



JANITORIAL • MAINTENANCE • REPAIR

HOA Services

Community Maintenance Services, Inc.
12178 SW Garden Place, Tigard, OR 97223
(503) 620-8386
office@hoafixit.com
OR CCB: 208889
WA CCB: CC Commums842JQ

TERMS AND CONDITIONS Effective January 1, 2021

1. **Agreement.** Community Maintenance Services, Inc. dba HOA Services (“Company”) agrees to provide certain labor, materials, and/or other services to you (“Client”) under the terms and conditions set forth herein (the “Terms”). By requesting, authorizing, or otherwise engaging Company in any form, Client expressly acknowledges and agrees to these Terms.
2. **Scope and Price.**
 - 2.1. *Scope.* Unless otherwise agreed to in writing, Company shall provide certain labor, materials, and/or other services (the “Work”) at the direction of Client. Oral direction by Client is sufficient to authorize Company to proceed with the Work and to bind Client to payment as set forth in this Section.
 - 2.2. *Price.* Unless otherwise agreed to in writing, Company shall be entitled to compensation in the form of its actual costs directly attributable to the Work, including equipment, subcontractors, and material at cost plus 15% mark-up. As well as labor costs (based on the labor rates in Exhibit A).
 - 2.3. *Estimates.* Company may, at the request of Client, provide an estimate for the Work. But, unless expressly agreed to in writing and signed by the parties, the estimate shall not constitute a lump sum or guaranteed maximum price, and Client agrees to pay for the Work in accordance with Section 2.2 above.
 - 2.4. *Unforeseen Conditions and Impacts.* In the event Company agrees to perform the Work for a lump sum amount, to the extent that the Company incurs additional costs in performance of the Work due to changes requested by Client, unforeseen conditions, or other impacts for which the Company is not responsible, Company shall be entitled to additional compensation in accordance with Section 2.2 above. Company’s failure to

notify or receive approval for additional costs shall not impact Company's right to compensation under this Section.

- 2.5. *Time for Performance.* Unless otherwise agreed to in writing, time is not of the essence for performance of the Work. Company agrees to perform the Work in a reasonable amount of time following Client's direction.

3. Payment Term.

- 3.1. *Invoices.* Company shall invoice Client either on a weekly or monthly basis or on completion of the Work, whichever occurs first. If the Work is performed on a time and material basis, Company shall invoice for its actual costs (labor, material, and mark-up) already incurred. If the Work is performed on a lump sum basis, Company shall invoice Client based on percentage of the Work completed. Invoices are due upon receipt.
- 3.2. *Interest.* Invoices not paid within 30 days after receipt will be assessed interest at a rate of 2% per month, or 18% per annum, compounded monthly, as well as any administrative costs incurred by the Company.
- 3.3. *Third Parties.* Unless otherwise agreed to in writing and signed by the parties, Client's obligations to make payments under this Section are not conditioned on Client receiving funds from any third-party, including without limitation any insurance company. Client expressly agrees to pay for the Work, regardless of any potential reimbursement by any third-party.

4. Client Responsibilities.

- 4.1. *Access.* Client is responsible for providing access necessary to perform the Work unhindered in all locations during normal work hours, or as otherwise agreed by the parties.
- 4.2. *Site Facilities.* Client shall furnish all site facilities necessary to perform the Work, including water and electrical power.
- 4.3. *Design Documents.* To the extent the Work requires compliance with any plans, specifications, drawings, or other similar design documents furnished by Client (collectively the "Design Documents"), Client warrants the accuracy and constructability of the Design Documents. Company shall have no responsibility whatsoever for errors, omissions, flaws or defects in the Design Documents.

5. Client Representations.

- 5.1. *Authority.* By requesting, authorizing, or otherwise engaging the Company in any form, Client represents that Client has authority to authorize the Work on behalf of the property owner.
- 5.2. *Residential Construction.* To the extent the Work involves construction work subject to ORS 701.330, *et seq.*, Client represents that Client has received and reviewed the statutory notices set forth in Exhibit B.

6. Limited Warranty on Construction

- 6.1. *One-year Warranty Construction.* Only to the extent that Company performs Work as a contractor that is (i) within the definition set forth in OAR 812-002-0760; (ii) subject to ORS 701.002, *et seq.*; and (iii) in excess of \$2,000 in value (hereafter "Construction Work"), Company warrants to Client that the Construction Work will be free from defects in workmanship and materials for a period of one year beginning on the date of completion ("Warranty Period"). This limited warranty only applies to Construction Work performed by the Company and does not apply to other services provided by the Company, including without limitation, janitorial services, regular maintenance, and small repair work (including without limitation, roof patching and targeted repairs). Company will assign all warranties provided by third-party manufacturers, suppliers, or distributors, if any and as permitted, and, in such case, such third-party warranties will be Client's sole and exclusive remedy with respect to such items.
- 6.2. *No Other Warranties.* EXCEPT FOR THE LIMITED WARRANTY SET OUT IN THIS SECTION, COMPANY MAKES NO OTHER WARRANTY WHATSOEVER WITH RESPECT TO THE WORK AND THIS LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES. THE COMPANY FURTHER LIMITS THE DURATION AND REMEDIES OF ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS TO A PARTICULAR PURPOSE, TO THE DURATION OF THE EXPRESS LIMITED WARRANTY IN THIS SECTION. NO EMPLOYEE OF THE COMPANY HAS AUTHORITY TO BIND THE COMPANY OR TO MAKE WARRANTIES OR REPRESENTATIONS UNLESS THE SAME ARE IN WRITING AND SIGNED BY AN OFFICER OF THE COMPANY.

7. **Limitation of Liability.** THE TOTAL LIABILITY OF THE COMPANY AND COMPANY'S AFFILIATES, IF ANY, FOR ANY CLAIMS, LOSSES, COSTS, OR DAMAGES WHATSOEVER ARISING OUT OF, RESULTING FROM OR IN ANY WAY RELATED TO THE WORK OR THESE TERMS FROM ANY CAUSE WILL NOT EXCEED THE AGGREGATE PAYMENTS COMPANY RECEIVED FOR THE WORK

GIVING RISE TO THE CLAIM OR FOR ANY CLAIM ASSERTED IN AN ACTION FILED AGAINST COMPANY OR COMPANY'S AFFILIATE MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION AROSE. IN NO EVENT WILL COMPANY BE LIABLE TO PURCHASER OR TO ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, EXEMPLARY, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND.

8. Indemnity. To the fullest extent permitted by law, Client shall defend, indemnify and hold harmless Company from and against all claims, damages, losses and expenses, including attorney fees, arising out of or resulting from the Work, to the extent caused in whole or in part by any act or omission of Client or anyone directly or indirectly employed by Client or anyone for whose acts it may be liable, regardless of whether it is caused in part by Company.

9. Termination.

9.1. *Notice.* Client may terminate its agreement with Company with or without cause, by giving written notice to Company. Upon receipt of such notice, Company shall immediately stop the Work.

9.2. *Notice.* Client and Company may each terminate its Maintenance/Janitorial Service Agreement by providing the other party with thirty (30) days written notice to the address listed in the signature blocks below. Termination shall in no way alter or limit the rights of either party with respect to any pending or future claim or dispute.

9.3. *Compensation.* If Client terminates its agreement with Company for any reason, Company shall be entitled to its actual costs incurred through the date of termination, including equipment, subcontractors, and material at cost plus 15% mark-up. As well as labor costs (based on the labor rates in Exhibit A).

10. General Provisions

10.1. *Arbitration.* All disputes, claims, and controversies arising from or relating to the Work or these Terms shall be submitted to final and binding arbitration administered by Arbitration Services of Portland in accordance with its then current rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

10.2. *Integration.* Unless modified in writing and signed by both parties, these Terms contain the complete and final agreement between the parties and supersede any other oral or written agreements between the parties on the same subject matter.

10.3. *Attorney Fees.* In any action related to or arising from the enforcement or interpretation of these Terms or the Work, including, but not limited to, arbitration and litigation, the prevailing party shall be entitled to recover all legal fees, expert witness fees, deposition costs and expenses, eDiscovery expenses, and court costs and expenses from the other Party.

10.4. *Jurisdiction and Venue.* Parties unconditionally and irrevocably agree to submit to jurisdiction of any court sitting in the County where the Work is performed and waive any defense of *forum non conveniens* or improper venue.

10.5. *Severability.* If any provision in these Terms is found to be unenforceable, that will not invalidate the remainder of these Terms.

11. Non-Interference

Client agrees not to approach, solicit, hire or retain in any capacity, either directly or indirectly, any Company employee or contractor during the term of this Agreement, or for a period of twelve (12) months after to the termination of this Agreement.

CLIENT STATES THAT THEY HAVE READ CAREFULLY THE ABOVE AGREEMENT, IN ITS ENTIRETY, KNOWS AND UNDERSTANDS ALL OF ITS CONTENTS, AND SIGNS THIS AGREEMENT WILLINGLY. CLIENT ACKNOWLEDGES THEY ARE AWARE THAT THE REFERENCED TERMS ARE A PART OF THIS AGREEMENT AND CLIENT HAS READ THEM FULLY AND UNDERSTANDS ALL OF THEIR CONTENTS AND SIGNS THIS AGREEMENT WILLINGLY.

CLIENT

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By _____

By _____

Title _____

Name _____

Date _____

Date _____