

MOUNTAINVIEW CONCRETE COATINGS, LLC ("MCC")
STANDARD TERMS OF ENGAGEMENT

1. SCOPE. These terms and conditions apply to the provision of all concrete work, including polishing, coating, and any other services ("Services") by Mountainview Concrete Coatings, LLC ("MCC" or the contractor) to Client under a bid provided to the client ("Agreement") to which this schedule is a part.

2. TERM.

a) The Agreement shall be effective on the date on the bid once signed by the Client ("Effective Date"). The term of the Agreement commence upon the Effective Date, and shall continue in full force until all services and work are completed and client has paid MCC in full or the Agreement is terminated as indicated herein.

b) ADDITIONAL SERVICES. Additional Services may be added from time to time as agreed to by Client and MCC either verbally or in writing, which Additional Services will be co-terminus with the Term of the Agreement.

3. CONTRACT DOCUMENTS. The contract documents consist of the Agreement, including all general provisions, special provisions, specifications, drawings, addenda, change orders, written interpretations, and written orders for minor changes in work. Work not covered by contract documents will not be required unless it is required by reasonable inference as being necessary to produce the intended result. By executing the contract, MCC represents that he/she has visited the site and understands local conditions including state or local regulations and conditions under which the work is to be performed.

4. CLIENT: Unless otherwise provided for in this Agreement, the client shall secure and pay for necessary easements, exceptions from zoning requirements, or other actions which must precede the approval of a permit for this project. If client fails to do so this contract is void. If MCC fails to correct defective work or persistently fails to carry out the work in accordance with the Agreement or general provisions, the client may order MCC in writing to stop such work, or a part of the work until the cause for the order has eliminated. Client may be an owner, or a contractor, or another person or entity.

5. MCC RESPONSIBILITIES:

a) The contractor shall supervise and direct the work and the work of all subcontractors. He or she shall use the best skill and attention and shall be solely responsible for all construction methods and materials and for coordinating all portions of the work. Unless otherwise specified in this Agreement, MCC shall provide for and/or pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and other goods, facilities, and services necessary for the proper execution and completion of the work. MCC shall maintain order and discipline among employees and shall not assign anyone unfit for the task at hand. MCC warrants to the client that all materials and equipment incorporated are new unless otherwise specified and that all work will be of good quality and free of defects or faults. MCC shall comply with all rules, regulations, laws,

ordinances, and orders of any public authority bearing on the performance of the work.

b) Subcontractors shall be selected by MCC, except that MCC shall employ no subcontractor to whom the client shall have a reasonable objection, nor shall MCC be required by the client to employ any subcontractor to whom MCC has a reasonable objection.

6. BILLING AND PAYMENT. Billing for a Service shall commence upon completion of the services as determined in the sole discretion of MCC (as previously defined). All bills are due and payable upon receipt. If Client's bill is not paid by within ten (10) days of the due date, Client also shall pay MCC a monthly late charge amount equal to the greater of \$200.00 or 1.5% per month of the unpaid balance due (or such lesser amount as is the maximum amount permitted under applicable law). Client must provide MCC with written notice of any disputed charge(s) within ten (10) days of the receipt of any bill or invoice or shall be deemed to have waived its rights to dispute the charges. If the dispute is filed within the ten (10) day timeframe, Client shall pay the due amount minus the disputed amount by the due date. Client shall have no right to withhold amounts not disputed. The dispute notice shall set forth in writing in reasonable detail the information concerning the disputed charges and reasons for the dispute. MCC and Client shall attempt in good faith to promptly resolve any objection to the invoiced amount. If the dispute is subsequently resolved, Client shall pay any additional due amount previously withheld within ten (10) days of such resolution. If MCC initiates legal proceedings to collect any amount due hereunder and MCC substantially prevails in such proceedings then Client shall pay the reasonable costs and expenses, including but not limited to reasonable attorney fees, expenses, court costs and service charges, work costs incurred by MCC in collecting payment and/or in prosecuting such proceedings and any appeals therefrom.

7. WORK BY CLIENT OR OTHER CONTRACTOR: The client reserves the right to perform work related to the project but which is not a part of this Agreement, and to award separate contracts in connection with other portions of the project not detailed in this Agreement. All contractors and subcontractors shall be afforded reasonable opportunity for the storage of materials and equipment by the client and by each other. Any costs arising by defective or ill-timed work shall be borne by the responsible party.

8. OTHER PROVISIONS: Claims or disputes relating to the Agreement or General Provisions shall be resolved by mediation or arbitration services provided by consumer affairs offices of local governments or local members of the National Academy of or the American Arbitration Association unless both parties mutually agree to other methods.

9. TIME: With respect to scheduled completion of tasks under a bid, time is of the essence. If MCC is delayed at anytime in the

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progress of the work by client change orders, fire, labor disputes, acts of God or other causes beyond MCC’s control, the completion schedule for the work or affected parts of the work shall be extended by the same amount of time caused by the delay.

10. PAYMENTS AND COMPLETION: Payments may be withheld only due to defective work not remedied and only for the actual cost of fixing the work. MCC will file a preliminary lien on the property for the work completed and such liens shall not be released until final payment in good funds is received by MCC. Upon final payment in full any liens that were filed by MCC shall be discharged.

11. INSURANCE: MCC shall purchase and maintain such insurance necessary to protect from claims under workers compensation and from any damage to the client’s property resulting from the conduct of this contract.

12. CHANGES IN THE CONTRACT: The client may order changes, additions, or modifications without invalidating the contract. Such changes must be in writing and signed by the client. The client shall pay for all additional costs resulting from changes immediately when billed for such charges.

6. TERMINATION.

a) A party may terminate the Agreement on sixty (60) days’ written notice if the other party materially breaches the Agreement and such breaching party fails to cure the breach within such notice period, *provided that* the cure period for breach of any of Client’s payment obligations shall only be ten (10) days, or as provided by law. If Client fails to cure any breach of its payment obligations with respect to amounts not disputed in accordance with the provisions of Section 5 above within such ten (10) business day period, in addition to MCC’s remedies under Section 5 above, MCC shall have the right to immediately and without further notice suspend Services to Client.

b) A party may terminate the Agreement upon written notice to the other party if (i) the other party dissolves or becomes insolvent; (ii) the other party makes an assignment for the benefit of creditors; (iii) the other party suspends the transaction of its usual business or consents to the appointment of a trustee or receiver; or (iv) a receiver of the other party is appointed.

c) If Client (or any Client affiliate) is in default of the terms of any other Agreement between MCC (or any MCC affiliate) and Client (or any Client affiliate), including but not limited to any payment obligation to MCC or its affiliates, then MCC, at its sole option, may consider such default as a default under this Agreement and provide notice of default in accordance with the terms of this Agreement. Client further understands and agrees that any breach by Client of its obligations under this Agreement shall also be deemed a breach by Client of its obligations under any other Agreements it (or any Client affiliate) has entered into with MCC and/or its affiliates and understands and agrees that any such breach shall authorize MCC and/or any of its affiliates to

immediately suspend performance under, and or terminate, said Agreements with Client (or Client’s affiliates) for default.

7. TERMINATION LIABILITY.

If the Agreement is terminated anytime during the Term with appropriate sixty (60) day notice, Client shall pay to MCC, immediately upon demand all sums then due and unpaid.

8. LIMITATIONS OF SERVICE. This Agreement also does not constitute a joint undertaking for Client’s furnishing of any service to its own Clients.

9. COMPLIANCE WITH LAWS. Each party shall comply with all applicable laws, regulations, court decisions or administrative rulings regarding the provision or use of the Services. Client represents and warrants that (i) its engagement with MCC does not and will not breach any Agreements with or duties to any other third party, (ii) Client have no obligations inconsistent with the terms of this Agreement or with his undertaking a relationship with MCC, and Client will not enter into any Agreement in conflict with this Agreement; (iii) the performance of this Agreement does not and will not violate any applicable law, rule or regulation or any proprietary or other right of any third party.

11. WARRANTY. THE QUALITY OF SERVICE PROVIDED HEREUNDER SHALL BE CONSISTENT WITH INDUSTRY STANDARDS, GOVERNMENT REGULATIONS AND SOUND BUSINESS PRACTICES. MCC MAKES NO OTHER WARRANTIES ABOUT THE SERVICE PROVIDED HEREUNDER, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. MCC DOES NOT AUTHORIZE ANYONE TO MAKE A WARRANTY ON MCC’S BEHALF AND THE CLIENT MAY NOT RELY ON ANY STATEMENT OF WARRANTY AS A WARRANTY OF MCC. THIS SECTION SURVIVES TERMINATION OF THE AGREEMENT.

12. LIMITATIONS OF LIABILITY.

a) IN NO EVENT SHALL EITHER PARTY (OR ITS AFFILIATES, EMPLOYEES, OFFICERS, DIRECTORS OR AGENTS) BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF REVENUE, LOSS OF PROFITS, OR LOSS OF CLIENTS, CLIENTS OR GOODWILL ARISING IN ANY MANNER FROM THE AGREEMENT AND/OR THE PERFORMANCE OR NONPERFORMANCE HEREUNDER. THIS DOES NOT LIMIT CLIENT’S RESPONSIBILITY FOR THE PAYMENT OF ANY AND ALL PROPERLY DUE CHARGES. THIS SECTION SHALL SURVIVE FAILURE OF AN EXCLUSIVE OR LIMITED REMEDY AND TERMINATION OF THE AGREEMENT.

b) MCC’S ENTIRE LIABILITY AND CLIENT’S EXCLUSIVE REMEDIES WITH RESPECT TO ANY SERVICE PROVIDED TO CLIENT OR BREACH OF THE AGREEMENT, WHETHER IN AN ACTION FOR OR ARISING OUT OF BREACH OF CONTRACT, TORT, INCLUDING NEGLIGENCE, INDEMNITY OR STRICT LIABILITY, SHALL BE AS FOLLOWS: THE AMOUNT OF PROVEN DIRECT DAMAGES; AND (III) FOR ALL OTHER

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CLAIMS NOT COVERED BY THE FOREGOING SUBSECTIONS, THE AMOUNT OF PROVEN DIRECT DAMAGES NOT TO EXCEED AN AMOUNT EQUAL TO THE AMOUNT PAID BY CLIENT TO MCC. IN NO EVENT SHALL MCC’S AND ITS AFFILIATES’ CUMULATIVE LIABILITY FOR ALL CLAIMS (EXCLUDING (II) ABOVE) ARISING OUT OF THIS AGREEMENT EXCEED THE TOTAL AMOUNT OF ALL FEES PAID BY CLIENT TO MCC HEREUNDER. THIS SECTION SURVIVES TERMINATION OF THE AGREEMENT.

13. FORCE MAJEURE. Except with respect to Client’s payment obligations for Services rendered prior to the commencement of a Force Majeure event, notwithstanding any other provision of the Agreement, neither Party shall be liable to the other Party for any delay or failure in performance of the Agreement to the extent such delay or failure is caused by fire, flood, explosion, accident, war, strike, embargo, governmental requirement, civil or military authority, Act of God, inability to secure materials or labor or any other causes beyond its reasonable control. Any such delay or failure shall suspend the Agreement until the Force Majeure ceases.

14. RELATIONSHIP OF PARTIES. Neither the Agreement nor the provision of Service hereunder shall be deemed to create any joint venture, partnership or agency between MCC and Client. The Parties are independent contractors and shall not be deemed to have any other relationship. Neither Party shall have, or hold itself out as having, the power or authority to bind or create liability for the other by its intentional or negligent act. The parties intend that an independent Client relationship will be created by this letter. MCC is interested only in assisting the Client and control of the work will lie solely with Client. It is understood that MCC does not agree to work for Client exclusively. It is further understood that MCC is free to contract with any other company to provide services while under contract with Client. The work to be performed under this contract will be performed entirely at Client’s risk.

15. MCC FACILITIES. Equipment furnished by MCC shall remain its property or the Client’s property and shall be returned to MCC on expiration or termination of the Agreement or as earlier requested by MCC, in good condition, reasonable wear and tear excepted. Client shall reimburse MCC for any loss of, or damage to, MCC’S facilities or equipment on the Client’s premises, except loss or damage caused by MCC’S own employees, agents or contractors.

16. NOTICES. All notices and communications under the Agreement shall be in writing and shall be given by personal delivery, by registered or certified mail, return receipt requested, by regular U.S. mail, or by facsimile transmission, or by email addressed to the respective Party as set forth in the first page of the Agreement or to such other address as may be designated in writing by such Party. Notice shall be deemed given upon mailing or sending.

17. ENTIRE AGREEMENT. The Agreement, including these Standard Terms of Engagement, MCC’s Acceptable Use Policy (“AUP”), Bid documents, invoices, Scope of Work, and all other schedules referenced in the Agreement or at <http://www.mountainviewconcretecoatings.com> and which are applicable to the Services purchased by the Client, all of which are expressly incorporated by reference, and any attached schedules, represents the entire Agreement of the Parties with respect to the subject matter hereof and supersedes all other Agreements, written or oral, between the Parties relating to the Service. The Standard Terms of Engagement and other documents referenced in this Agreement may be modified from time to time. Any modification to the Scope of Work shall be in writing and signed by authorized representatives of both Parties. In case of any conflict between the provisions of these Standard Terms and any other document or schedule (including any Addendum), the provisions of the other document, schedule or Addendum shall take precedence unless otherwise indicated in writing by Client and MCC. A digitized (electronic) copy of the executed Agreement shall be deemed the same as an original copy. Both Parties agree to keep any such information confidential unless either is obligated by law to disclose information contained herein. Provisions in the Agreement that by their sense and context are intended to survive completion of performance, termination or cancellation of the Agreement, shall survive.

18. REGULATORY CHANGE. MCC may amend any contract term or pricing in response to a regulatory change that materially changes the technical feasibility or economics of providing service. MCC will notify Client in writing when exercising this right, after which Client will have ten (10) days from the date of the notice to terminate the adversely affected Services for cause by notifying MCC in writing. If Client does not respond in writing to MCC within ten (10) days, Client waives its right to terminate. For avoidance of doubt, Client’s remedy pursuant to this section shall not apply for rates otherwise subject to change as designated on Client’s Scope of Work(s).

19. WAIVER. No term or provision herein shall be waived, and no breach or default excused, unless such waiver or consent is in writing and signed by the Party to which it is attributed. No consent by a Party to, or waiver of, a breach or default by the other, whether expressed or implied, shall constitute a consent to or waiver of any subsequent breach or default. The failure, whether purposeful or otherwise, to exercise in any instance any right, power or privilege under this Agreement or under law shall not constitute a waiver of any other right, power or privilege, nor of the same right, power or privilege in any other instance.

20. PARTIAL INVALIDITY. If any term, provision, covenant or condition of this Agreement, or the application thereof to any person, place or circumstance, shall be held to be invalid, unenforceable or void, the remainder of this Agreement and such term, provision, covenant or condition as applied to other persons, places and circumstances shall remain in full force and effect. Moreover, if any one or more of the provisions of this

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Agreement shall be held to be excessively overbroad as to duration, activity or subject, such provision shall be construed by limiting and reducing them so as to be enforceable to the maximum extent allowed by applicable law. However, if such provision is an essential element of the Agreement, the Parties shall promptly attempt to negotiate a substitute therefor. Any provision’s invalidity or unenforceability shall not invalidate or render the Agreement unenforceable, but rather the Agreement shall be construed as if not containing the invalid or unenforceable provision.

The rights and remedies provided hereby are cumulative, and the exercise of any right or remedy, whether pursuant hereto, to any other Agreement, or to law, shall not preclude or waive the right to exercise any or all other rights and remedies. Termination of this Agreement shall not affect Client’s continuing obligations under this Agreement. This Agreement shall be binding upon Client, its administrators, affiliates and shall be for the benefit of MCC or Client, its successors and its assigns.

21. ASSIGNMENT. Client may not assign the Agreement without the written consent of MCC, which consent shall not unreasonably be withheld or delayed; *provided* that no such consent shall be required

for any assignment by a party to an entity that either controls or is controlled by or is under common control with that party; or to an entity which succeeds to all or substantially all of such party’s assets whether by merger, sale or otherwise; or to any institutional lender to whom this Agreement is assigned as collateral security for any indebtedness of the assignor or any affiliate of the assignor. In the event of any assignment by Client as permitted hereunder, the assignee must comply with MCC’S credit and security requirements.

22. GOVERNING LAW. The Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Utah, without regard to its conflict of laws principles. Each party consents to personal jurisdiction in the state and federal courts of the State of Utah.

23. SPECIAL CONSTRUCTION. Provision of Services is subject to MCC’s approval of the suitability of Client’s premises for the Services.

26. CONFIDENTIALITY. Both Client and MCC agree at all times during this engagement, that Client and MCC and all related persons and affiliates will not use, show, display, release, discuss, communicate, divulge or otherwise disclose any “Confidential Information” (as defined below). Client and MCC understand that “Confidential Information” means all data, information and materials related to MCC or Client, or any subsidiary, affiliate, related entity, division or any of their respective partners, members, employees, consultants, portfolio companies, or business associates (collectively, the “Parties”) thereof which are not generally known or available to competitors or the public or so known only through improper means including, but not limited

to: (i) concepts, ideas, proposals, text, illustrations, designs, characters, trade secrets, proposed trademarks and trade names; (ii) matters of the business of the Parties including, but not limited to: financial data or plans; business plans and strategies; any other proprietary information relating to the business of the Parties, whether oral, graphic, written, electronic or in machine readable form.

Client and MCC and their related persons and affiliates will not, directly or indirectly, use, make available, sell, disclose or otherwise communicate to any third party any Confidential Information. Client and MCC are aware that the unauthorized disclosure of Confidential Information may be highly prejudicial to the other party’s interests, an invasion of privacy, and an improper disclosure of trade secrets. Without limiting the foregoing, Client or MCC shall not make copies of, or otherwise reproduce, Confidential Information. Client and MCC will take all appropriate steps to safeguard and protect the Confidential Information.

Any and all printed, typed, written or other material which Client or MCC has or may obtain with respect to Confidential Information (including without limitation all copyrights therein) shall be and shall remain the exclusive property of the original party. Upon termination of his engagement for whatever reason, the other party shall promptly deliver to the original party all Confidential Information in his possession or control. And, further, Client or MCC shall not take, or allow a third party to take, any Confidential Information.

27. USE OF CLIENT LOGO AND NAME AND TESTIMONIALS. Client agrees that MCC can use Client’s logo and name in MCC’s advertising and promotional campaigns including but not limited to its marketing materials and on its website. Client agrees that MCC can create and promote testimonials and references from the Client that depict MCC in a positive way. Client agrees not to disparage MCC in any manner or in any form and to resolve any disputes or issues privately with MCC.

28. SUPERCEDES. This Agreement supersedes all, and may not be contradicted by evidence of any, other prior and contemporaneous Agreements and statements on the subjects covered in this Agreement, whether written or oral.

MCC is defined for purposes of this Agreement to include Mountainview Concrete Coatings, LLC, Solid Concrete Walls, LLC and any of their respective affiliates.