

TERMS AND CONDITIONS

1. **Payment Terms.** The Owner/Contractor agrees to pay Mays Construction Specialties, Inc. (MCSI) for all amounts due for work performed under this Agreement. Owner/Contractor agrees to pay a **FINANCE CHARGE OF 2% PER MONTH / 24% PER ANNUM**, on all sums due and owing per proposal for the work under this Agreement. Owner/Contractor shall also be required to pay to MCSI all attorney fees and costs incurred to collect sums due to MCSI under the terms of this Agreement, whether actual litigation is commenced or not. No warranty work shall be performed by MCSI until Owner/Contractor has paid all amounts due under this Agreement. Failure to pay all amounts due under this Agreement in a timely manner shall void the express warranty provided below. The Owner/Contractor acknowledges that payment for work performed under this Agreement is due when complete, and MCSI is under no obligation to await payment from any insurance company obligated to reimburse Owner/Contractor for the work performed under this Agreement.
2. **Work Performed.** Owner/Contractor acknowledges that the anticipated work involves uncertainties regarding the exact work to be performed. MCSI may encounter unexpected and unanticipated conditions underground and under existing concrete sidewalks, slabs and foundations. Owner/Contractor hereby agrees to pay for all labor, materials and costs which are required to complete the anticipated work and to pay for all additional labor, materials and costs resulting from unexpected conditions. MCSI, however, shall, as soon as reasonably possible, advise Owner/Contractor of all unexpected and unanticipated conditions encountered and shall, if possible, provide Owner/Contractor with a summary of such conditions and an estimate of the additional labor, materials and costs. A written change order signed by both parties shall be required to approve changes to the work, additions thereto and costs associated with the changes. Owner/Contractor may terminate this Agreement upon Owner/Contractor's review of MCSI's estimate of extra labor, materials and costs needed to complete the work, provided that Owner/Contractor shall pay MCSI for all labor, materials and costs originally agreed to under this Agreement, plus actual labor, materials and costs incurred in excess of the originally estimated amount, through the date on which Owner/Contractor gives MCSI written notice to stop work under this Agreement.
3. **Warranty and Disclaimers.** Owner/Contractor acknowledges that unknown soil, underground conditions and other unknown conditions involving existing concrete and other improvements in the vicinity of the anticipated work can and probably will affect and be effected by the anticipated work. Because of these unknown conditions, the parties agree that MCSI shall not be responsible for damages, including cracks, heaving, swelling or settling in floors or walls, which might appear in any improvements in the vicinity of the anticipated work. MCSI shall also not be responsible for any damage to existing utilities, or other damage which occur as a consequence of the work. **MCSI expressly warrants that the work performed under this Agreement shall be free of defects in materials and workmanship for a period of one (1) year from the date work under this Agreement is complete. This warranty and any damages arising from the work performed under this Agreement shall be limited to the dollar amount paid by Owner/Contractor to MCSI under this Agreement. The warranty shall be solely for the benefit of Owner/Contractor and shall not be transferable or for the benefit to any third party. MCSI expressly disclaims and Owner/Contractor expressly waives and releases MCSI from all claims for any express or implied warranties of any kind or nature concerning the work, including but not limited to any express or implied warranty of habitability, workmanlike construction and compliance with applicable building codes, except to the extent of and subject to the provisions of the express warranty set forth in this Agreement. The above Express Warranty is expressly intended to be in derogation of any other express or implied warranty. Owner/Contractor expressly waives any claim to and MCSI shall not be liable for any special, consequential or indirect damages arising from the work under this Agreement. All warranty rights are in consideration of your timely and full payment of all sums due under this contract, and such timely and full payment to MCSI is an express condition precedent to MCSI obligation to honor warranty claims.**
4. **Insurance.** Owner/Contractor shall maintain fire, hazard, accident and other liability insurance, upon the premises where the work is being performed, which is acceptable to MCSI, and shall provide copies of such policies and certificates of insurance, if requested. MCSI shall maintain workers' compensation and liability insurance.
5. **Damage to Improvements:** MCSI shall not be responsible for any damage to or destruction of flooring materials, sidewalks, curbing, landscaping, plantings or other improvements that may be removed or which must be disturbed in order to allow MCSI to perform the work contemplated by this Agreement, and MCSI shall not be obligated to replace or reinstall such improvements unless provided in this Agreement.
6. **Force Majeure:** Owner/Contractor shall not be required to perform any term, condition or covenant in this Agreement so long as such performance is delayed or prevented by force majeure, which shall mean Acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods and any other cause not reasonably within the control of MCSI or Owner/Contractor, and which, by the exercise of due diligence, MCSI or Owner/Contractor is unable, wholly or in part, to prevent or overcome.
7. **Authority.** Owner/Contractor, by executing this Agreement, confirms that Owner/Contractor has full power and authority to agree to the terms of this Agreement on behalf of all Owners of the property as owner's agent and further agrees to pay all amounts due in the event of non-payment by Owner(s) pursuant to the terms of this Agreement.

These Terms and Conditions are an integral part of **Proposal # JM-MP23-007, dated January 9th, 2023** as shown on the front page of the Proposal.

Owner/Contractor Initials _____ **Date** _____

MCSI Initials _____