

## TERMS AND CONDITIONS

1. The pricing listed herein will be subject to change 30 days after the proposal date. If there are significant increases in the prices that Elevated Concrete Solutions LLC ("ECS") pays for materials and supplies for the Work to be performed between the date the Proposal is signed and the date that materials are purchased for the work to be performed, ECS shall be entitled to additional compensation from Customer as described herein. This Proposal will expire in 30 days if not accepted and signed by an authorized representative of Customer and returned to ECS within 30 days of the date listed herein. No attempted acceptance which varies or adds to the terms and conditions stated herein shall be effective, and any such counter-proposal, whether in the form of a purchase order, modification of this Proposal, or otherwise, shall be deemed rejected.
2. The Contract Amount plus any applicable sales, use or similar taxes, any set-up charges, any processing fees, and any aforementioned mobilization charges shall be invoiced and are due and payable in full upon completion of the Work.
3. Customer understands that Customer's failure to pay ECS's billings on time (Net 30\*) will result in ECS taking all action necessary to secure payment, including sending Customer and property owner lien notices, filing a mechanic's and materialman's lien or a constitutional lien, and filing a lawsuit, the jurisdiction of which is Harris County, Texas.
4. Interest shall accrue at the rate of 1-½ % per month on any unpaid balance due commencing ten (30) days after the invoice date until the date of payment. Notwithstanding anything to the contrary in this Proposal, the aggregate of all interest contracted for, charged, or received under this Proposal shall not exceed the maximum amount of interest allowed by applicable law, and any excess shall be credited to Customer. Customer shall reimburse ECS for any and all attorneys' fees incurred to collect any past due invoice.
5. ECS shall perform the Work in accordance with the drawings and specifications, including any necessary design and engineering, provided by Customer. ECS is not responsible for any defects or deficiencies in design, engineering, drawings or specifications
6. ECS shall not be obligated to perform any changes in the Work absent a written Change Order agreed to and executed by Customer and ECS, describing in detail the change in the Work and any resulting adjustment of the Contract Amount.
7. All measurements are approximate. Customer shall provide any soil testing, geotechnical reports, design, engineering, drawings and specifications necessary for proper performance of the Work.
8. Customer shall provide any and all permits, surveys, benchmarks, and staking necessary for proper performance of the Work.
9. Customer shall provide ECS with any and all information known or available to Customer regarding latent or underground utilities, obstructions, or conditions at the site of the Work, including but not limited to buried lines, cable, pipe or utilities (electrical, gas, water, sewer, fiber optic, or other), rock, soil conditions, ground water, contaminants or hazardous materials. ECS is not responsible for any damages

to or arising out of or related to any such undisclosed latent or underground utilities, obstructions, or conditions at the site of the Work, including but not limited to any interruption of service.

10) Buyer is responsible for locating, through One Call service and/or such other investigations as necessary, any and all underground water lines, storm and sanitary sewer lines, sprinkler systems, sump pump discharge lines, electrical lines, cables and other utilities in the vicinity of the work to be performed by ECS (collectively hereafter "Utilities"), and identifying and flagging or otherwise clearly marking the locations of such Utilities for ECS, prior to commencement of the work. Buyer warrants and represents that all such Utilities shall be properly located and clearly marked, and ECS may rely upon the accuracy and completeness of all such information provided by Buyer. Buyer waives and releases any and all rights, claims and causes of action against ECS arising out of or related to any damage to or destruction of any such utilities not properly located and clearly marked by buyer. Buyer agrees to and shall defend, indemnify and hold harmless (collectively "indemnify") ECS, its directors, officers, agents, and employees (collectively the "indemnified parties" or individually an "indemnified party") from and against any and all claims, losses, damages, demands, judgments, causes of action, suits, and liability of every kind, including but not limited to all expenses of litigation, court costs and attorney's fees (collectively "claims"), for damages to or destruction of utilities, including the loss of use thereof, actually or allegedly occasioned by, contributed to or arising out of, in whole or in part, the work, the performance of the work, or this contract, including but not limited to claims occasioned by, contributed to or arising out of, in whole or in part, the negligence, gross negligence, breach of warranty, breach of contract, violation of any statute, rule or regulation or other act or omission by buyer, its employees, agents or any other contractor of buyer, or their respective agents or employees, or any other party for whose acts buyer is liable. Buyer's obligation to indemnify shall apply even if such claims are actually or allegedly caused in whole or in part by the strict liability or the acts, omissions, or negligence of an indemnified party, even if such negligence or other acts or omissions are active or passive, direct or indirect, sole or concurrent. This indemnity agreement is intended to indemnify the aforementioned indemnified parties from the consequences of their own negligence, as provided above. Notwithstanding the foregoing, if subchapter c of chapter 151 of the Texas Insurance Code applies to the contract, this indemnity provision shall not apply to the extent that it requires buyer to indemnify an indemnified party against a claim caused by the negligence or fault, the breach or violation of a statute, ordinance, governmental regulation, standard, or rule, or the breach of contract of the indemnified party, its agent or employee, or any third party under the control or supervision of the indemnified party.

11. Customer shall provide ECS with unrestricted access to the site of the Work. Customer shall compensate ECS for any demobilization, remobilization, trip charges, standby charges, or other costs incurred if unrestricted access to the site of the Work is not available as scheduled.

12. ECS shall be entitled to an extension of time to perform the Work if the Work or any part thereof is delayed, disrupted, hindered or interfered with due to acts or omissions of Customer or the owner of the property or any of their respective contractors, adverse weather conditions, flooding, named storm, or other Acts of God, or any other cause beyond ECS's reasonable control.

13. Customer shall provide ECS with written notice of any alleged default hereunder within three (3) days of the occurrence of the alleged default, and ECS shall have a reasonable period of time and no less than ten (10) days to cure or commence and diligently pursue cure of any default hereunder.

14. These Proposal Terms and Conditions, as well as the scope of Work, specifications, conditions, and prices set forth above, are accepted, adopted and incorporated into any subsequent agreement related to the Work herein and shall survive and supersede any subsequent agreement. No subsequent agreement shall supersede or alter this Proposal unless it is made in writing, signed by both ECS and the Customer, and explicitly identifying this Proposal and the language to be altered or superseded.

15. ECS shall not be responsible or liable for, and Customer hereby waives any and all rights, claims or causes of action for consequential, indirect or special damages arising out of or related to any breach of this agreement.

16.) Proper landscaping, soil moisture content, and joint seals must be properly maintained to protect concrete raised or replaced, and ECS is not responsible for, and buyer waives and releases any and all claims for, concrete movement and/or damages arising out of or related to buyer's failure to properly maintain proper landscaping, soil moisture content, and/or joint seals.

17. The total cumulative, aggregate liability of ECS and their respective officers, directors, shareholders, employees, agents, affiliates, subsidiaries, partners and vendors of any tier to Customer and its officers, directors, shareholders, employees, agents or affiliates for all claims, losses, liabilities, damages, costs, and expenses ("Claims") arising out of or relating in any way to this Proposal (including any change order) and/or to the performance of any of ECS's obligations shall be limited to actual damages not to exceed the Contract Amount under the Proposal from which the Claim arose.