptly pay to City any reimbursement or indemnification arising under this Subparagraph A. 2).

3) Consultant shall obtain executed indemnity agreements with provisions identical to those in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations, Consultant shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant’s subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Consultant’s subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees’ active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the parties.

B. Workers' Compensation Acts not Limiting. Consultant's indemnifications and obligations under this Section 10, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

C. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Section 10 shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liability, tax, assessment, penalty or interest asserted against City.

D. Survival of Terms. Consultant's indemnifications and obligations under this Section 10 shall survive the expiration or termination of this Agreement.

11. Insurance.

A. Minimum Scope and Limits of Insurance. Consultant shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows: .

1) Commercial General Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of Two Million Dollars (\$2,000,000) per project or location. If Consultant is a limited liability company, the commercial general liability coverage shall be amended so that Consultant and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of Two Million Dollars (\$2,000,000) per accident for bodily injury and property damage. If Consultant does not use any owned, non-owned or hired vehicles in the performance of services under this Agreement, Consultant shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under Subparagraph A. 1) of this Section 11.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000) per accident for bodily injury or disease. If Consultant has no employees while performing services under this Agreement, workers' compensation policy is not required, but Consultant shall provide an executed declaration that it has no employees.

4) Errors and Omissions Insurance with minimum limits of Two Million Dollars (\$2,000,000) per claim and in aggregate.

B. Acceptability of Insurers. The insurance policies required under this Section 11 shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self insurance shall not be considered to comply with the insurance requirements under this Section 11.

C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming the City, its officers, employees, agents and volunteers as additional insureds.

D. Primary and Non-Contributing. The insurance policies required under this Section 11 shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.

E. Consultant's Waiver of Subrogation. The insurance policies required under this Section 11 shall not prohibit Consultant and Consultant's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against City.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be approved by City. At City's option, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Consultant shall not cancel, reduce or otherwise modify the insurance policies required by this Section 11 during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail thirty (30) calendar days' prior written notice to City. If any insurance policy required under this Section 11 is canceled or reduced in coverage or limits, Consultant shall, within two (2) business days of notice from the insurer, phone, fax or notify City via certified mail, return receipt requested, of the cancellation of or changes to the policy.

H. City Remedy for Noncompliance. If Consultant does not maintain the policies of insurance required under this Section 11 in full force and effect during the term of this Agreement, or in the event any of Consultant's policies do not comply with the requirements under this Section 11, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Consultant's expense, the premium thereon. Consultant shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Consultant.

I. Evidence of Insurance. Prior to the performance of services under this Agreement, Consultant shall furnish City's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section 11. The endorsements are subject to City's approval. Consultant may provide complete, certified copies of all required insurance policies to City. Consultant shall maintain current endorsements on file with City's Risk Manager. Consultant shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Consultant shall furnish such proof at least two (2) weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duty to indemnify City under Section 10 of this Agreement.

K. Subcontractor Insurance Requirements. Consultant shall require each of its subcontractors that perform services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section 11.

12. Mutual Cooperation.

A. City's Cooperation. City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for Consultant's proper performance of the services required under this Agreement.

B. Consultant's Cooperation. In the event any claim or action is brought against the City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance that City requires.

13. Records and Inspections. Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of five (5) years. Consultant shall, without charge, provide City with access to the records during normal business hours. City may examine and audit the records and make transcripts therefrom, and inspect all program data, documents, proceedings and activities.

14. Termination or Suspension of Agreement.

A. Right to Terminate or Suspend. City may terminate or suspend this Agreement at any time, at will, for any reason or no reason, after giving written notice to Consultant at least seven (7) calendar days before the termination or suspension is to be effective. Consultant may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to City at least sixty (60) calendar days before the termination is to be effective.

B. Obligations upon Termination. Consultant shall cease all work under this Agreement on or before the effective date of termination specified in the notice of termination. In the event of City's termination of this Agreement due to no fault or failure of performance by

Consultant, City shall pay Consultant based on the percentage of work satisfactorily performed up to the effective date of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

15. Force Majeure. Consultant shall not be liable for any failure to perform its obligations under this Agreement if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond Consultant's reasonable control and not due to any act by Consultant.

16. Notices. Any notices, consents, requests, demands, bills, invoices, reports or other communications which either party may desire to give to the other party under this Agreement must be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by reputable document delivery service or courier service during Consultant's and City's regular business hours, or (c) five business days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the party to be notified as set forth below:

If to City:
Attn: Brian K. Lee
City of Covina
125 E. College Street|
Covina, California 91723

If to Consultant:
Attn: Laura Tanaka
Converse Consultants
717 S. Myrtle Avenue
Monrovia, CA 91016

17. Non-Discrimination and Equal Employment Opportunity. In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law. Consultant will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information or sexual orientation.

18. Prohibition of Assignment and Delegation. Consultant shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, without City's prior written consent. City's consent to an assignment of rights under this Agreement shall not release Consultant from any of its obligations or alter any of its primary obligations to be performed under this Agreement. Any attempted assignment or delegation in violation of this Section 18 shall be void and of no effect and shall entitle City to terminate this Agreement. As used in this Section 18, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance or

other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs.

19. No Third Party Beneficiaries Intended. Except as otherwise provided in Section 10, this Agreement is made solely for the benefit of the parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

20. Waiver. No delay or omission to exercise any right, power or remedy accruing to City under this Agreement shall impair any right, power or remedy of City, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement shall be (1) effective unless it is in writing and signed by the party making the waiver, (2) deemed to be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy, or (3) deemed to constitute a continuing waiver unless the writing expressly so states.

21. Exhibits. Exhibits A, B, C and D constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, the provisions of this Agreement shall control.

22. Entire Agreement. This Agreement and all exhibits referred to in this Agreement constitute the final, complete and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement and supersede all other prior or contemporaneous oral or written understandings and agreements of the parties. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation or warranty except those expressly set forth in this Agreement.

23. Amendment of Agreement. This Agreement may be amended only by a writing signed by both parties. The City Manager is authorized to sign an amendment to this Agreement on the City Council's behalf and without the City Council's prior approval to make the following non-substantive modifications to the Agreement: (a) name changes; (b) extensions of time; (c) non-monetary changes in the scope of work; and (d) termination of the Agreement.

24. Headings. The headings in this Agreement are included solely for convenience of reference and shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the parties to this Agreement.

25. Word Usage. Unless the context clearly requires otherwise, (a) the words "shall," "will" and "agrees" are mandatory and "may" is permissive; (b) "or" is not exclusive; and (c) "includes" or "including" are not limiting.

26. Time of the Essence. Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.

27. Governing Law and Choice of Forum. This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of California, except that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. Any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be resolved in a municipal, superior or federal court with geographic jurisdiction over the City of Covina.

28. Attorneys' Fees. In any litigation or other proceeding by which on party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded reasonable attorneys' fees together with any costs and expenses, to resolve the dispute and to enforce the final judgment.

29. Severability. If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable for any reason, the validity of and enforceability of the remaining provisions of this Agreement shall not be affected and continue in full force and effect.

30. Authority to Execute Agreement. The person or persons executing this Agreement on behalf of Consultant warrants and represents that he or she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

[SIGNATURE PAGE FOLLOWS]

The parties, through their duly authorized representatives, are signing this Agreement on the date stated in the introductory clause.

City:

City of Covina,
a California municipal corporation

By: _____

Name: Chris Marcarello
Title: City Manager

Consultant:

Converse Consultants,
a California Corporation

By: _____

Name: _____
Title: _____

By: _____

Name: _____
Title: _____

(Two signatures of corporate officers required for corporations under Corporations Code Section 313, unless corporate documents

ATTEST:

authorize only one person to sign this Agreement on behalf of the corporation.)

By: _____

Name: Fabian Velez

Title: Chief Deputy City Clerk

EXHIBIT A
APPROVED FEE SCHEDULE

Time Frame/Schedule

It is anticipated that the time frame to complete the proposed Scope of Services is as follows:

Task	Number of Business Days
Asbestos, LBP and Other Hazardous Materials Survey	20
Phase II ESA	25

The analytical turnaround time is five (5) business days for the bulk asbestos samples and seven (7) business days for the soil samples.

Conditions and Fees

Converse services will be performed in accordance with the enclosed *General Conditions* (GC99-1), which form part of this proposal. Our services are for the sole benefit and exclusive use of the City of Covina and Frontier California Inc. in accordance with the General Conditions under which these services have been provided.

The fee for the Scope of Services described will be as follows:

Asbestos, LBP & Other Hazardous Materials Survey	\$	10,700.00
Phase II ESA	\$	15,200.00
Total Cost	\$	25,900.00

The project will be billed on a lump sum basis. Payment terms are net 30 days.

Written authorization will be required to initiate our services. Written authorization via electronic mail (email) is acceptable. This proposal expires 60 days from its issuance, if not accepted within that time.

If hard copies of the report are requested in addition to the PDF file there will be an additional charge of \$300.00 for each report. Additional professional services, including revisions to the scope of services, meetings, consultation with other parties, composition of reliance letters or detailed cost estimates are not included in the standard fee. Requested additional services can be provided on a time-and-materials basis.

No bulk PCB caulk or paint samples are proposed herein.



EXHIBIT B
SCOPE OF SERVICES



Converse Consultants

Geotechnical Engineering, Environmental & Groundwater Science, Inspection & Testing Services

November 30, 2023

Mr. Rafael Fajardo
City of Covina
Department of Public Works
125 East College Street
Covina, California 91723-2199

Subject: **PROPOSAL –**
 Asbestos, Lead Base Paint & Other Hazardous Materials Survey and
 Phase II Environmental Site Assessment
 Eastern Portion of Former Frontier Building
 176 E Badillo Street, Covina, California
 Converse Project No. 21-41-190-00 (-06)

Mr. Fajardo:

Converse Consultants (Converse) appreciates the opportunity to present this proposal for an *Asbestos, Lead-Base Paint (LBP) and Other Hazardous Materials Survey* and a Phase II Environmental Site Assessment (ESA) at the referenced site.

Based on the information provided by the City of Covina (herein referred to as Client), it is Converse's understanding that the City is considering acquiring the eastern portion of the building along with the majority of the associated parking lot (see attached map). referenced site.

If the City does acquire the site, the interior of the building will be renovated, and the parking lot will be redeveloped into residential housing. A Phase II ESA is being proposed in the area of an existing underground storage tank (UST) and associated generator building, which will be retained by Frontier. The City of Covina is proposing to redevelop the area surrounding the UST/generator building.

Scope of Services

Asbestos Survey

The *Asbestos Survey* will be limited to the predominant style of accessible materials that are present at the building. Based on Converse's understanding of the property, and the client's needs, budget and schedule as presented, the following Scope of Services is proposed:

1. Visual survey of the structure(s) on-site for suspect asbestos-containing materials and homogeneous areas (areas that have uniform color, texture, and appearance). In addition, if construction plans and/or specifications are available, Converse can review these items to help in the identification of potential asbestos-containing materials (ACMs). Suspect materials will be divided into friable and non-friable materials. The homogenous materials will be placed in one of the following Environmental Protection Agency (EPA) categories:
 - Surfacing Materials (sprayed or troweled-on materials)
 - Thermal Systems Insulations (materials generally applied to various mechanical systems)
 - Miscellaneous Materials (any materials which do not fit in the above categories)

Accessible interior and exterior areas (as noted below) will be sampled for the presence of asbestos. Samples of general building components (i.e., visually identical flooring material and ceiling tiles) will be assumed to be representative of materials used throughout the building. Converse will not make a second effort to survey buildings, or portions of buildings, not accessible during the field reconnaissance.

2. Suspect hardscapes materials such as concrete, mortars and asphalt will be sampled. However, sample locations will not be patched.
3. Suspect buried items underneath soil or foundations, such as vapor barriers, liners, mastics and pipes, are excluded from the proposed Scope of Services.
4. No destructive sampling methods will be employed during this survey. Therefore, the following items, including but not limited to, will not be sampled during the survey. These items will only be inventoried.
 - Mirror mastics
 - Ceiling tile mastics (concealed spline)
 - Fire doors
 - Void spaces between walls, floors and ceilings
 - Paneling adhesives
 - Tile grout & underlayment materials
 - Sink/sink piping gaskets
5. Collect samples of suspect ACMs in representative homogenous areas determined by visual examination and review of plans. Up to 113 bulk samples will be collected following accepted EPA procedures and will be analyzed for asbestos content. If additional sampling is necessary, City of Covina will be notified of all additional costs. The additional sampling will not be completed without prior authorization of the Client.



The strategy for the collection of asbestos samples will be in general accordance with EPA guidance document “*Asbestos in Buildings: Simplified Sampling Scheme for Friable Surfacing Materials*”, EPA 560/5-85-030a, October 1985, 40 CFR 763 (AHERA), and appropriate air pollution control district regulations. According to OSHA Regulation 29 CFR 1926.1101, a minimum of three samples must be collected of each suspect ACM.

6. During the collection of bulk samples, damage to the materials sampled is often necessary to obtain representative samples. Converse will attempt to collect the bulk samples in inconspicuous locations (behind doors, in closets, in corners); however, it will not always be possible, and sample locations will be visible to the owner/occupant/tenant.

Converse will patch interior plaster/drywall sample locations and exterior stucco walls with caulk/patching materials. However, Converse will not be held responsible for the quality or usefulness of the patching repairs.

Samples of vinyl flooring materials, baseboards and carpeting will be encapsulated with spray adhesive or lacquer, but holes and cuts in the materials will be present.

Typically, the bulk samples that will be collected are approximately 1.5-inches in diameter or a 1-inch square, and it would be collected to the substrate. Mastics from carpet and baseboards will be scraped from underneath/behind the materials; however, cuts and holes will be present.

7. Samples collected will be processed for shipment to an accredited laboratory following EPA protocol and chain-of-custody procedures. Samples at the laboratory will be analyzed, on a normal turnaround basis (5 business days), for asbestos content using polarized light microscopy (PLM). Laboratory results which indicate a trace amount of asbestos (less than one percent) will be reported as ACMs unless supplemental point count analysis is approved by Client at an additional cost.

The results of the survey will be evaluated to determine if asbestos-containing building materials are present in the collected and analyzed samples. The analytical test results will be presented together with the sample locations, a list of materials surveyed found to contain asbestos, and a field generated sample location map. An electronic file (PDF format) of the final document will be provided to the Client.

LBP Survey

The *LBP Survey* will be limited to the predominant style of accessible painted components that are present at the building. The survey will be performed using a direct reading x-ray fluorescent (XRF) device. No bulk paint chips samples will be collected during the survey. Based on Converse’s understanding of the property, and the client’s needs, budget and schedule as presented, the following Scope of Services is proposed:



1. Visual survey of the building on-site for representative painted surfaces. Accessible areas will be sampled for the presence of LBPs. Samples of general building components (i.e., visually identical surface paints) will be assumed to be representative of materials used throughout the building.
2. The limited survey is intended to identify representative painted surfaces. The survey is not intended to identify all painted surfaces or comply with Housing and Urban Development (HUD) Guidelines.

The results of the survey will be evaluated to determine if lead is present in the surveyed paints. The XRF logs will be provided in the final report. The logs will contain the following information: paint color of component tested, type of substrate, lead concentration, and condition of paint. The results of the *LBP Survey* will be incorporated into the *Asbestos Survey* report.

Inventory of Other Hazardous Materials

Converse will inventory the following within the building:

- Fluorescent Light Fixtures and light tubes
- Thermostats
- Illuminated fire exit signs
- Drums and/or containers of Hazardous Materials

The fluorescent light fixtures, thermostats and fire exit signs will not be disassembled. These items will only be inventoried.

Converse will assume one ballast is located within each florescent light fixture. All homogenous light fixtures will be assumed to be the same through the building.

Drums and/or containers of chemicals or hazardous materials will also be inventoried. Unlabeled drums or containers will not be opened by Converse.

The inventory will be provided in a section of the *Asbestos and LBP Survey Report*.

Phase II ESA

The objective of the Phase II ESA is to evaluate if any soil contamination is present that has impacted the proposed new City parcels. The UST and associated generator building are to be retained by Frontier and are not a part of the proposed City acquisition.



- **Project Set Up:**

Underground Service Alert (USA) will be notified at least 48 hours prior to completing borings. Prior to advancing each boring, locations of nearby underground (UG) utilities and other UG structures will be evaluated by surface observation of the proposed boring locations for features such as nearby manholes, utility vaults, or surface features served by UG utilities.

- **Field Activities:**

Three (3) borings will be advanced to maximum depths of 25-feet below ground surface (bgs) using direct push (Geoprobe) technology. The boring locations will be placed as close as possible to the UST but within the proposed City parcels. Soil samples will be collected from each of the borings at depths of 5, 10, 15, 20, and 25 feet bgs in acetate sleeves. A portion of each sample will be placed into a sealable bag for lithologic evaluation and screened with a photoionization detector (PID).

Split samples will be provided to the Frontier representative. The Frontier representative must be present on the day of the sampling as Converse will not be preparing the split samples.

- **Laboratory Analyses:**

Three (3) soil samples per boring (9 total) will be analyzed for total petroleum hydrocarbons (TPH) by EPA Method 8015M; and two (2) samples per boring (6 total) will be analyzed for metals by EPA Method 6010/7470.

- **Report Preparation:**

The results will be presented in a *Phase II ESA Report*. Included in the report will be a summary of the fieldwork and methodologies, as well as a discussion and summary of the analytical results.

Converse will also present our conclusions and recommendations for further assessment, potential mitigation measures, or remedial activities, if any.

Copies of boring location maps, summary tables of sample analytical results, and laboratory analytical reports with chain of custody documentation will be provided in the report. An electronic file (PDF format) of the final report will be provided to the Client.

Our services will be completed under the responsible charge of a California Professional Geologist (PG) or Professional Engineer (PE).



Time Frame/Schedule

It is anticipated that the time frame to complete the proposed Scope of Services is as follows:

Task	Number of Business Days
Asbestos, LBP and Other Hazardous Materials Survey	20
Phase II ESA	25

The analytical turnaround time is five (5) business days for the bulk asbestos samples and seven (7) business days for the soil samples.

Conditions and Fees

Converse services will be performed in accordance with the enclosed *General Conditions* (GC99-1), which form part of this proposal. Our services are for the sole benefit and exclusive use of the City of Covina and Frontier California Inc. in accordance with the General Conditions under which these services have been provided.

The fee for the Scope of Services described will be as follows:

Asbestos, LBP & Other Hazardous Materials Survey	\$	10,700.00
Phase II ESA	\$	15,200.00
Total Cost	\$	25,900.00

The project will be billed on a lump sum basis. Payment terms are net 30 days.

Written authorization will be required to initiate our services. Written authorization via electronic mail (email) is acceptable. This proposal expires 60 days from its issuance, if not accepted within that time.

If hard copies of the report are requested in addition to the PDF file there will be an additional charge of \$300.00 for each report. Additional professional services, including revisions to the scope of services, meetings, consultation with other parties, composition of reliance letters or detailed cost estimates are not included in the standard fee. Requested additional services can be provided on a time-and-materials basis.

No bulk PCB caulk or paint samples are proposed herein.



Converse's services are performed in a professional manner with the best interest of our Client in mind. Work is performed with care, exercising the customary thoroughness and competence of consulting professionals in the relevant disciplines, in accordance with the standard for professional services at the time and location those services are rendered. The most comprehensive scope of services may fail to detect asbestos-containing materials, LBPs or other forms of contamination on a particular site. Therefore, Converse cannot act as an insurer or "certify" that a site is free of asbestos-containing materials or LBPs or contamination.

Supplemental analyses to evaluate asbestos content at low percentages, such as 1,000-point count analysis, may be necessary to distinguish between ACMs, asbestos-containing construction materials (ACCMs) and non-ACMs. Converse has not included a cost estimate for point-counting as a part of the proposed Scope of Services. Laboratory results which indicate a trace amount of asbestos (less than one percent) will be reported as ACMs unless supplemental point count analysis is approved by Client. Supplemental 1,000-point count analysis can be completed. Costs and turnaround times will be provided as necessary.

Analysis by Transmission Electron Microscopy (TEM) can be used to further evaluate asbestos content in bound matrices. No bulk TEM analysis is budgeted in the proposed Scope of Services. Supplemental qualitative TEM analysis can be completed. Costs and turnaround times will be provided as necessary.

The soil boring locations and actual samples to be analyzed may differ than what is stated in the Scope of Services depending on field conditions. In the event that conditions are encountered that are significantly different than those anticipated, services not specifically proposed herein may be required in order to achieve the objective of this assessment. Converse will not proceed with these unanticipated services without receipt of a written authorization and agreement to the additional services. In the event that the scheduled Scope of Services cannot be performed due to circumstances beyond our reasonable control, the Client will be responsible for the labor and equipment cost incurred.

The soil borings will be backfilled with hydrated bentonite chips. As a result, the surface may settle or bulge over time. We recommend the owner monitor the boring sites and address any mounding or settlement depressions that might occur to prevent trip and fall injuries from occurring near the backfilled boring locations.

The above Scope of Services assumes that any utilities existing in the general area of the proposed work will not limit or be affected by investigative activities. Please note that performing the borings and moving exploration equipment to the test boring locations may cause damage to existing lawns, pavements and vegetation. Converse will make every reasonable effort to limit damage. However, this proposal does not include any services for work required to restore the Property to its original condition,



including backfilling of settled area, seeding, sodding, landscaping, repaving, or repair of underground piping and utilities.

It should be recognized that this proposal and its Scope of Services are proprietary in nature, and as such, may not be used as a specification or bidding document for and/or by others without the express prior written consent of Converse Consultants.

Converse understands that the Client is the only intended user of the document. If it is the intent to have other parties rely on this report, they must be identified on the *Acceptance of Agreement and Authorization to Proceed* form. If third party reliance requirements change, Client agrees with Converse Consultants that, to be valid, such request must be received within 180 days of the date of submission indicated on the title page of referenced report. Client and Converse Consultants also agree to the following:

- Reliance must be authorized through Converse Consultants' standard reliance agreement.
- The party seeking reliance must agree to accept the same terms and conditions Client accepted.
- The third party must agree to abide by the same qualifications and limitation contained in any of Converse Consultants' instruments of professional service.
- Client and/or third party must pay a reliance fee of \$1,000 (one thousand dollars) that considers the additional administrative burdens, increased costs incurred and risk assumed by Converse.

Closure

Thank you for this opportunity to be of service. Should you have questions regarding this proposal, please contact Laura Tanaka at (626) 930-1261.

Sincerely,

CONVERSE CONSULTANTS



Michael Van Fleet, PG
Senior Geologist



Laura Tanaka, CAC, Lead Certified
Principal Environmental Scientist

Encl: General Conditions (GC 99-1)
Map

Dist: 1/Addressee via Electronic Mail



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:

- a. That Converse shall in no way be responsible for the manner in which such work is performed by any third party.
- b. 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.
- c. 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.
- d. 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 nonparticulate 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 California.

The current owner is marketing the eastern portion of the property for sale in as-is condition, along with a portion of the rear parking lot. It will retain the western portion of the office building and will require 24/7 access to the electrical room in the eastern portion of the building, as well as 24/7 access to the generator building, both via permanent easements. In order to appraise the portion of the property listed for sale, I have to assume two hypothetical parcels, as shown in the following aerial map:



The subject portion of the office building totals 17,247 SF and is situated on a 13,000 SF (0.30-acre) site. This has been denoted as Hypothetical Parcel A in this report. The subject portion of the rear parking lot totals 39,210 SF (0.90-acres). This has been denoted as Hypothetical Parcel B.

In order for the subject office building to become operational, several items of physical depreciation and obsolescence need to be cured:

1. The 2nd Floor corridor bridge must be removed;
2. The rooftop mechanicals serving the western building must be removed;
3. Any power from the electrical room to the subject building must be separated;
4. A lot split must be applied for and recorded;
5. An access easement must be recorded; and
6. The subject needs to be upgraded and retrofitted to comply with building codes. This includes the installation of an elevator to conform to ADA guidelines.

Best,
Alana

From: Laura A. Tanaka <ltanaka@ConverseConsultants.com>

Sent: Tuesday, November 28, 2023 11:15 AM

To: Alana Spector <ASpector@covinaca.gov>