



CONSTRUCTION CONTRACT

This Construction Contract ("Contract") is entered into by and between SplashPadsUSA, Inc. ("SplashPadsUSA") and the Customer identified in Paragraph 1 below. SplashPadsUSA will not be responsible to perform or provide any services that are not specifically articulated in the Contract. In consideration of the mutual promises contained herein, SplashPadsUSA and Customer agree as follows:

1. PROJECT INFORMATION

SplashPadsUSA:

SplashPadsUSA, Inc.
60 N Cutler Dr, Ste 104
North Salt Lake, UT 84054
Support@SplashPadsUSA.com

Customer:

Town of Diamondville
20 US HWY 30-189
P.O. Box 281
Diamondville, WY 83116

tclerk@diamondvillewyo.com

Project:

Diamondville Splash Pad
Diamondville Park
32 Conroy
Diamondville, WY 83116

2. SCOPE OF WORK AND PAYMENT

Scope of Work: Customer has hired SplashPadsUSA to perform the following work in the Scope of Work according to the plans attached hereto as Exhibit "A" for the price of \$139,500.00

Payment: Payment for the services rendered shall be as set forth in the Contract and as invoiced. When invoices are not paid timely, the unpaid balance may, at the SplashPadsUSA's election, bear interest at the rate of 18% (eighteen percent) per year, or the highest rate allowed by law, whichever is less. Returned checks will be subject to a \$30 (thirty dollars) charge. Delinquent accounts may also be subject to collection efforts, and Customer agrees to pay all reasonable costs of collection, including attorneys' fees and court costs. SplashPadsUSA also reserves the right to stop all work for Customer in the event Customer's account becomes delinquent.

Progress Payment Schedule:

Splash pad payment schedule will be as follows:

- a. 10% scheduled payment, for Wyoming stamped engineering \$13,950.00 PD
- b. 20% scheduled payment, due for manufacturing \$27,900.00 PD
- c. 35% progress payment once work is in progress on site \$48,825.00 PD
- d. 25% installation completion payment, successful full system test \$34,875.00
- e. 10% payment upon completion of deck coating \$13,950.00 PD

Any additions or upgrades will be invoiced separately and will be due upon receipt.

Customer's Failure to Make Payments: If Customer fails to make any progress payment to SplashPadsUSA when due, SplashPadsUSA shall have the option to cease work until such payment is made. If Customer fails to make a payment for fifteen (15) consecutive days from the due date, SplashPadsUSA may terminate this Agreement and shall be entitled to recover the unpaid balance of the costs for work through the date of termination plus 11% (eleven percent) as well as 11% (eleven percent) of the estimated costs of work to be completed.

Change Orders: Customer shall pay for any costs incurred by SplashPadsUSA for any additional tasks or materials outside the Contract documents. SplashPadsUSA shall not implement any changes unless Customer and SplashPadsUSA first agree in writing to the details of the change and any resulting price, schedule, or other contractual modifications. Any change to any law, rule, regulation, order, code, standard or requirement which requires any change hereunder shall entitle SplashPadsUSA to an equitable adjustment in the prices and any time for completion.

Site Preparation: Customer shall be responsible for preparing the site as specified in the Contract, including but not limited to, site preparation, installation of water line to equipment room area, specified electricity brought to equipment site area along with attached electrical specs and sewer drain installed to proposed equipment room site. Customer shall give SplashPadsUSA at least five (5) business days advance written notice of the date the site will be ready for SplashPadsUSA's work. If the site is not ready as noticed, SplashPadsUSA shall not be required to begin work and Customer shall be responsible for the delay fee described in Delay Fee Section below.

Permits: Customer shall pull and pay for all permits required for the services to be performed hereunder.

Inspections: Customer shall schedule all required inspections so that SplashPadsUSA's work shall not be delayed.

Access to Work: Customer shall grant free access to work areas for workers and vehicles and allow for storage of materials and rubbish. Customer shall provide a trash receptacle required by SplashPadsUSA at Customers cost. Customer shall provide a restroom or portable restroom required by SplashPadsUSA at Customers cost. Customer shall also provide utility services required by SplashPadsUSA at Customers cost.

3. PROSECUTION OF WORK

Delay Fee: Customer acknowledges that SplashPadsUSA schedules its work crews based on the dates of delivery and inspection promised by Customer and that a delay in the site preparation or inspections will cause SplashPadsUSA to incur additional expenses and losses which are difficult to quantify, including, by way of illustration and not of limitation, lost profits, construction delay costs and employee wages. If SplashPadsUSA is delayed in its performance because of delays in site preparation, inspection delays or other work on the site that prevents SplashPadsUSA from performing its work, then Customer, as compensation in the form of liquidated damages, shall pay SplashPadsUSA a fee of \$1,500 per day of delay. Customer and SplashPadsUSA agree that the foregoing fee is a liquidated damages remedy to compensate SplashPadsUSA based on SplashPadsUSA and Customer's best estimate of the daily damages, including but not limited to lost sales and business opportunities that SplashPadsUSA will incur as a result of Customer's failure to deliver the site as required, and such amount is not to be deemed a penalty.

Job Completion: SplashPadsUSA will perform completion of splash pad once groundbreaking payment has been received by SplashPadsUSA. SplashPadsUSA will perform all work in accordance with the Scope of Work until project completion; excluding any unforeseen circumstances that would delay completion. Delays include but are not limited to; changes made by Customer, engineer, architect, general contractor, health department or other city or county organizations, unavailability of materials required for the job,

unexpected adverse weather conditions, transportation delays, acts of God, any other condition which are out of the control of SplashPadsUSA. If SplashPadsUSA defaults on project completion for any other reasons within their control, Customer will have the option to impose a fee of \$300 per day of delay. SplashPadsUSA and Customer agree that the foregoing fee is a liquidated damages remedy to compensate Customer based on Customer and SplashPadsUSA's best estimate of the daily damages, including but not limited to loss of use that will incur as a result of SplashPadsUSA's failure to complete the project as required, and such amount is not to be deemed a penalty.

4. CHANGES

If Customer gives SplashPadsUSA an instruction that modifies the requirements of the Contract documents, SplashPadsUSA shall be entitled to an adjustment in the Contract Sum and/or time for completion. If compliance with the instruction affects the cost to SplashPadsUSA to perform a fixed line item of the Work, the price for that fixed line item will be adjusted to reflect the reasonable increase or decrease in cost. Any such changes must be in writing and signed by Customer and SplashPadsUSA or agreed to by e-mail.

In the event of a suspension Customer shall promptly pay SplashPadsUSA's reasonable and necessary costs from the suspension, including storage, demobilization, and re-mobilization costs incurred as a result of the suspension, and, if the suspension continues for more than 30 days, Customer shall make an interim payment for work completed.

5. MISCELLANEOUS PROVISIONS

Notice: SplashPadsUSA and Customer designate their respective addresses and e-mail addresses listed in Paragraph 1 above to be used for sending any written notice required by this Agreement.

Severability: In the event that any provision of this Agreement shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to applicable laws by an authority having jurisdiction, such determination shall not impair or otherwise effect the validity, legality, or enforceability of the remaining provisions or parts of provisions of this Agreement, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

Termination: Customer may terminate this Contract for cause for a material breach; however, prior to terminating for cause, Customer must give SplashPadsUSA at least ten (10) days prior written notice and must give SplashPadsUSA a reasonable amount of time to cure the defect in work or alleged failure to perform. If SplashPadsUSA proceeds to cure with reasonable diligence and ultimately does cure the alleged defect or failure, then the Customer may not terminate the Contract. SplashPadsUSA may terminate the Contract if the Customer fails to pay SplashPadsUSA when payment becomes due. If Customer or SplashPadsUSA terminates the Contract, then the Customer will pay any unpaid fees and costs due under the Contract.

Limited Warranty: SplashPadsUSA warrants to the Customer that for the periods of time from the original installation specified below, the following materials will be free from defects:

- a. Two Years: Splash pad lights and lighted nozzles.
- b. Three Years: Control boxes, timer boxes and the stainless-steel manifold.
- c. Five Years: Splash pad tanks and nozzles (other than the lighted nozzles).
- d. 30 Years: Stainless steel water features, pipes and welds, stainless steel footing bases.

SplashPadsUSA makes no other warranties, express or implied, and disclaims all implied warranties including, without limitations, the implied warranties of merchantability and fitness for a particular purpose, as well as any implied warranty that could arise from course of dealing or usage of trade.

When, within the applicable Warranty Period, SplashPadsUSA, is given prompt notice of a defect and a reasonable period of time in order to perform any warranty work, it will, in its discretion and option, repair, replace, or reimburse the Customer for reasonable costs of defective items covered by this warranty. SplashPadsUSA's sole obligation, and Customers' sole remedy, shall be this repair, replacement, or reimbursement. Customer shall provide access to the items to be repair or replaced and remove any materials or structures necessary to provide free and clear access, as well as supply any necessary equipment, and bear the costs of access (including removal and replacement of systems, structures or other parts of the end-user's facility), de-installation, decontamination, re-installation, and transportation of goods to SplashPadsUSA and back to Customer. SplashPadsUSA shall not be liable for and this warranty shall not apply to any damage to the materials sustained by any person or by acts of God, riot and civil commotion, fire, explosion, impact of foreign objects or by defects in the preparatory work performed by Customer. This warranty shall not apply to any damage to the extent it is caused or made worse by (i) negligence or improper maintenance, (ii) changes, alterations or additions made to the materials after completion of work by SplashPadsUSA, or (iii) misuse, negligence, accident, or failure to operate in accordance with the instructions of SplashPadsUSA and/or manufacturer, or (iv) damage caused by Customer or a third party. This warranty shall not apply to normal wear and tear or normal deterioration. SplashPadsUSA shall not be liable for any consequential, special, incidental or punitive damages. No representative, employee or agent of SplashPadsUSA, or any other person, has authority or assumes for SplashPadsUSA any additional liability or responsibility. This warranty is personal to the Customer and is not assignable or transferrable under any circumstances. Customer must notify SplashPadsUSA by registered mail or certified mail, return receipt requested, of a breach of warranty within 30 days after discovery thereof, but no later than the warranty period, otherwise such claims shall be deemed waived.

Repair or replaced parts or goods and re-performed services shall remain under warranty for the expired portion of the original Warranty Period as warranty work shall not extend the Warranty Period.

Entire Agreement: The Contract, including any plans and specifications, and these Terms and Conditions, constitute the entire agreement between SplashPadsUSA and Customer regarding the subject of these Terms and Conditions and the Contract and supersede all other oral and written representations, understandings or agreements relating to this subject matter, and may only be modified or amended by written agreement. For the avoidance of doubt, pre-printed terms and conditions contained in any work order, purchase order, contractor order acknowledgement, change order, or other document or instruction shall not be considered additive but shall be void and unenforceable.

Attorney's Fees: The prevailing party in any dispute that arises out of, or is related to this Contract, will be entitled to an award of its reasonable attorney's fees and costs that it incurred in enforcing this agreement or pursuing the dispute against the other party.

Governing Law: These Terms and Conditions and the Contract shall be governed by and construed in accordance with the laws of the State of Utah. The parties agree that the state and/or federal courts of Salt Lake County, Utah, shall be the exclusive forum and venue for resolving any disputed matter.

Waiver: The fact that a Party hereto has not insisted on the full performance of any provision contained herein or has not always exercised any of its rights conferred thereon shall not be construed as a waiver of such rights or the performance of such provisions in the future; save for express provisions to the contrary, any waiver of a right by one of the Parties hereto shall be effective only where set out in writing,


signed by an authorized representative of both Parties, with any such waiver apply only to the rights and circumstances expressly indicated there in.

Limitation of Liability: SplashPadsUSA shall not be liable to Customer for indirect, consequential, punitive, special, or incidental damages. Consequential damages shall include loss of use, loss of profit, loss of contract, loss of opportunity, as well as indirect losses or damages of any type no matter how characterized. SplashPadsUSA's aggregate liability for all claims arising out of or related to this contract, whether the claim be in contract, tort (including negligence), strict or product liability, or otherwise, shall not exceed 50% (fifty percent) of the contract price. This limitation shall be effective even if a company remedy should fail of its essential purpose.


[signature page to follow]

Proposal Acceptance: The prices, specifications, and conditions, together with the plans accompanying this proposal and the Terms and Conditions of this contract, are satisfactory and are hereby accepted. SplashPadsUSA, Inc. is hereby authorized to perform the work as specified. Customer agrees to pay the entire invoice on the terms set forth herein.

CUSTOMER:

Signed: 
Name _____
(Printed): Charles M. LANGLEY
Title: MAYOR
Date: 11/22/22

SPLASHPADSUSA, INC. (SplashPadsUSA):

Signed: 
Name _____
(Printed): RICHARD FUNK
Title: VP OPERATIONS
Date: 01/1/2023