



CONTRACT AGREEMENT

PROJECT: TIMBER BUILDINGS MAINTENANCE SERVICES – Silver Park and Fort Missoula Regional Park

This Contract Agreement is made and entered into this ____ day of September, 2022, and between the City of Missoula and New Concept Coatings, Inc, P.O. Box 16205, Missoula, MT 59808-6205, a registered Montana Corporation hereinafter referred to as "Contractor," for the scope of work listed below.

A. SCOPE OF WORK

Contractor shall furnish all labor, equipment, and materials necessary to complete the following items:

1. Pressure Wash clean five (5) existing timber framed; open air buildings located in Silver Park
2. Pressure Wash clean four (4) existing timber framed, open air buildings located in Fort Missoula Regional Park
3. Apply stain and anti-graffiti coat to each building

B. TIME OF COMPLETION

All work shall be completed by June 30, 2023.

C. PAYMENT

Upon completion and acceptance by the City of the work performed under this agreement, the City shall pay Contractor in accordance with the not-to-exceed price of **SIXTY-SEVEN-THOUSAND, TWENTY-FIVE DOLLARS AND NO CENTS (\$67,025.00)** for maintenance services per the quotations signed and dated May 25, 2022 (Exhibit 3 and Exhibit 4)). The payment shall be full compensation for the work described on the attached Quotation Proposals.

D. DOCUMENTS AND DRAWINGS

The following documents shall be made a part of this agreement:

Exhibit #	Description
1.	City of Missoula Special Conditions
2.	City of Missoula General Conditions (Short Form)
3.	<u>New Concept Coatings, Inc quotation dated May 25, 2022 – Silver Park</u>
4.	<u>New Concept Coatings, Inc quotation dated May 25, 2022 – Fort Missoula Regional Park</u>

ACKNOWLEDGMENT AND APPROVAL OF AGREEMENT:

City of Missoula

Contractor

By: _____
Jordan Hess
Mayor

By: _____

Attest:

Martha L. Rehbein, CMC/ Legislative Services/ City Clerk

(Seal)

Jim Nugent, City Attorney

CITY OF MISSOULA
SILVER PARK TIMBER BUILDINGS MAINTENANCE SERVICES
EXHIBIT 1
PROJECT SPECIAL CONDITIONS

These Special Conditions are special provisions that modify and/or supplement in part the General Conditions or the Technical Specifications of the contract. In the event of a conflict, these Special Conditions shall take precedence. These Special Conditions are a part of this Contract.

1. **SAFETY.** The safety of park patrons, children, pets and maintenance staff is paramount. The Contractor shall execute and protect his work in such a way as to protect the safety of said individuals during and following work hours.
2. **SCHEDULE & SEQUENCE OF WORK.** The Contractor shall submit a schedule to be approved by the Owner. The Contractor should schedule work so as not to cause unnecessary conflicts with other installations or unnecessary inconvenience to the public or to Parks & Recreation staff. Contractor's attention and adherence to the provided project schedule is required.

Time is of the essence in this contract. Therefore, the Contractor shall prosecute the work regularly and uninterruptedly with such force as to complete the work within the contract time and per the schedule to minimize the effects upon park patrons and maintenance crews.

3. **TRAFFIC CONTROL AND SIGNING.** Traffic control and signing for this project shall be provided by the Contractor. No additional compensation will be made for traffic control on this project. The traffic control shall meet all requirements set forth by the Manual of Uniform Traffic Control Devices and the City of Missoula Standardized Installation Traffic Control Plans. Temporary Sidewalk fencing (STD-171) or barricading shall be used to provide pedestrian route around work areas.
4. **MAINTENANCE OF TRAFFIC & ACCESS FOR EMERGENCY SERVICES.** It is the Contractor's responsibility to maintain private and emergency vehicle traffic routes at all times. It is the Contractor's responsibility to sign the routes when they are temporarily closed and to sign an approved detour.
5. **STAGING & SITE WORK.** The Contractor shall stage the work such as to prevent damage to any and all existing park elements and to minimize any impact to park patrons and maintenance crews. The Contractor shall be responsible at their own expense for the repair or restoration of any damage or negative impact to the park that is outside of the established construction zone that is caused by moving onto the site or prosecution of the work.
6. **PERMITS.** Contractor shall be responsible to obtain any required local building and excavation permits for the project. City is responsible for any required permits from Federal or State Agencies as well as any required City Floodplain permit.
7. **LIEN/CLAIM WAIVERS AND AFFIDAVIT OF BILLS PAID FOR RELEASE OF FINAL PAYMENT.** Contractor is required to complete and submit installation lien/claim waivers for payment applications and an Affidavit of Bills Paid for Release of Final Payment as provided for below:

"Requests for Payment shall be accompanied by a City of Missoula Lien/Claim Waiver Form, with appropriate "Conditional" and "Unconditional" portions completed, from the Contractor and from each vendor, subcontractor and sub-subcontractor. Contractor shall submit an Affidavit of Bills Paid for Release of the Final Payment. For projects under \$50,000 a single Lien/Claim Waiver form may be submitted from each vendor, subcontractor and sub-subcontractor with the Request for Final Payment, accompanied by the Contractor's Affidavit of Bills Paid for Release of the Final Payment."

END OF SPECIAL CONDITIONS

CITY OF MISSOULA
SILVER PARK TIMBER BUILDINGS MAINTENANCE SERVICES
EXHIBIT 2
GENERAL CONDITIONS (SHORT FORM)

1. **Examination of Site.**

The Contractor shall make arrangements to inspect the work area to satisfy him/herself as to the character, quality and quantity of the work to be performed, as well as the conditions that will be encountered at the site or will otherwise affect the cost or difficulty of performing the work.

2. **Materials and Workmanship.**

Whenever any material is specified by name and/or number thereof, such specifications shall be deemed to be used for the purpose of facilitating a description of the materials and establishing quality, and shall be deemed and construed to be followed by the words "or approved equal." No substitutions will be permitted which have not been submitted for prior approval by the Engineer. All materials shall be new and without flaws or defects and shall be the best of their class and kind. Sufficient descriptive literature and/or samples must be furnished for any materials submitted as "equal" substitutes.

All materials and equipment shall be installed in a neat and workmanlike manner. The Owner's Authorized Representative reserves the right to direct the removal and replacement of any items, which in their opinion shall not present an orderly and reasonably neat or workmanlike appearance, provided such time can be properly installed in such orderly way by the usual methods in such work. Such removal and replacement shall be done, when directed in writing, at the Contractor's expense without additional cost to the Owner.

3. **Montana State License and Registration Requirements.**

Uniform Professional Licensing and Regulation procedures are contained in Title 37, M.C.A. Bidders are responsible for ensuring that they and their subcontractors are licensed and qualified to conduct business in Montana. Any Construction Contractor bidding on public work in the State of Montana is required to have a current Montana State Construction Contractor Registration except as listed in M.C.A. 39-9-211. No bids will be considered that do not carry the current contractor registration number on the Bid Proposal immediately following the signature and address of the bidder. Information pertaining to registration requirements may be obtained from the Montana Department of Labor and Industry, Helena, Montana. It is the duty of said Department to determine whether an applicant has met all requirements for registration as a construction contractor per Title 39, Chapter 9, Sections 39-9-101 through 39-9-401, M.C.A.

4. **Taxation – Gross Receipts Tax.**

As defined under Title 15, Chapter 50, embracing Sections 15-50-101 through 15-50-207, M.C.A., a governmental agency entering into a construction contract shall withhold one percent (1%) of gross sum due the Contractor under the performance of the contract provided that the contract amount exceeds five thousand dollars (\$5,000). The Contractor shall also withhold one percent (1%) of gross sum due the subcontractors. The withholdings shall be made payable to Miscellaneous Tax Division, Department of Revenue, Mitchell Building, Helena, Montana.

5. **City of Missoula License and Bond Requirements.**

Any Contractors engaged in public work in the City of Missoula are required to have a license from the City of Missoula based upon the nature of the work. A bond is also required for each type of work in the City of Missoula. Licenses are obtainable at the Office of the City Treasurer, City Hall, Missoula, Montana.

6. **Industrial Accident Insurance.**

The Contractor's attention is directed to the Industrial Accident Insurance laws in force in Montana and to the responsibility of the Owner for the collection of premiums thereunder. Contractor's compliance with said laws is required, and he shall relieve the Owner of any responsibility for the payment of premiums thereunder, and shall furnish the Owner with satisfactory evidence showing that all premiums arising from this contract have been paid before payment is made on the final estimate.

7. **Ordinances and Regulations.**

The Contractor shall give all notices and comply with all Federal, State and local laws, ordinances and regulations in any manner affecting the conduct of the work, and all such orders and decrees as exist, or may be enacted by bodies or tribunals having any jurisdiction or authority over the work, and shall indemnify and save harmless the Owner and the Engineer against any claim or liability arising from, or based on, the violation of any such law, ordinance, regulation, order or decrees, whether by himself or his employees.

8. **Guarantee.**

The Contractor shall guarantee all materials and workmanship furnished and performed for a period of one year from the date of written acceptance of the work unless specified otherwise.

9. **Insurance.**

The Contractor shall not commence any work until he obtains, at his own expense, all required insurance. Such insurance must have the approval of the Owner as to limit, form and amount. The Contractor will not permit any Subcontractor to commence work on this project until the same insurance requirements have been complied with by such Subcontractor.

- A. **Types:** The types of insurance the Contractor is required to obtain and maintain for the full period of the Contract will be: Workmen's Compensation Insurance, Comprehensive General Liability Insurance, and Builders' Risk "All-Risk" Insurance as detailed in the following portions of these specifications.
- B. **Evidence:** As evidence of specified insurance coverage, the Owner may, in lieu of actual policies, accept certificates issued by the insurance carrier showing such policies in force for the specified period. Each policy or certificate will bear an endorsement or statement waiving right of cancellation or reduction in coverage without Forty-five days notice in writing to be delivered by registered mail to the Owner. Should any policy be canceled before final payment by the Owner to the Contractor and the Contractor fails immediately to procure other insurance as specified, the Owner reserves the right to procure such insurance and to deduct the cost thereof from any sum due the Contractor under this Contract.
- C. **Adequacy of Performance:** Any insurance bearing on adequacy of performance shall be maintained after completion of the project for the full guaranty period. Should such insurance be canceled before the end of the guaranty period and the Contractor fails immediately to procure other insurance as specified, the Owner reserves the right to procure such insurance and to charge the cost thereof to the Contractor.
- D. **Payment of Damages:** Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from his operations under this contract.

10. **WORKMEN'S COMPENSATION INSURANCE.** Before the Agreement between the Owner and the Contractor is entered into, the Contractor shall submit written evidence that he and all subcontractors have obtained, for the period of the Contract, full Workmen's Compensation Insurance coverage for all persons whom they employ or may employ in carrying out the work under this Contract. This insurance shall be in strict accordance with the requirements of the most current and applicable State Workmen's Compensation Insurance Laws.

11. **COMPREHENSIVE GENERAL LIABILITY INSURANCE.** Before commencement of the work, the Contractor shall submit written evidence that he and all his Subcontractors have obtained for the period of the Contract, full Comprehensive General Liability Insurance coverage. This coverage shall provide for both bodily injury and property damage. (The Comprehensive General Liability Insurance will include as Additional Named Insured: The Owner, the Engineer and his consultants; and each of their officers agents and employees).

- A. **Bodily Injury** portion shall include coverage for injury, sickness or disease, and death, arising directly or indirectly out of, or in connection with the performance of work under this Contract, and shall provide for a limit of not less than one million dollars (\$1,000,000) for all damages arising out of bodily injury, sickness or disease to or death of one person, and a total limit of three million dollars (\$3,000,000) for damages arising out of bodily injury, sickness or disease and death of two or more persons in any one occurrence.
 - B. **Property Damage** portion will provide for a limit of not less than that listed below for all damages arising out of injury to or destruction of property of others arising directly or indirectly out of or in connection with the performance of work under this Contract and in any one occurrence including explosion, collapse and underground exposure.
 - 1. Automobile \$1,000,000 per accident
 - C. **Indemnity.** The Contractor shall hold harmless, indemnify and defend the Owner, the Engineer and his consultants, and each of their officers and employees and agents, from any and all liability claims, losses or damage arising or alleged to arise from the performance of the work described herein, but not including the sole negligence of the Owner or the Engineer.
12. **INDEMNITY.** The Contractor shall hold harmless, indemnify and defend the Owner, the Engineer and his consultants, and each of their officers and employees and agents, from any and all liability claims, losses or damage arising or alleged to arise from the performance of the work described herein, but not including the sole negligence of the Owner or the Engineer.
13. **NOTICE TO PROCEED.** Following the execution for the Contract by the Owner and the Contractor, written Notice to Proceed with the work shall be given by the Owner to the Contractor. The Contractor shall begin and prosecute the work regularly and uninterruptedly thereafter with such force as to secure the completion of the work within the Contract time.
14. **MINIMUM WAGE RATES.** In event the contract price written above is amended such that the total contract value exceeds \$24,999.99 for any reason, the Contractor shall be required to be in accordance with Montana Law (Section 18-2-403, M.C.A.). Montana Law (Section 18-2-403, M.C.A.) provides that on contracts of \$25,000 or more for State, County, municipal school construction, heavy highway or municipal construction, repair or maintenance work under any of the laws of the State, the Contractor and Employers shall give preference to the employment of bona fide Montana residents in the performance of said contract, and shall further pay the standard prevailing rate of wages including fringe benefits and travel allowances in effect as paid in the County or locality in which the work is being performed. The provisions of Section 18-2-409, MCA, requires 50 percent of the workers on the project to be Montana residents.

The minimum wages if included as a part of the contract documents, are not controlling except as to the minimum for the purpose of the Davis-Bacon Act; therefore, it is incumbent upon each employer to pay the standard prevailing rate of wages including fringe benefits for health and welfare and pension contributions, and travel allowance provisions in effect and applicable to the County or locality in which the work is being performed. The prevailing wage rate schedule in effect at the time this project is first advertised shall be used throughout the duration of the contract as prescribed in Administrative Rules of Montana (ARM) 24.17.127(1)(c).

"Standard Prevailing Rate of Wages" is defined by Section 18-2-402, M.C.A., as including wages, fringe benefits for health and welfare and pension contributions and travel allowance which are paid in the City or locality by other contractors for work of a similar character performed in the County or locality by each craft, classification or type of worker needed to complete a contract.

In accordance with Montana Law (Section 18-2-422, M.C.A.), each contractor and employer shall maintain payroll records in a manner readily capable of being certified for submission under M.C.A. 18-2-423, for not less than three years after the contractor's or employer's completion of work on this project.

Travel allowance, if applicable, may or may not be all inclusive of "travel" and/or subsistence and travel time due employees. It is incumbent on the employer to determine the amounts due for each craft employed according to the method of computation outlined for each craft where applicable.

To comply with Section 18-2-406, M.C.A., the Contractor performing work or providing construction services, shall post in a prominent and accessible site on the project or staging area, not later than the first day of work and continuing for the entire duration of the project, a legible statement of all wages and fringe benefits to be paid to the employees.

Per Montana Law, (Section 18-2-407, M.C.A.), any contractor, subcontractor, or employer who pays workers or employees at less than the standard prevailing wage as established under the public works contract shall forfeit a penalty at a rate of up to 20% of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs. Money collected under this section must be deposited in the Montana general fund. A contractor, subcontractor, or employer shall also forfeit to the employee the amount of wages owed plus \$25 a day for each day that the employee was underpaid.

Copies of the current prevailing rate of wages may be obtained from the Montana State Department of Labor and Industry, Labor Standards Division, Helena, Montana.

Any infractions of the Laws of the State of Montana covering labor will be forwarded to the State of Montana, Department of Labor and Industry, Labor Standards Division.

15. **CONTRACT TIME.** The Contractor shall complete, in an acceptable manner, all of the work contracted for in the time stated herein. Computation of the Contract Time shall commence on the day following the date the Contractor's Acknowledgement of the Notice to Proceed and every calendar day following shall be counted as Contract Time.
16. **REQUESTS FOR PAYMENT.** The Contractor may submit to the Owner periodically, but not more than once each month a Request for Payment for work done and materials delivered to and stored on the site. The Contractor shall furnish the Owner all reasonable information required for obtaining the necessary data relative to the progress and execution of the work. Payment for materials stored on the site will be conditioned upon evidence submitted to establish the Owner's title to such materials. Each Request for Payment shall be computed on the basis of work completed on all items listed in the Detailed Breakdown of Contract, unit prices, less five percent to be retained until final completion and acceptance of the work and less previous payments.
17. **OWNER'S ACTION ON REQUEST FOR PAYMENT.** Within thirty days after receipt of a Request for Payment from the Contractor, the Owner shall:
 - A. **Pay the Request** for Payment as submitted by the Contractor.
 - B. **Pay such other amount**, in accordance with Paragraph 18 as he shall decide is due the Contractor, informing the Contractor in writing of his reasons for payment the amended amount.
 - C. **Withhold payment** in accordance with Paragraph 18, informing the Contractor of his reasons for withholding payment.
18. **OWNER'S RIGHT TO WITHHOLD PAYMENT OF A REQUEST FOR PAYMENT.** The Owner may withhold payment, in whole or in part, of a Request for Payment to the extent necessary to protect itself from loss on account of any of the following:
 - A. **Defective work.**
 - B. **Evidence indicating** the probably filing of claims by other parties against the Contractor that may adversely affect the Owner.
 - C. **Failure of the Contractor** to make payments due to Subcontractors, material suppliers or employees.

19. **INTEREST ON UNPAID REQUESTS FOR PAYMENT.** No interest will be paid on unpaid requests for payment.
20. **NON-DISCRIMINATION.** All hiring shall be on the basis of merit and qualification and there shall be no discrimination in employment on the basis of race, ancestry, color, physical or mental disability, religion, national origin, sex, age, marital or familial status, creed, ex-offender status, physical condition, political belief, public assistance status, sexual orientation or gender identity/expression, except where these criteria are reasonable bona fide occupational qualifications.
21. **AFFIRMATIVE ACTION POLICY.** Contractors, subcontractors, sub grantees, and other firms doing business with the City of Missoula must be in compliance with the City of Missoula's Affirmative Action Plan, and Title 49 Montana Codes Annotated, entitled "Human Rights" or forfeit the right to continue such business dealings.

The City's Affirmative Action Policy Statement is:

The Mayor of the City of Missoula or the Mayor's designee may adopt an affirmative action plan to provide all persons equal opportunity for employment without regard to race, ancestry, color, handicap, religion, creed, national origin, sex, age, sexual orientation, gender identity or expression or marital status. In keeping with this commitment, we are assigning to all department heads and their staff the responsibility to actively facilitate equal employment opportunity for all present employees, applicants, and trainees. This responsibility shall include assurance that employment decisions are based on furthering the principle of equal employment opportunity by imposing only valid requirements for employment and assuring that all human resource actions are administered on the basis of job necessity.

Specific responsibility for developing, implementing, monitoring and reporting are assigned to the City Personnel staff under the supervision and direction of the Chief Administrative Officer and the Mayor.

It is the policy of the City of Missoula to eliminate any practice or procedure that discriminates illegally or has an adverse impact on an "affected" class. Equal opportunity shall be provided for all City employees during their terms of employment. All applicants for City employment shall be employed on the basis of their qualifications and abilities.

The City of Missoula, where practical, shall utilize minority owned enterprises and shall ensure that subcontractors and vendors comply with this policy. Failure of subcontractors and vendors to comply with this policy statement shall jeopardize initial, continued, or renewed funds.

Our commitment is intended to promote equal opportunity in all employment practices and provide a positive program of affirmative action for the City of Missoula, its employees, program participants, trainees and applicants.

END OF GENERAL CONDITIONS

EXHIBIT 3

NEW CONCEPT COATINGS, INC.

P.O. Box 16205
Missoula, Montana 59808-6205
Phone (406) 540-4455 Fax (406) 540-4129

2023 FALL BUDGET PRICING PROPOSAL

SILVER PARK

TO: MISSOULA PARKS AND RECREATION

Attn: Mark Honken
Via email: honkenm@ci.missoula.mt.us

Scope of Work: Painting

DESCRIPTION	ALTERNATES	BASE BID
Exterior: Pressure wash clean. Apply stain and/or anti-graffiti.		
Picnic shelter.		\$ 6,000.00
Bath and pump house.		\$ 4,500.00
River structure (3).		\$ 4,800.00
Big Picnic area.		\$15,500.00

All material is guaranteed to be as specified in submittals. All work to be completed in a timely, professional, workmanlike manner and according to standard industry practices. Any alteration or deviation from written and agreed to specifications involving extra costs are to be executed only upon written change orders and will become an extra charge over and above the estimate.

Dated: May 25, 2022

NEW CONCEPT COATINGS, INC.

By: John Darrow, Owner

Montana Contractors License #54281

EXHIBIT 4

NEW CONCEPT COATINGS, INC.

P.O. Box 16205
Missoula, Montana 59808-6205
Phone (406) 540-4455 Fax (406) 540-4129

2023 FALL BUDGET PRICING PROPOSAL

FORT MISSOULA REGIONAL PARK PAVILLON

TO: MISSOULA COUNTY PARKS AND RECREATION

Attn: Mark Honken
Via email: honkenm@ci.missoula.mt.us

Scope of Work: Painting

DESCRIPTION	ALTERNATES	BASE BID
Exterior: Pressure wash clean. Apply stain and/or anti-graffiti.		
<u>Pavillion</u>		\$21,600.00
Overlook		\$ 2,700.00
Meadowlark		\$ 7,200.00
Tennis courts		\$ 4,725.00
Concession building. Not needed.		

All material is guaranteed to be as specified in submittals. All work to be completed in a timely, professional, workmanlike manner and according to standard industry practices. Any alteration or deviation from written and agreed to specifications involving extra costs are to be executed only upon written change orders and will become an extra charge over and above the estimate.

Dated: May 25, 2022

NEW CONCEPT COATINGS, INC.

By: John Darrow, Owner

Montana Contractors License #54281