



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, 2023**

- 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 costs for subcontractors, materials, equipment rental, and labor (based on the labor rates in effect at the time of the Work), plus 15% mark-up on all of the foregoing costs (including labor) for general conditions, overhead, and profit (the “Price”).
  - 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, 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 on Construction Work.* If Company performs Work 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, small repair work (including without limitation, roof patching), and Partial Repairs (defined below).
- 6.2. *Third-Party Warranties.* 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.
- 6.3. *Extended Warranties.* If requested by Client, Company may, in its sole discretion, provide an extended warranty for some or all of the Work if Company determines that the scope of the Work requested by Client is extensive enough to allow Company to ensure the performance of the Work for the extended warranty period and if the Price is adjusted to reflect the additional risk to Company in providing the extended warranty.
- 6.4. *No Warranties for Partial Repairs.* To the extent the Company performs Work that is intended to be a partial repair to provide temporary or interim relief from damages that are the result of a larger issue with the Property, which would otherwise require substantially more Work to repair completely, identified by Company as “Interim” or “Partial” repair work in the invoice or other correspondence with Client (hereafter “Partial Repairs”), Company makes no warranty whatsoever with respect to the Partial Repair work. Company does not represent or warrant, but rather expressly disclaims that the Partial Repairs will meet the Client’s needs or requirements, will prevent water intrusion, or otherwise prevent future damages.

Client expressly acknowledges that (i) the Partial Repairs do not constitute a complete repair; (ii) as requested by Client, the Partial Repairs are intended as an interim and partial repair and that a more extensive repair will be required in the future; (iii) that the Company has not performed any investigation into the root cause of any damages that are the subject of the Partial Repairs; (iv) the Partial Repairs are not intended to correct deficiencies in the Property that may have caused the damage; and (v) Client understands that the lack of warranty being provided is reflected in the Price to perform the Partial Repairs.

6.5. *No Oral Representations or Warranties.* 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. 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 for, from and against all claims, damages, losses and expenses, including attorney fees, arising out of or related to 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. *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 material, equipment, and labor costs (based on the labor rates in Exhibit A), plus 15 % percent mark-up.

## 10. General Provisions

- 10.1. *Labor Rates.* Hourly labor rates are reviewed periodically, usually once a year, to reflect current levels of experience, changes in overhead costs, and other factors. Hourly rates may be changed by the Company without prior notice to Client. A current rate schedule is available upon request.
- 10.2. *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.
- 10.3. *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.
- 10.4. *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.
- 10.5. *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.
- 10.6. *Severability.* If any provision in these Terms is found to be unenforceable, that will not invalidate the remainder of these Terms.