



**CONSTRUCTION CONTRACT FOR LANDSCAPING SERVICES**

This Construction Contract for Landscaping Services (“Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between Big Rock Landscaping & Design, Inc., a Utah corporation (“Contractor”) and \_\_\_\_\_ (“Owner” or “Customer”), who is the fee title owner of the Premises where the work of this Agreement is to be performed, or the authorized agent of such owner.

Contractor and Owner hereby agree to the following terms, conditions and covenants.

1. Owner’s Information. Owner hereby certifies that Owner is \_\_\_\_\_ the owner of a fee simple title in the land upon which the work of this Agreement is to be performed (“Premises”), or is an authorized agent of the owner of such fee simple title. Owner’s contact information is set forth below:

- a. Name:
- b. Business Name:
- c. Address for Billing and Notices:
- d. Phone:
- e. Email address:

Owner agrees that if any changes occur in the foregoing contact information, Owner will give Contractor timely notice of such changes and provide current contact information during the Term of this Agreement.

2. Description of the Premises. The Premises is located in \_\_\_\_\_ County, State of Utah, and the address or property description of the Premises is: \_\_\_\_\_

\_\_\_\_\_. The Premises (including multiple lots or parcels the Work is anticipated to be on or affect such multiple parcels) is identified by the following tax parcel identification number(s):

\_\_\_\_\_. If Owner obtains the building permit for the Work which is the subject of this Agreement, Owner shall within a reasonable time, not more than 15 days, provide to Contractor a copy of the building permit.

3. Owner’s Representations. Owner represents and warrants as follows:

- a. that the party identified as Owner above is the holder of fee simple title in and to the property described herein as the Premises;
- b. that Owner has the right and authority to enter into this Agreement;
- c. that there are no claims or assertions of rights by any third party to this Agreement, including claims of prescriptive or other easements across or affecting the Premises that would in any way interfere with Owner’s right to enter into this Agreement or with the Work to be performed hereunder; and
- d. that none of the real property on which the Work is to be performed, including facilities or properties currently located on the real property, contains or previously contained, any hazardous materials in amounts or concentrations or under circumstances that constitute or constituted a violation of, or could result in liability under, any applicable environmental law.

4. Contract Documents. The Contract Documents consist of this Agreement, as well as any drawings, plans, specifications, materials lists, estimates or quotes, and addenda to any of the foregoing, issued or provided prior to the execution of this Agreement and signed by Owner, and any Change Orders agreed to by the parties during the Term of this Agreement. Any additional documents included within the Contract Documents are listed separately as follows:

\_\_\_\_\_. The Contract Documents constitute the entire agreement between the Contractor and the Owner, and are all incorporated in and made a part of this Agreement as if attached to or repeated in this Agreement.

5. Description and Scope of the Work. Contractor shall furnish all the materials and perform all the work on the Premises described in any estimate of the contract price and in any drawings, plans, specifications or materials lists made part of the Contract Documents. The estimate(s) will be used as the basis for determination of the initial contract price.

6. Work Not Covered by This Agreement. The parties agree that the following items and categories of work are not covered by this Agreement, unless provided for specifically hereunder:

- a. Weed clearing, or grow kill cycle treatments;
- b. Import or export of soil or placement of soil;

- c. Drain work or site amenities;
- d. Demolition or removal of existing structures;
- e. Placement of water or power meters, or pump systems;
- f. Concrete cutting, patching or removal;
- g. Provision of power, water or irrigation to Premises, such are to be supplied by Owner;
- h. Hand watering of plants and vegetation;
- i. Control of deer, gophers, moles or rodents.

7. Additional Terms and Conditions. Owner and Contractor agree to the following additional terms and conditions of this Agreement:

- a. Owner shall be liable for all damage done by animals, including domesticated or wild animals;
- b. The Final Contract Price shall be increased by Contractor's reasonable additional expenses, costs and profit if Contractor encounters subsurface rock obstructions or conditions which increase the cost of the Work;
- c. The Final Contract Price shall be increased by Contractor's reasonable additional expenses, costs and profit if work is suspended for more than one week to compensate for mobilization and related expenses;
- d. Contractor does not guarantee seed germination in non-irrigated areas, nor does it guarantee plant survival or growth in non-irrigated areas;
- e. Owner shall furnish at Owner's cost (i) necessary or helpful surveys; (ii) permits, fees and licenses, excepting Contractor's license; (iii) water and power at a point of connection to be supplied by Owner;
- f. If required, Owner shall provide at Owner's cost a landscape architect or engineer;
- g. Contractor shall be responsible for repair of underground utilities and lines only when such utilities and lines have been marked or designated, and shall not be responsible for unknown utilities or lines;
- h. Contractor does not warranty against loss due to theft or vandalism.

8. Time of Commencement and Completion of Work. The Work to be performed under this Agreement shall begin within one week of \_\_\_\_\_, 20\_\_\_\_\_, and barring inclement weather, material shortages, acts of God ("Force Majeure"), or other circumstances reasonably beyond Contractor's control, will be substantially completed on or before \_\_\_\_\_, 20\_\_\_\_\_. The time of commencement or substantial completion of the Work may be modified, but only by in writing, signed by both parties.

9. Contract Price. The parties agree that the Owner shall pay Contractor a the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) for the labor, equipment use and rental, plants, materials and supplies to be performed or provided under this Agreement ("Initial Contract Price"). In addition to the Initial Contract Price, Owner shall pay to Contractor any additional amounts specified and provided for pursuant to any Change Order(s) approved by the parties, plus an additional amount for Contractor's time spent consulting or meeting with Owner's architect or engineer at the rate of \$100 per hour, together with any interest accrued on any amount not timely paid, pursuant to paragraph 11 herein ("Final Contract Price").

10. Method and Timing of Payment. Owner agrees to pay the Initial Contract Price as follows:

- a. At the execution of this Agreement, Owner shall pay to Contractor a sum equal to 10% of the Initial Contract Price or Two Thousand Dollars (\$2,000.00), whichever is greater, in cash, check or certified funds. This payment shall be nonrefundable and, in the event of a cancellation or termination by Owner of this Agreement prior to the Contractor performing work or providing materials and supplies having a value equal to this payment, shall be considered a mobilization fee.
- b. At the commencement of Work, Owner shall pay to Contractor a sum equal to 50% of the Initial Contract Price in cash, check or certified funds.
- c. In the event any Change Order(s) is/are approved by both the Owner and Contractor, the full amount of the Change Order shall be paid by Owner at the time the Change Order is approved, and such payment shall be a condition precedent to Contractor's obligation to perform the work or supply the materials called out in the Change Order.
- d. At the time Contractor notifies Owner that the Work is substantially completed, Owner shall pay to Contractor 25% of the Initial Contract Price, plus any unpaid amounts on Change Orders that have not been paid in full.
- e. At the time the Work is fully completed, as certified by Contractor, including any reasonable "punch list items" provided by Owner within ten (10) days following Contractor's certification of completion, Contractor shall provide to Owner an invoice showing the Final Contract Price and the amount remaining to be paid. Owner shall immediately upon receipt of such invoice pay to Contractor the entire unpaid balance of the Final Contract Price. Owner's obligation for payment of the Full Contract Price shall be deemed late and in breach of this Agreement if not paid within seven (7) calendar days following Contractor's delivery of the invoice, and shall begin to accrue interest from the date of Contractor's delivery of the invoice, pursuant to paragraph 11.
- f. Owner's payment of the Final Contract Price in full, shall constitute Owner's waiver of any and all claims against Contractor pertaining to or arising out of Contractor's Work and this Agreement.
- g. Upon receipt of Owner's payment of the Final Contract Price in full, Contractor shall waive any and all claims and lien rights, except and unless Contractor has filed liens, submitted claims for mediation hereunder, or filed legal action in which case the claims of the Contractor shall not be waived by Owner's payment and shall be independently resolved by agreement or adjudication.

11. Financing and Security Agreement. Upon Owner's request and in Contractor's sole discretion, Contractor may provide financing to Owner for all or any part of the Initial Contract Price, Change Order price, and/or Final Contract Price. If any such financing is provided, it should be documented in a Revolving Loan Promissory Note, signed by Owner as Borrower, in the form attached hereto as Exhibit "A" ("Financing Addendum"), which specifically references the parties' agreement for Contractor financing under this paragraph, the amount of financing to be provided, and terms of repayment. In the event Owner fails to make any of the payments required by paragraph 10 on time or in the amount required, the parties agree that Contractor shall be deemed to have loaned or financed, and Owner shall be deemed to have borrowed, the amount that is unpaid or underpaid and interest on the terms set forth in the Revolving Loan Promissory Note attached hereto as Exhibit "A", and the signature of the Owner at the end of this Agreement shall be deemed to be the signature of the Owner as the Borrower on the attached Revolving Loan Promissory Note. At Owner's option, Contractor will accept payment of any the foregoing required payments, or portions thereof, in the form of a credit card payment; however, in such event Owner shall add an amount equal to the sum of three percent (3%) to each credit card payment as a financing charge.

12. Contractor's Lien Rights. Contractor intends to exercise all lien rights available to Contractor under the law of the State where the Premises are located. With respect to Work performed on Premises located in the State of Utah, Contractor intends to exercise all rights available under Title 38, Utah Code Annotated, and specifically under UCA 38-1a-101, et seq., to secure through lien the payment of all services rendered which can be identified as preconstruction service

as that term is defined in UCA 38-1a-102(28), and for all services or work rendered as construction work, as that term is defined in UCA 38-1a-102(11). Owner understands that in asserting and protecting its rights under the foregoing law, Contractor will file applicable notices and/or actions relating to preconstruction liens and/or construction liens with the State Construction Registry, the County Recorder's Office, or the Court, where appropriate. Owner acknowledges and the parties agree that if Owner cancels or terminates this Agreement prior to the commencement of Work, the payment required by paragraph 10.a. is for preconstruction service.

13. Changes in the Work. Owner may request changes in the nature or scope of the Work, i.e., for additions, deletions, or modifications, including both changes in the labor provided and materials supplied, without invalidating the Agreement; however, Owner agrees that for each such requested change in the Work, Contractor shall provide a Change Order to be signed by both parties, which shall set forth a specific price for each Change Order, and Owner shall pay the full price of each Change Order before Contractor begins the work or provides the materials called for in the Change Order. Owner shall increase the Final Contract Price to reflect the additional labor, materials, supplies, equipment and profit caused or generated by the approved Change Order(s), and may extend the date of substantial completion by the delay reasonably caused by the Change Order, as calculated by Contractor. Any adjustment in the Final Contract Price and time of substantial completion shall be determined by mutual agreement of the Owner and Contractor before Contractor is obligated to start the work involved in the requested change. Neither Contractor nor Owner shall withhold its agreement to the Change Order or the increase in Final Contract Price unreasonably. If no agreement can be reached as to a requested change in the Work and the cost thereof, the construction shall continue under this Agreement as to the scope of Work described without the requested change. All changes in the Work shall be confirmed by a written Change Order, which has been approved by the signature of the Owner or an authorized agent of Owner.

14. Latent Property Characteristics or Conditions. Owner acknowledges that any estimate provided to Owner by Contractor is based on Contractor's brief inspection of the Premises. Any latent characteristics of the Premises not discovered until after the Work is started that materially add to either the labor or materials required to perform the Work shall entitle Contractor to increase the Final Contract Price. Contractor shall notify Owner of such latent characteristics when discovered and of the corresponding increase in the Final Contract Price, and Contractor shall consult with Owner as to whether to proceed with the Work at the increased Final Contract Price. Latent characteristics shall include, but are not limited to, poor soil, rocky soil (containing rocks greater than four inches (4") in diameter), and underground pipes, obstructions or subsurface conditions. Owner shall pay all costs to repair any damage and all increased costs to perform the Work resulting from the existence of or damage to any underground pipes not marked by Questar's Blue Stakes service or a similar service.

15. Contractor's Performance and Licensure. Contractor shall comply with all laws and ordinances as well as all rules, regulations or orders of public authorities having jurisdiction over the Premises or the Work, including licensure laws applicable to Contractor or the Work.

16. Work Stoppage for Weather, Latent Property Characteristics or Other Causes. If work is stopped for any reason outside of Contractor's control, including for weather, latent property conditions on the Premises, Force Majeure, act of government or public official, negligent act of the Owner, or other unforeseen circumstances or conditions, the parties agree that for every day lost or delayed due to such conditions, the substantial completion date shall be extended for one day. If work is stopped for thirty (30) days or longer for any reasons described generally or specifically herein, Contractor may upon three (3) days written notice to Owner, stop work and terminate this Agreement and recover payment from Owner for all work completed and for all losses sustained on any materials, machinery, equipment, supplies, or labor, including mobilization costs and reasonable profit, through the day of termination which shall be the fourth day following said written notice.

17. Contractor's Warranties. Contractor warrants to Owner that any sprinkler system products and services included in the Work will be free of defects in materials and workmanship for a period of one (1) year and that all living plants included in the Work will, with proper professional care and watering by the Owner, survive for a period of ninety (90) days following the date the Work is completed. The 90-day warranty on living plants applies only to the original plants installed by Contractor and paid for by Owner; that is, Owner's sole remedy shall be replacement of plants only once under this warranty, but such replacement plants shall not be covered by any warranty. If the description of the Work includes installation or maintenance, Contractor shall perform such services in a workmanlike manner. Contractor does not provide a warranty for any period longer than 90 days, nor does Contractor provide a warranty covering any other products or services unless expressly stated on any estimate or a Change Order. Owner acknowledges and agrees that a lifetime warranty on sprinkler system products and services is available from the Contractor, but is effective only if expressly stated in this Agreement. Notwithstanding the existence of any statute of limitations provided at law or in equity that may be otherwise applicable to warranty claims, the parties agree that any action asserted by Owner against Contractor for breach of warranty related to this Agreement is barred unless it is filed as a judicial action in a Utah State District Court within the shorter of (i) ninety (90) days following the end of the relevant warranty period, or (ii) one (1) year following the date of delivery of products or performance of services hereunder. Except as required by law, Contractor's warranties extend only to Owner, and not to any subsequent owner of the Premises. Notwithstanding the foregoing, Owner's right to enforce any warranty herein shall arise only after the Final Contract Price is paid in full, such payment in full being an express condition precedent to the filing of any action for enforcement. Failure to pay the Final Contract Price in full, regardless of the reason, shall not toll the foregoing contractual period of limitations for an action on any warranty. Contractor makes no other warranties express or implied. CONTRACTOR HEREBY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

18. Termination or Suspension. This Agreement and the performances called for hereunder may be terminated or suspended as follows:

- a. Contractor's Termination for Cause: Liquidated Damages. Contractor may, in its sole discretion, elect to terminate this Agreement if Owner fails to make any payment required hereunder within ten (10) calendar days after payment is due, by giving written notice to Owner of Contractor's intent to terminate and the reasons therefore, and delivering the same by Certified Mail, Return Receipt Requested and addressed to Owner using the information set forth in paragraph 1, as it may be changed from time to time. If Owner fails to make payment in full of all amounts due, including interest, within ten (10) calendar days following delivery by Contractor to Owner of written notice to terminate, this Agreement shall be terminated (Effective Date of Termination for Cause). If Owner makes payment of all amounts due, including interest, within such seven (7) days, the Work shall continue or be resumed upon the terms and conditions of this Agreement. Upon termination under this paragraph, Contractor shall be entitled to retain all payments made by Owner prior to the Effective Date of Termination for Cause, and to additional payment by Owner as follows: (1) that portion of the Initial Contract Price, Change Orders, and Final Contract Price for labor and materials provided but unpaid as of the Effective Date of Termination for Cause; plus, (2) all financing charges incurred but unpaid as of the Effective Date of Termination for Cause; plus (3) a sum equal to fifty percent (50%) of the remaining amount of the Final Contract Price. Owner and Contractor agree that Contractor will be damaged by termination under this paragraph, and that it is extremely difficult to calculate and prove the amount of such damage; therefore, the parties agree that a reasonable estimate of such damages is and shall be the liquidated sum equal to foregoing amounts, including 50% of the remaining amount of the Final Contract Price. The parties further agree that the amount set forth in this paragraph is an estimate of actual damages which will be sustained or incurred by Contractor, and is not intended to represent nor does it represent a penalty to Owner.
- b. Owner's Termination for Cause. Owner may terminate this Agreement when Contractor fails to carry out the Work in accordance with the provisions of this Agreement, by giving written notice to Contractor of Owner's intent to terminate and the reasons therefore, and allowing

Contractor fifteen (15) days to cure. To be effective, notice shall be sent to Contractor by Certified Mail, Return Receipt Requested, and addressed to Contractor at 5017 N. Edgewood Dr., Provo, Utah 84604. If Contractor fails to cure within said 15 days following Contractor's receipt of written notice, the Agreement shall be terminated. Upon termination, Owner may take possession of the worksite and all materials thereon, and finish the Work in whatever reasonable way Owner deems expedient. If any unpaid balance on the Final Contract Price under the Agreement at the time of Owner's termination exceeds the expense of finishing the Work, Owner will pay the excess to Contractor.

- c. **Owner's Termination for Convenience.** Owner may at any time and for any reason terminate Contractor's services and work at Owner's convenience, by giving written notice of such termination delivered by Certified Mail, Return Receipt Requested and addressed to Contractor at 5017 N. Edgewood Dr., Provo, Utah 84604. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement. Upon such termination, Contractor shall be entitled to retain all payments made by Owner prior to the date of Contractor's receipt of the written notice of termination for convenience (Effective Date of Termination for Convenience), and to additional payment as follows: (1) that portion of the Initial Contract Price, Change Orders, and Final Contract Price for labor and materials provided but unpaid as of the Effective Date of Termination for Convenience; plus, (2) all financing charges incurred but unpaid as of the Effective Date of Termination for Convenience; plus (3) a sum equal to fifty percent (50%) of the remaining amount of the Final Contract Price. Owner and Contractor agree that Contractor will be damaged by termination under this paragraph, and that it is extremely difficult to calculate and prove the amount of such damage; therefore, the parties agree that a reasonable estimate of such damages is and shall be the liquidated sum equal to foregoing amounts, including 50% of the remaining amount of the Final Contract Price. The parties further agree that the amount set forth in this paragraph is an estimate of actual damages which will be sustained or incurred by Contractor, and is not intended to represent nor does it represent a penalty to Owner.

19. **Dispute Resolution Procedures.** Owner and Contractor agree that any and all disputes arising from the Work, or from this Agreement, shall be resolved in the following manner and procedure:

- a. **Mediation.** If a dispute arises hereunder, the party claiming to have been injured shall give the other party written notice of its election to submit the dispute to a Mediator, which notice shall (a) describe the nature of the dispute, (b) the party's demand for performance or other resolution, and (c) propose to submit the claim for mediation to a recognized dispute resolution service, or to a private Mediator who has demonstrated mediation skills and expertise. Within fifteen (15) days after delivery of notice, the receiving party shall respond to the notice and the proposed means of Mediation, which response may also include a counter notice of its election to submit a dispute asserted by the receiving party. The parties shall thereafter mutually select a Mediator and mediate the dispute in good faith.
- b. **Litigation.** If the parties are unable to reach a resolution of their dispute by Mediation, either party may file an action in a court of competent jurisdiction located within the Jurisdiction set forth in this Agreement. However, an action against the Contractor for claims (other than warranty claims) arising out of this Agreement must be filed within one year from the date of substantial completion or it will be deemed beyond the contractual period of limitation for actions. The contractual period of limitation for actions to enforce a warranty against the Contractor shall be governed by paragraph 17.

20. **Jurisdiction and Venue.** This Agreement and any judicial action filed by either party shall be governed by, construed in accordance with, and interpreted pursuant to the laws of the State of Utah, except with respect to Work performed on Premises located outside the State of Utah in which case the lien laws of the state in which the Premises is located shall govern. Any judicial action filed to enforce the terms of this Agreement shall be filed in the district court for the State of Utah where the Premises is located, and exclusive venue for any litigation between the parties hereto shall be in such Utah State District Court. The parties hereto waive any challenge to personal jurisdiction or subject matter jurisdiction or venue.

21. **Attorney's Fees and Cost of Enforcement.** In any action for enforcement of this Agreement, the prevailing party shall be entitled to an award of its attorney's fees, costs and expenses of litigation, including travel and lodging for attorneys and witnesses, deposition fees, expert witness fees and expenses, and other expenses reasonably incurred in connection with the litigation. All such fees, costs and expenses shall be included in any award or judgment entered or issued in favor of the prevailing party.

22. **Counterpart and Electronic Signatures.** This Agreement, and any document provided for or anticipated hereunder, may be executed in counterparts, or by electronic signature or approval when administered by a recognized facilitator of such electronic or "click and approve" practices, and the same will be deemed effective for all purposes as if it had been signed in person on a single copy of this Agreement.

23. **Final and Complete Agreement.** This Agreement is the final, complete, integrated and exclusive statement of the contract between Contractor and Owner concerning the subject matter hereof, and supersedes all prior written and oral communications. No person has been authorized by Contractor to make any additional or different representations or warranties, and Owner has not relied on any person's communication that is not expressly recited in this Agreement. Notwithstanding the foregoing, the terms of any credit agreement or guarantee executed by Owner or a third-party guarantor in favor of Contractor with respect to this Agreement or similar agreements shall be enforceable by Contractor.

24. **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable, such provision shall be fully severable and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance, and this Agreement shall be construed to effect the intent of the parties.

EXECUTED on the dates set forth below:

CONTRACTOR:

By:  Brandon Hatch, Big Rock Industries, Inc.

Date:

OWNER:

By:

Date: