

## AGREEMENT TO PERFORM NON-PROFESSIONAL SERVICES

This agreement for the provision of exterior painting services for the City of Redlands' Corporate Yard ("Agreement") is made and entered in this 16<sup>th</sup> day of October, 2012 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City") and MC Painting ("Contractor"). City and Contractor are sometimes individually referred to herein as a "Party" and, together, as "Parties." In consideration of the mutual promises contained herein, City and Contractor agree as follows:

### ARTICLE 1 – ENGAGEMENT OF CONTRACTOR

- 1.1 City hereby engages Contractor to provide exterior painting services for City's Corporate Yard (the "Services").
- 1.2 The Services shall be performed by Contractor in a professional manner, and Contractor represents that it has the skill and the professional expertise necessary to provide the Services to City at a level of competency presently maintained by other practicing professional Contractors in the industry providing like and similar types of Services.

### ARTICLE 2 – SERVICES OF CONTRACTOR

- 2.1 The Services that Contractor shall perform are more particularly described in Exhibit "A," entitled "Scope of Services," which is attached hereto and incorporated herein by reference.
- 2.2 The Services to be performed under this Agreement constitute a "public work" as defined in Labor Code sections 1771 and 1720. Contractor shall comply with all applicable federal, state and local laws and regulations in the performance of this agreement including, but not limited to, State prevailing wage laws, and all applicable Labor Code provisions relating to the employment of apprentices, hours of labor, and the disbarment of contractors and subcontractors.

### ARTICLE 3 – RESPONSIBILITIES OF CITY

- 3.1 City shall make available to Contractor information in its possession that may assist Contractor in performing the Services.
- 3.2 City designates Fred Cardenas, Quality of Life Director, as City's representative with respect to performance of the Services, and such person shall have the authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to performance of the Services.

### ARTICLE 4 – PERFORMANCE OF SERVICES

- 4.1 Contractor shall perform and complete the Services in a prompt and diligent manner in accordance with the schedule set forth in Exhibit "B," entitled "Project Schedule," which

is attached hereto and incorporated herein by reference. The Services shall commence within ten (10) days of the Effective Sate of this Agreement.

- 4.2 If Contractor's Services include deliverable electronic visual presentation materials, such materials shall be delivered in a form, and made available to the City, consistent with City Council adopted policy for the same. It shall be the obligation of Contractor to obtain a copy of such policy from City Staff.
- 4.3 During the term of this Agreement, City may request that Contractor perform Extra Services. As used herein, "Extra Services" means any work that is determined necessary by City for the proper completion of the Services, but which the Parties did not reasonably anticipate would be necessary at the time of execution of this Agreement. Provided the Extra Services do not exceed twenty percent (20%) of the compensation to be paid by City to Contractor for the Services, such Extra Services may be agreed to by official in accordance with Chapter 2.16 of the Redlands Municipal Code. Contractor shall not perform, nor be compensated for, Extra Services without such written authorization from City.

ARTICLE 5 – PAYMENTS TO CONTRACTOR

- 5.1 The total compensation for Contractor's performance of the Services shall be Sixty One Thousand Eight Hundred Seventy One Dollars (\$61,871). City shall pay Contractor in full within thirty (30) days of completion of the Services.
- 5.2 All notices shall be given in writing by personal delivery or by mail. Notices sent by mail should be addressed as follows:

City

Fred Cardenas, Director  
Quality of Life Department  
City of Redlands  
35 Cajon Street, Suite 222  
P.O. Box 3005 (mailing)  
Redlands, CA 92373

Contractor

Michael Lewis, President  
MC Painting  
2525 Ramona Drive  
Vista, CA 92084

When so addressed, such notices shall be deemed given upon deposit in the United States Mail. Changes may be made in the names and addresses of the person to whom notices and payments are to be given by giving notice pursuant to this section 5.2.

ARTICLE 6 – INSURANCE AND INDEMNIFICATION

- 6.1 Insurance required by this Agreement shall be maintained by Contractor for the duration of its performance of the Services. Contractor shall not perform any Services unless and until the required insurance listed below is obtained by Contractor. Contractor shall provide City with certificates of insurance and endorsements evidencing such insurance

prior to commencement of the Services. Insurance policies shall include a provision prohibiting cancellation or modification of the policy except upon thirty (30) days prior written notice to City.

- 6.2 Contractor shall secure and maintain Workers' Compensation and Employer's Liability insurance throughout the duration of its performance of the Services in accordance with the laws of the State of California, with an insurance carrier acceptable to City as described in Exhibit "B," entitled "Workers' Compensation Insurance Certification," which is attached hereto and incorporated herein by this reference.
- 6.3 Contractor shall secure and maintain comprehensive general liability insurance with carriers acceptable to City. Minimum coverage of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate for public liability, property damage and personal injury is required. City shall be named as an additional insured and such insurance shall be primary and non-contributing to any insurance or self-insurance maintained by City.
- 6.4 Contractor shall have business auto liability coverage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence, combined single limit bodily injury liability and property damage liability. This coverage shall include all Contractor owned vehicles used in connection with Contractor's provision of the Services, hired and non-owned vehicles, and employee non-ownership vehicles. City shall be named as an additional insured and such insurance shall be primary and non-contributing to any insurance or self insurance maintained by City.
- 6.5 Contractor shall defend, indemnify and hold harmless City and its elected officials, employees and agents from and against any and all claims, losses or liability, including attorneys' fees, arising from injury or death to persons or damage to property occasioned by and negligent act, omission or failure to act by Contractor, its officers, employees and agents in performing the Services.

#### ARTICLE 7 – CONFLICTS OF INTEREST

- 7.1 Contractor covenants and represents that it does not have any investment or interest in any real property that may be the subject of this Agreement or any other source of income, interest in real property or investment that would be affected in any manner or degree by the performance of Contractor's Services. Contractor further covenants and represents that in the performance of its duties hereunder, no person having any such interest shall perform any Services under this Agreement.
- 7.2 Contractor agrees it is not a designated employee within the meaning of the Political Reform Act because Contractor:
  - A. Does not make or participate in:
    - (i) the making or any City governmental decisions regarding approval of a rate, rule or regulation, or the adoption or enforcement of laws;

- (ii) the issuance, denial, suspension or revocation of City permits, licenses, applications, certifications, approvals, orders or similar authorization or entitlements;
- (iii) authoring City to enter into, modify or renew a contract;
- (iv) granting City approval to a contract that requires City approval and to which City is a party, or to the specifications for such a contract;
- (v) granting City approval to a plan, design, report, study or similar item;
- (vi) adopting, or granting City approval of policies, standards or guidelines for City or for any subdivision thereof.

B. Does not serve in a staff capacity with City and in that capacity, participate in making a governmental decision or otherwise perform the same or substantially the same duties for City that would otherwise be performed by an individual holding a position specified in City's Conflict of interest Code under Government Code section 87302.

7.3 In the event City officially determines that Contractor must disclose its financial interests, Contractor shall complete and file a Fair Political Practices Commission Form 700, State of Economic Interests with the City Clerks' office pursuant to the written instructions provided by the City Clerk.

#### ARTICLE 8 – GENERAL CONSIDERATIONS

8.1 In the event any action is commenced to enforce or interpret any of the terms or conditions of this Agreement the prevailing Party shall, in addition to any costs and other relief, be entitled to the recovery of its reasonable attorneys' fees, including fees for the use of in-house counsel by a Party.

8.2 Contractor shall not assign any of the Services, except with the prior written approval of City and in strict compliance with the terms, and conditions of this Agreement.

8.3 Documents, records, drawings, designs, cost estimates, electronic data files, databases and any other documents developed by Contractor in connection with its performance of the Services, and any copyright interest in such documents, shall become the property of City and shall be delivered to City upon completion of the Services, or upon the request of City. Any reuse of such documents, and any use of incomplete documents, shall be at City's sole risk.

8.4 Contractor is for all purposes under this Agreement an independent contractor and shall perform the Services as an independent contractor. Neither City nor of its agents shall have control over the conduct of Contractor or Contractor's employees, except as herein set forth. Contractor shall supply necessary tools and instrumentalities required to perform the Services. Assigned personnel employed by Contractor are for its account only, and in no event shall Contractor or personnel retained by it be deemed to have been employed by City or engaged by City for the account of, or on behalf of City. Contractor shall have no authority, express by City for the account of, or on behalf of City. Contractor shall have no authority, express or implied, to act on behalf of City in any

capacity whatsoever as an agent, nor shall Contractor have any authority, express or implied, to bind City to any obligation.

- 8.5 Unless earlier terminated as provided for below, this Agreement shall terminate upon completion and acceptance of the Services by City; provided, however, this Agreement may be terminated by City, in its sole discretion, by providing five (5) days prior written notice to Contractor (delivered by certified mail, return receipt requested) of City's intent to terminate. If this Agreement is terminated by City, an adjustment to Contractor's compensation shall be made, but (1) no amount shall be allowed for anticipated profit or unperformed Services, and (2) any payment due Contractor at the time of termination may be adjusted to the extent of any additional costs to City occasioned by any default by Contractor. Upon receipt of a termination notice, Contractor shall immediately discontinue its provision of the Services.
- 8.6 This Agreement, including the Exhibits incorporated herein by reference, represents the entire agreement and understanding between the Parties as to the matters contained herein, and any prior negotiations, written proposals or verbal agreements relating to such matters are superseded by this Agreement. Except as otherwise provided for herein, an amendment to this Agreement shall be in writing, approved by City and signed by City and Contractor.
- 8.7 This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, duly authorized representative of the City and Contractor have signed in confirmation of this Agreement.

CITY OF REDLANDS

MC Painting

By: \_\_\_\_\_  
Pete Aguilar, Mayor

By: \_\_\_\_\_  
Michael Lewis, President

Attest:

\_\_\_\_\_  
Sam Irwin, City Clerk

# EXHIBIT "A"

## PART 1 - GENERAL

### 1.01 RELATED REQUIREMENTS

Review General Requirements, or Contract Documents contain information and requirements that apply to the Work.

### 1.02 DESCRIPTION

A. This Section describes requirements for providing preparation, priming and coating of TEX-COTE® COOL-WALL® Heat-Reflective Textured Coating system on exterior of previously painted metal panel walls and other selected surfaces.

### 1.03 SUBMITTALS

- A. Product Data: Furnish manufacturer's Technical Data Sheets, MSDS and application instructions.
- B. Samples: Submit 8"-x-10" drawdown samples for each color selected. Samples shall be made of coating specified, match colors select by Owner.
- C. Field Samples: Submit 10ft by 10ft sample panel on jobsite building or surface as selected by Owner. Obtain approval of colors prior to proceeding with full application. Sample panel to be part of finished job.
- D. Adhesion Test Report: On all elevations the Prime Coat shall be left uncoated with finish coating until adhesion test is conducted. Contractor in presence of Manufacturer's Field Technician to conduct Adhesion by Tape Test ASTM D 3359-78 Method A. Contractor to provide written report of result to manufacturer prior to application of finish coat. Failure to pass the Adhesion Test may result in additional preparations or use of specialized primer.

### 1.04 QUALITY ASSURANCE

- A. Manufacturer's Qualifications: Not less than 10 years successful experience in supplying materials of the types equivalent to those required for this Project.
- B. Installer Qualifications: Firm approved in writing by systems manufacturer as a qualified applicator.
- C. Single Source: Provide materials of a single manufacturer for systems specified.
- D. Application Equipment: TEX-COTE Super-Cote® HD Textured Primer: GRACO® GM1030 or GRACO PRESIDENT 10:1 Texture pump with related hoses and texture gun. TEX-COTE COOLWALL® Smooth, Flat coating, GRACO 5900 or equal airless pump with ¼-inch hose and .017-.019 RAC Spray Tip.
- E. Coats: The number of coats specified is the minimum acceptable. If full coverage is not achieved with the specified number of coats, apply such additional coats as necessary to provide the required finish.
- F. Employ coats and undercoats for all finishes pursuant to this specification, and then paint manufacturer instructions. Completed coating system must provide min.16 mils DFT.
- G. WARRANTY: Upon successful completion in accordance with the specification and Manufacturer's written instructions, manufacturer shall issue 5-Year Warranty against Chipping, Flaking, Peeling, 5-Year Warranty against Color Fade for the coating system.
- H. Regulatory Agency Requirements:
  - 1. Comply with state and local regulations governing use of paint materials.
  - 2. Comply with OSHA guidelines for protective clothing, glasses, gloves and respirators

required for project conditions.

### 1.05 PRODUCT DELIVERY, STORAGE, AND HANDLING

- A. Packaging: Deliver materials to job site in manufacturer's original unopened containers, with labels intact and readable, listing manufacturer, coating type, product name, and batch numbers.
- B. Manufacturer's Instructions: Comply with manufacturer's instructions for storage and handling, including cautions on product data safety sheets.
- C. Unusable Material: Discard deteriorated material and materials manufactured more than 12 months before application.
- D. Contractor to leave Owner four(4) gallons of the finish coating system in each color applied on Color to match colors of original batch numbers installed. Identified all one(1) gallon pails with batch number, color name, number and dry sample on lids.

### 1.06 JOB CONDITIONS

- A. Environmental Requirements:
  - 1. Environmental conditions can be modified only if such requirements are a part of the Manufacturer's application instructions or if the manufacturer supplies a letter amending the environmental conditions.
  - 2. Ambient Air temperature: At least 45 degrees F but not exceeding 100 degrees F. during application .
  - 3. Precipitation: Do not apply primer and coating materials during precipitation and when precipitation is imminent or anticipated.
  - 4. Apply coatings to surfaces that are free of surface moisture.
  - 5. Ultraviolet Light: Do not allow primer to be exposed to ultraviolet light for more than four-weeks prior to application of coating. If exposure exceeds the four week limit, apply additional coat of primer.
  - 6. Do not apply coating in areas with airborne dust or where dust can be generated.
- B. Allow installed sealants, caulk, and patching materials to fully cure according to product manufacturer's recommendations prior to coating.

## PART 2 - PRODUCTS

### 2.01 MANUFACTURER

Textured Coatings of America, Inc., 5950 So. Avalon Blvd., Los Angeles, CA 90003  
Local Contact: **Bill Borchert (510) 206-8030.**

### 2.02 MATERIALS

- A. Textured Primer: TEX-COTE® Super-Cote HD Textured Primer.
- B. Finish Coat: TEX-COTE® COOL-WALL® Smooth, Flat.
- C. Accent Colors: TEX-COTE® COOL-WALL® Smooth, Flat.

- D. Crack Repair and Patching Compounds:
1. Fine Cracks up to 1/32": TEX-COTE® TC-600® Smooth.
  2. Cracks larger than 1/32" up to 1/8": TEX-COTE® FLEX-PATCH®(Smooth).
  3. Cracks larger than 1/8" up to 1/4": Use SIKA-FLEX® 1-A, inject into cracks and fill cracks minimum 1/4".
  4. Cover ALL CRACKS with heavy coat(80-100sf/Gal) TEX-COTE® Super-Cote® Classic® Primer prior to application of Textured Primer coat. Rolled-on.

## 2.04 COLORS AND TEXTURES

A.Match colors in COOLWALL® Smooth, Flat, as selected by Architect.

## PART 3 - EXECUTION

### 3.01 CONTRACTORS INSPECTIONS and VERIFICATIONS

Examine substrates scheduled to receive coating system for conditions that may adversely affect the work. Do not proceed with the work of this Section until all conditions have been corrected. Notify the Owner and Manufacturer's Rep in writing of any unsatisfactory conditions that would interfere with the adhesion of the coating.

A. Previously Painted Metal Wall Panels and other selected surfaces:

1. Verify cracks have been patched or repaired prior to applying any coatings.
2. Verify the repair of surface irregularities and damaged surfaces.
  - a. Verify all loose, chip, flake, peel and de-lamination of previous coatings have been removed, repaired and brought back to match existing surrounding surfaces.
  - b. Verify all chalk on previously painted surfaces removed and neutralized.
3. Verify patching materials are water resistant flexible compounds.
4. Manufacturer's Representative to inspect surfaces prior application of  
Notify Manufacturer's Representative 1 week prior to application of primer.

B. Caulk

1. Verify existing and new caulk compatible with primer and finish coating, verify caulk surface have been primed.
2. Verify new caulk fully cured in accordance with manufacturer's direction.
3. Verify surface of caulk is clean, dry and sound, ready for coating.
4. Verify existing panel joint caulk is sound and prepared for coating system.

### 3.02 PREPARATION

A. General: Protect hardware, accessories, fixtures, and similar items already installed that are not scheduled for painting. Provide surface-applied protection or masking prior to preparation and painting. Upon completion of painting operations, re-install removed items, remove masking and protection and dispose of at Contractors expense.

B. Cleaning: Before applying paint or other surface treatments, brush blast all metal surfaces in accordance with SSPC-SP 7/NACE No. 4, Bush-Off Blast Cleaning Standards. This joint Standard covers the requirements for bush-off blast cleaning

of unpainted and painted steel surfaces by the use of abrasives.

1. These requirements include the end condition of the surface and materials and procedures necessary to achieve and verify the end condition.
  2. A brush-off blast cleaned surface, when viewed without magnification, shall be Free of all visible oil, grease, dirt, dust, loose mill scale, loose rust, and loose Coating.
  3. Tightly adherent mill scale, rust, and coating may remain on the surface. Mill scale, rust and coating are considered tightly adherent if they cannot be removed by lifting with a dull putty knife after abrasive blast cleaning has been performed.
  4. Pressure Wash and clean the substrates of any contaminants that could impair the bond and/or adhesion and performance of the coating system. Remove chalk, grease, dirt, stains, loose paint, rust, mill scale and all other laitance to provide **SOUND, CLEAN, and DRY** surface.
- C. Schedule cleaning and painting so dust, dirt, and other contaminants from the cleaning process will not fall on wet, or newly painted surfaces.
- D. Waste Water: Divert, Direct or otherwise collect water, cleaning chemicals and all other cleaning materials away from buildings and other connecting structures.
1. Coordinate collection, diversion of all Waste Water, cleaning chemicals and Debris with City of Redlands representative.
  2. All Waste Water, Cleaning Chemicals, Debris and materials employed in Surface Preparation and Coating shall be collected and disposed of in Accordance with Environmental Requirements at Contractors expense.
- E. Surface Preparation: Clean and prepare all surfaces to be painted in accordance with manufacturer's recommendations for each particular substrate condition, and specified finish, texture, sheen, etc.
1. Surface shall be free oils, grease, chalk, dirt, rust, oxidation, mill-scale, mildew, loose, unsound substrates any other surface contaminants that would adversely affect the adhesion, protective properties, or final appearance of the coating system.
  2. Pressure Wash (min. 2,500PSI) to provide a clean and sound surface.
- F. CRACK REPAIR:
1. Address all cracks, caulk, patch or repair as follows:
    - a. Fine Cracks up to 1/32": Brush or Roll-on TEX-COTE® TC-600® Smooth into cracks, knife smooth to match surrounding surface.
    - b. Crack 1/32-inch to 1/8-inch shall be filled with TEX-COTE® FLEX-PATCH® Smooth Buttery Grade, knife smooth and uniform with surrounding surface.
    - c. Cracks 1/8-inch to ¼-inch shall be filled with SIKA-FLEX® 1A, single-component urethane caulk. Knife smooth to match surrounding surfaces.
    - d. Cover all repaired cracks with heavy coat (80-100sf/gal) TEX-COTE® Super-Cote® Classic® Primer Smooth, rolled-on, prior to and in addition to priming

### 3.03 MATERIAL PREPARATION

- A. Remove skins formed on surface of material before moving containers, mixing Material, or applying material.
  
- B. Store materials not in actual use in tightly covered containers. Maintain containers used in storage, mixing and application of coatings in clean condition, free of foreign materials and residue. Do not store in sunlight. Material should be maintained between 45° F and 95° F for best application properties.

### **3.04 APPLICATION**

- A. PREVIOUSLY PAINTED METAL WALL PANELS:
  - 1. TEXTURED PRIME COAT: Apply TEX-COTE® HD Super-Cote® Primer: Fine Texture(F/T): 55 square feet per gallon, or Coarse Texture(C/T): 45 square feet per gallon, in a uniform textural profile, embedded in a continuous pin-hole free film, to achieve a minimum of 10 Mils DFT.
  - 2. SMOOTH FINISH COAT: Apply TEX-COTE® COOLWALL® Smooth, Flat at 175-200 square feet per gallon to provide a uniform continuous pinhole-free film, to achieve a minimum 5-6 Mils DFT.
    - a. May be sprayed-on and crossed-off or rolled-on in two separate coats.
    - b. Maintain a wet edge to prevent lap marks.
    - c. Use adequate numbers of workers to avoid lap marks and spray patterns.
  
- D. FINAL INSPECTION
  - 1. Notify Manufacturer's Rep to conduct final inspection TEX-COTE® COOLWALL® HD Textured Coating System upon completion of Job.
  - 2. Unacceptable finishes will be corrected at the expense of the Contractor.
  - 3. Contractor to provide Manufacturer with completed application WARRANTY form.
  - 4. Upon successful completion of Job in accordance with Manufacturer's instructions and this specification, Manufacturer to issue Owner 5-Year WARRANTIES.

### **3.06 CLEAN UP AND PROTECTION**

- A. Cleanup: During the course of work, remove discarded coating materials, rubbish cans, rags and similar construction waste and related materials from the site at the end of each workday.
- B. Upon completion of work, clean coating-splattered surfaces. Remove splattered coating by proper methods of washing, using care not to scratch or otherwise finished surfaces or glass.
- C. Repair, restore, or replace to the satisfaction of the Owner, all roof surfaces, roof structures, and all other surfaces damaged by exposure to preparation and installation of the coating system.

**End of Section**

**EXHIBIT 'B'**

**WORKERS' COMPENSATION INSURANCE CERTIFICATION TO PERFORM  
EXTERIOR PAINTING SERVICES TO THE CITY OF REDLANDS**

Every employer except the State, shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation in one or more insurer duly authorized to write compensation insurance in this State.
- (b) By securing from the Director of Industrial Relations, a certificate of consent to self-insure, either as an individual employer or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.

I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code §1861).

MC Painting

By: \_\_\_\_\_  
Michael Lewis, President

\_\_\_\_\_  
Date: