

SKATE/BIKE PARK AGREEMENT

1. Introduction.

1.1. This *Skate/Bike Park Agreement* is entered into by and between Lehi City and SPOHN RANCH Inc. This Agreement shall be binding and effective as of the Effective Date.

2. Recitals.

2.1. WHEREAS, the City owns a certain parcel of real property located in Lehi, Utah, which will be determined in the process of site inspection and evaluation, Lehi, Utah (hereinafter, "Subject Property" or "Skate/Bike Park"); and;

2.2. WHEREAS, the City desires to have approximately ten thousand 10,000 square feet of the Subject Property improved and landscaped in accordance with the terms and conditions of this Agreement; and

2.3. WHEREAS, the Contractor is capable of performing, and desires to perform, the improvements and landscaping in accordance with the terms and conditions of this Agreement.

2.4. THEREFORE, in consideration of the promises, covenants, and conditions set forth in this Agreement, and in further consideration of the execution of this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and SPOHN RANCH agree as follows.

3. Definitions.

3.1. The following capitalized words or terms shall have the corresponding meanings or definitions as follows:

3.1.1. Agreement. This *Skate/Bike Park Agreement*.

3.1.2. Attachment A. Project Description

3.1.3. Attachment B. SPOHN RANCH proposal

3.1.4. Calendar Days. Monday, Tuesday, Wednesday, Thursday, Friday, Saturday, and Sunday.

3.1.5. City. Lehi City.

3.1.6. Consideration Payment. The goods, services, payments, etc. constituting the consideration contemplated by Section 5.

3.1.7. Contractor. SPOHN RANCH Inc.

3.1.8. Effective Date. The date when both parties have affixed their respective signatures to this Agreement. If the second party has not affixed its signature to this Agreement within sixty (60) days of when the first party affixed its signature, this Agreement shall be void.

3.1.9. SPOHN RANCH. SPOHN RANCH Inc.

3.1.10. Scope of Service. The performance contemplated by Section 4., for which the Consideration Payment shall be made.

3.1.11. Scope of Work. *See, Scope of Service.*

3.1.12. Warranty Period. The 365-day period following the City's approval and acceptance of the Scope of Service.

3.1.13. Working Days. Monday, Tuesday, Wednesday, Thursday, and Friday.

4. Terms of the Scope of Service.

4.1. The Contractor shall complete the following improvements and landscaping in accordance with all specifications as contained in "Attachment A" "Project Description," and "Attachment B" "SPOHN RANCH proposal" no later than October 15, 2016 with the following:

4.1.1.1. Contractor will design, construct, install, and complete a ten thousand plus square foot skate/bike park with amenities like bowls, ramps, tables, ¼ pipe, and like features.

4.1.1.2. In the event of any conflict between or among this Agreement, Attachment A, and Attachment B, the terms and conditions of this Agreement shall prevail.

4.2. Should the landscaping and improvement contemplated by this Agreement not be completed by October 15, 2016, the consideration owed to the Contractor as contemplated by Section 5. shall be reduced by \$700 per day for every day after October 20, 2016 for which said landscaping and improvements remain incomplete. This reduction is meant to be in addition to any other damages available to the City at law or in equity, or both.

4.3. While the City shall generally supervise the improvements and landscaping contemplated by Section 4., the Contractor shall, nevertheless, be responsible for the manner

of performance and completion of said improvements and landscaping, as well as the performance of this Agreement. All improvements and landscaping shall be completed in a professional and skilled manner, and of the highest quality in the applicable industries. The City will inspect the Contractor's work at the following stages before the Contractor shall be allowed to proceed with any additional work contemplated by this Agreement: grading prior to concrete being poured, compaction prior to cement pouring, all irrigation lines prior to backfill, plant and tree stock prior to planting, the planting of trees and shrubs. As requested by the City, the Contractor must be able to summarize and concisely report pertinent information associated with this Agreement and the performance thereof to the City in a timely manner.

4.3.1. SPOHN RANCH is solely responsible for job site security, as well as the security of any goods or materials located on said job site. The City shall not be responsible for the theft or destruction of any such goods or materials, and SPOHN RANCH agrees not to bill the City for such goods or materials which may be stolen or destroyed in the course of SPOHN RANCH's performance of this Agreement.

4.4. The City, by and through its designated representatives, shall be the sole decision maker as to whether the improvements and landscaping performed by the Contractor satisfy the requirements of this Agreement. In determining whether the improvements and landscaping are acceptable and comply with the terms and conditions contemplated by this Agreement, the City shall apply a commercially reasonable standard. Upon approval and acceptance of the improvements and landscaping contemplated by Section 4., the Contractor's performance under this Agreement shall be deemed complete, subject to any provision herein which expressly survives beyond the term or termination of this Agreement.

4.4.1.1. Within thirty (30) days of receiving written notice of completion from the Contractor, the City shall make a final inspection of the improvements and landscaping performed by the Contractor to determine whether said performance satisfies the requirements of this Agreement. After completing its final inspection, the City shall provide written notice to the Contractor approving and accepting the Contractor's performance of this Agreement, or indicating specific tasks yet to be performed by the Contractor before the city approves and accepts the Contractor's performance.

4.5. The Contractor shall be responsible to pay for any applicable royalties and licensing fees. The Contractor shall also defend all suits or claims for infringement of any intellectual property rights (whether brought against the Contractor or the City), and shall hold the City harmless from any such suits, claims, or resulting damages.

5. Consideration.

5.1. In exchange for the Scope of Service, the City shall pay SPOHN RANCH the total amount of \$470,000, as follows:

5.1.1. The Consideration contemplated by Section 5.1. shall be paid to the Contractor within thirty (30) days of the City's approval, acceptance, and inspected improvements and landscaping contemplated by Section 4.

5.1.1.1. At the sole option of the City, the City may disburse portions of the Consideration Payment to SPOHN RANCH at various times throughout SPOHN RANCH's performance of the Scope of Service when significant portions of the Scope of Service have been completed. For example (and for illustrative purposes only), the City may disburse an amount it deems appropriate after the sod has been installed and established. However, any disbursements made pursuant to this Section 5.1.1.1. shall not constitute any approval and acceptance contemplated by Section 9.2.3.

5.2. All changes in performance of this Agreement shall be described in detail on a change order request form, provided by the City, and which must be authorized in writing by an authorized representative of the City prior to commencing any proposed changes in performance. SPOHN RANCH shall not be entitled to any additional consideration for changes in performance which were not authorized as contemplated by this Section 5.2., nor for the correction of any mistakes attributable in any way to SPOHN RANCH, or its employees, agents, subcontractors, independent contractors, and the like.

5.3. The City may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any of the Consideration Payment to the extent that the City reasonably determines such withholding is necessary to protect itself from loss or liability on the account of:

5.3.1. Defective performance by SPOHN RANCH, including (but not limited to) defective goods or services not remedied.

5.3.2. Any other failure to comply with the terms and conditions of this Agreement.

5.4. Upon SPOHN RANCH's timely remedy of the grounds for withholding some or all of the Consideration Payment as contemplated by Section 5.3., the corresponding amount withheld shall be paid to SPOHN RANCH. However, in the event of SPOHN RANCH's default, the City reserves the right to perform the Scope of Service, or any unfinished portion thereof, itself, or to procure the same from a third party, while holding SPOHN RANCH responsible for

any costs occasioned thereby. If the City performs any portion of the Scope of Service itself, or obtains any portion of the Scope of Service from a third party, SPOHN RANCH shall not be entitled to any Consideration Payment withheld, and SPOHN RANCH shall pay the City any amounts owed as contemplated by this Section 5.4., within thirty (30) days of receiving a notice of indebtedness from the City.

5.5. In the event the City terminates, suspends, or abandons this Agreement without cause pursuant to Section 6.3., the City shall pay SPOHN RANCH a proportionate amount of the Consideration Payment for any of the Scope of Service which was actually performed or provided prior to termination, suspension, or abandonment.

6. Termination and Non-Appropriation.

6.1. The City may terminate this Agreement at any time if, in the sole discretion of the City:

6.1.1. SPOHN RANCH's performance under this Agreement is unsatisfactory. The standard which the City shall apply in determining whether SPOHN RANCH's performance is satisfactory shall be a commercially reasonable standard.

6.1.2. SPOHN RANCH fails to perform its duties and obligations required by this Agreement with diligence or within the time specified herein.

6.1.3. SPOHN RANCH has otherwise materially breached this Agreement.

6.2. Prior to terminating this Agreement as contemplated by Section 6.1., the City must first provide written notice to SPOHN RANCH of the City's intention to terminate this Agreement. Said notice of termination must be provided by the City to SPOHN RANCH at least seven (7) Calendar Days prior to termination. After receiving such notice of termination from the City, SPOHN RANCH shall have the next fifteen (15) Working Days in which to cure any deficiency noted by the City. If SPOHN RANCH adequately cures any such deficiency, to the sole satisfaction of the City, this Agreement shall continue. However, in the event SPOHN RANCH fails to adequately cure any such deficiency, this Agreement shall terminate, and SPOHN RANCH shall be liable for any resulting damages associated with said deficiency and breach of this Agreement. The City may pursue any such damages through all available means, whether in law or in equity, or both.

6.3. The City may, in its sole discretion, terminate, suspend, or abandon this Agreement without cause at any time by providing written notice to SPOHN RANCH of the City's intention to terminate this Agreement without cause. Said notice of termination must be provided by the City to SPOHN RANCH at least seven (7) calendar days prior to termination.

6.4. Any Scope of Service which SPOHN RANCH has completed or performed prior to the date of any termination, suspension, or abandonment, shall be recorded, and tangible work

documents shall be transferred to, and become the sole property of, the City. If the City has terminated this Agreement without cause as contemplated by Section 6.3., then subsequently requests SPOHN RANCH to recommence its performance of the Scope of Service after more than three (3) months from the date of termination, the Consideration Payment amount shall be subject to renegotiation at the request of either party hereto.

6.5. If the Lehi City Council decides not to appropriate a sufficient amount of resources to fund the Consideration Payment, this contract shall be void. In the event of such non-appropriation of resources, the City shall be relieved of all of its obligations contemplated by this Agreement, including (but not limited to) the Consideration Payment.

7. Taxes.

7.1. Each party shall be solely responsible for any tax liability which it may incur as a result of this Agreement.

7.2. The City is exempt from the payment of any Federal excise or any Utah sales tax (State of Utah Sales Tax Exemption Number: 11891541-002-STC). Such taxes will not apply to the City, unless otherwise noted in writing by the City. Any price listed by SPOHN RANCH on a purchase order, or equivalent, must be net, exclusive of taxes. However, when under established trade practices, any Federal excise tax is included in the list price, SPOHN RANCH may quote the list price, and shall show separately the amount of Federal tax, either as a flat sum or as a percentage of the list price, which shall be deducted from any payments made by the City.

8. Indemnification and Insurance.

8.1. SPOHN RANCH shall be solely responsible for any damage or injury which it, or its employees, agents, subcontractors, independent contractors, and the like, may cause in the performance of this Agreement. Consequently, to the fullest extent permitted by law, SPOHN RANCH shall indemnify, defend, and hold harmless the City, any subsidiary or affiliate of the City, and its past, present and future agents, representatives, and employees from and against all claims, damages, lawsuits, losses, liabilities, liens, cost, citations, penalties, fines and expenses, including (but not limited to) attorneys' fees, arising out of or resulting from SPOHN RANCH 's performance of this Agreement, provided that such claims, damages, losses, liabilities, liens, costs, citations, penalties, fines, and expenses are caused in whole or in part by any negligent, grossly negligent, reckless, or intentional act or omission attributable in any way to SPOHN RANCH , or its employees, agents, subcontractors, independent contractors, and the like, or anyone directly or indirectly employed by SPOHN RANCH or any subcontractor, or any party for whose acts SPOHN RANCH may be liable, regardless of whether liability is imposed upon such party. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity, which may otherwise exist in favor of the City. In any and all claims against the City, or any subsidiary or affiliate, or any of its past, present or future agents, representatives, or employees, by SPOHN RANCH , or its current or former employees, agents, subcontractors, independent contractors, and the like, or anyone directly or indirectly

employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by the amount or types of damages, compensations, or benefits payable by or for SPOHN RANCH, or any subcontractor, worker's or workman's compensation acts, disability benefit acts, or other employee benefit acts.

8.2. The City shall indemnify and hold harmless SPOHN RANCH, its parent, subsidiaries, affiliates, agents, shareholders, directors, and employees from and against all damages, costs, liabilities (including reasonable attorneys' fees and expenses) arising from or related to the actions of the City with respect to the subject matter of this Agreement.

8.3. SPOHN RANCH, at its own expense, shall provide for the payment of worker's compensation benefits to its employees employed on or in connection with the performance of this Agreement, and in accordance with applicable State and Federal laws.

8.4. SPOHN RANCH, at its own expense, shall maintain comprehensive general liability insurance, including (but not limited to) \$3,000,000.00 per occurrence.

8.5. SPOHN RANCH, at its own expense, shall maintain automobile public liability insurance with bodily injury and death limits of at least \$250,000.00 for any one person, and \$500,000.00 for any one occurrence, and a property damage limit per occurrence of \$250,000.00. Such benefits and coverage shall not be deemed to limit SPOHN RANCH's liability under this Agreement. It is intended by this Section 8.5. that the requirements set forth herein will satisfy applicable minimum requirements under Utah law. However, in the event that the foregoing requirements do not satisfy applicable Utah law, SPOHN RANCH must maintain automobile public liability insurance in amounts satisfying applicable Utah law.

8.6. SPOHN RANCH, at its own expense, shall maintain professional liability/errors and omissions insurance appropriate to SPOHN RANCH's profession, with a minimum coverage of \$3,000,000.00 per occurrence. The professional liability/errors and omissions insurance required by this Section 8.6. must be project specific with at least a one-year extended reporting period (or longer upon request by the City). SPOHN RANCH shall, likewise, require its subcontractors, if any, to provide for such benefits and to maintain such insurance at no expense to the City.

8.7. Before commencing the Scope of Service, and at any time thereafter upon written request by the City, SPOHN RANCH shall furnish the City with a copy of certificates of insurance as evidence that policies providing the coverage required by this Agreement are in effect.

8.8. All insurance required by this Agreement, with the exception of worker's compensation and employer's liability policies, shall include the City, its directors, officers, agents, and employees as additional insured persons with respect to the activities of SPOHN RANCH in the performance of this Agreement, or that of its employees, agents, subcontractors,

independent contractors, and the like. Any certificate or certificates presented as evidence of insurance shall specify the date when such benefits and insurance expire. Unless a different length of time is expressly set forth in this Agreement, SPOHN RANCH shall maintain any insurance required by this Agreement until after the Scope of Service has been fully performed by SPOHN RANCH, and subsequently approved and accepted by the City. SPOHN RANCH shall provide the City with written notice at least sixty (60) days in advance of any cancellation, termination, or material alteration of said policies of insurance.

9. Performance and Warranty Bonds or Letters of Credit.

9.1. Prior to commencing work on the Scope of Service, SPOHN RANCH must provide the City with a performance bond/performance letter of credit in the amount of the Consideration Payment. The completed performance bond/performance letter of credit is attached hereto as Exhibit A. In the event that SPOHN RANCH fails to provide a performance bond/performance letter of credit within 10 days of the Effective Date, this Agreement shall be void.

9.1.1. The purpose of the performance bond/performance letter of credit is to guarantee the proper completion by SPOHN RANCH of the Scope of Service as contemplated by this Agreement.

9.1.2. The performance bond/performance letter of credit shall remain valid until the City approves of and accepts the Scope of Service, as set forth in Section 9.2.

9.2. Prior to the City's approval and acceptance of the Scope of Service, SPOHN RANCH must provide the City with a warranty bond/warranty letter of credit in the amount of \$216,500.00.

9.2.1. The purposes of the warranty bond/letter of credit is to guarantee that the Scope of Service:

9.2.1.1. (1) complies with this Agreement; and

9.2.1.2. (2) will not fail in any material respect as a result of poor workmanship or materials within the Warranty Period.

9.2.2. The warranty bond/warranty letter of credit shall remain valid for the entire Warranty Period.

9.2.3. Approval and acceptance of the Scope of Service shall be deemed to have occurred when each of the following events have been satisfied:

9.2.3.1. SPOHN RANCH provides written notice to the City that SPOHN RANCH considers the Scope of Service to be complete.

9.2.3.2. The City provides written approval and acceptance of the Scope of Service, or fails to provide a written response to SPOHN RANCH, within thirty (30) days after receiving the notification contemplated by Section 9.2.3.1., indicating the additional work which the City considers incomplete pursuant to this Agreement.

10. Representations and Warranties.

10.1. Each party represents that:

10.1.1. Its signatory has the authority to the party to this Agreement.

10.1.2. It has not sold, assigned, or otherwise transferred any interest in the claims or subject matter contemplated by this Agreement.

10.2. SPOHN RANCH represents and warrants that:

10.2.1. SPOHN RANCH has sufficiently and reasonably researched the requirements of this Agreement, understands the same, and is able to competently perform each of its duties and obligations required hereunder.

10.2.2. SPOHN RANCH warrants the workmanship, materials, proper functioning, and manner of the Scope of Service contemplated by this Agreement for the entire Warranty Period. In the event that any portion of the Scope of Service does not remain in good and operating condition (in the sole judgment of the City) during the Warranty Period (ordinary wear and tear excepted), SPOHN RANCH, at its own expense, shall immediately perform all necessary repairs and replacements to maintain such inadequate Scope of Service in good and operating condition (to the City's sole satisfaction). Should any portion of the Scope of Service imminently jeopardize the health and safety of the City, or any other individual, the City may perform any necessary repairs and replacements (or arrange for a third party to perform such services) at SPOHN RANCH's expense – to be paid by SPOHN RANCH within thirty (30) days of receiving a notice of indebtedness from the City.

10.2.3. SPOHN RANCH shall perform its obligations required by this Agreement in a manner consistent with applicable professional and technical standards for Scope of Service of a similar and comparable nature, and shall ensure that the implementation thereof is also performed in an applicable professional, technical, and workman-like manner. SPOHN RANCH shall correct any defect in its performance at no additional cost to the City. Upon request by the City, SPOHN RANCH must be able to summarize and concisely report pertinent information associated with this Agreement and the performance thereof to the City in a timely manner. SPOHN RANCH shall not make any alterations or variations in or additions to, or omissions

from, its duties and obligations contemplated by this Agreement, without the prior written consent of the City

10.3. SPOHN RANCH's licensure or authority to transact business issued by the Utah Division of Corporations and Commercial Code and the Utah Division of Occupational and Professional Licensing, as well as any other required licensure, is currently active, and shall remain active throughout the performance of this Agreement.

11. Confidentiality.

11.1. The parties acknowledge that this Agreement may be subject to public disclosure pursuant to the Government Records Access and Management Act, UTAH CODE ANN. § 63G-2-101, *et seq.*, as the same may be amended from time to time.

11.2. Notwithstanding Section 11.1., SPOHN RANCH agrees that, except as directed by the City, SPOHN RANCH shall not at any time during or after the term of this Agreement disclose to any person or entity any information or document provided by the City which the City has designated as "confidential" or "private." Upon the conclusion or termination of this Agreement, SPOHN RANCH shall turn over to the City all documents, papers, and other matter, including copies thereof, which are in SPOHN RANCH 's possession or control, and which are designated "confidential" or "private." SPOHN RANCH further agrees to bind its employees and any sub-contractors to the terms and conditions of this Section 11.2.

12. Equal Opportunity.

12.1. Neither SPOHN RANCH, nor any sub-contractor of SPOHN RANCH, shall discriminate against any employee, applicant for employment, or recipient of services on the basis of race, religion, color, sex, age, disability, or national origin.

13. Record Keeping and Audits.

13.1. SPOHN RANCH shall maintain accurate accounting records for all goods and services provided in the performance of this Agreement, and shall retain all such records for a period of at least three (3) years following the termination or completion of this Agreement. Upon forty-eight (48) hours written notice and during normal business hours, the City shall have access to and the right to audit any records or other documents pertaining to this Agreement. SPOHN RANCH shall furnish copies of any records requested by the City at SPOHN RANCH 's expense

14. Relationship of the Parties, and Immunity.

14.1. The relationship between the parties shall be that of independent contracting parties. Each party shall be responsible for the manner of its own performance of this Agreement. Nothing herein shall be construed to create an employer-employee, principal-

agent, or other similar relationship. Neither party is authorized to, nor shall either party, enter into any contract or commitment on behalf of the other party. Neither party shall be considered an affiliate or subsidiary of the other party. It is expressly understood that this Agreement, including the performance thereof, is not a joint venture, partnership, or any other relationship other than that of independent contracting parties.

14.2. Nothing in this Agreement, nor the performance hereof, shall adversely affect any immunity from suit, or any right, privilege, claim or defense, which the City or its employees, officers, and directors may assert under State or Federal law, including (but not limited to) The Governmental Immunity Act of Utah, UTAH CODE ANN. § 63G-7-101, *et seq.* All claims against the City or its employees, officers, and directors are subject to the provisions of the aforementioned act, which controls all procedures and limitations in connection with any claim of liability.

15. Notice.

15.1. If any notice is required to be provided pursuant to the terms and conditions of this Agreement, said notice must be provided as follows:

To the City:

Lehi City Corporation
Attn: Beau Thomas
153 North 100 East
Lehi, Utah 84043

To SPOHN RANCH:

SPOHN RANCH Inc.
Attn: Aaron Spohn
6824 S Centinela Ave.
Los Angeles, CA 90230

15.2. If notice is sent via regular mail, commercial courier, and the like, receipt thereof shall be presumed on the third Calendar Day thereafter.

15.3. The designation of any address or individual contemplated by this Section 15 may be changed by notice given in the same manner as provided in this Section 15., and shall not be subject to the restrictions contemplated by Section 22.

16. Attorneys' Fees and Costs.

16.1. Each party shall bear its own attorneys' fees and costs incurred in connection with the drafting, execution, and performance of this Agreement. However, if any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party in such action shall be entitled to recover reasonable attorneys' fees, legal costs, and other collection fees and costs incurred by said prevailing party in connection with the suit, both before and after judgment, in addition to any other relief to which such party may be entitled.

17. Non-Waiver.

17.1. No failure to exercise and no delay in exercising any right, remedy, or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of

any right, remedy, or power under this Agreement preclude any other or further exercise thereof, or the exercise of any other right, remedy or power provided herein or by law or in equity.

18. Binding Effect.

18.1. This Agreement is binding upon the parties and their proper and allowable heirs, legatees, representatives, successors, transferees, assignees, and delegates.

19. Assignment.

19.1. Neither party hereto may assign this Agreement, nor delegate any responsibilities under this Agreement. Any purported assignment or delegation in violation of this Section 19., without prior written consent from the non-assigning party, shall be void, and will be considered a material breach of this Agreement.

20. Time.

20.1. Time is of the essence with this Agreement, as well as every term, covenant, and condition contained herein.

21. Force Majeure.

21.1. Neither party will be liable for any failure or delay in performing an obligation under this Agreement that is due to causes beyond its reasonable control, such as natural catastrophes, governmental acts or omissions, laws or regulations, labor strikes or difficulties, transportation stoppages or slowdowns or the inability to procure parts or materials. If any of these causes continue to prevent or delay performance for more than 180 days, the non-delaying party may terminate this Agreement, effective immediately upon notice to the delaying party.

22. Amendments.

22.1. This Agreement may not be modified, amended, or terminated, except by an instrument in writing, signed by each party hereto.

23. Further Assurances.

23.1. The City and SPOHN RANCH mutually agree to execute such other documents and to take such other action as may be reasonably necessary to further the purposes of this Agreement.

24. Incorporation of Miscellaneous Material.

24.1. Each section of this Agreement shall be considered a part hereof, including (but not limited to) Sections 1. and 2., respectively. Likewise, any exhibit referenced in this Agreement is made a part hereof.

25. Drafting and Voluntary Execution.

25.1. The negotiation and drafting of this Agreement have been accomplished collectively by each party hereto, and for all purposes this Agreement shall be deemed to have been drafted jointly by each such party. The parties acknowledge that they have been represented by counsel of their choice in all matters connected with the negotiation and preparation of this Agreement, or that they have had the opportunity to be represented by counsel, and that they have reviewed this Agreement with their counsel, or that they have had the opportunity to review this Agreement with their counsel, and that they fully understand the terms of this Agreement and the consequences thereof. Furthermore, the parties hereto have been afforded the opportunity to negotiate as to any and all terms of this Agreement, and each party is executing this Agreement voluntarily and free of any undue influence, duress, or coercion. The parties further acknowledge that they have relied on their own judgment, belief, knowledge, and advice from their own representatives, consultants, affiliates, and agents, as to the extent and effect of the terms and conditions contained herein. The parties are not relying upon any statement or representation made by any other party or any officer, director, employee, agent, servant, adjustor, or attorney acting on behalf of another party, unless such a statement or representation is expressly set forth in this Agreement.

25.2. The headings in this Agreement are for convenience only and shall not be interpreted to limit the meaning of the language contained herein in any way.

26. Severability.

26.1. If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions of this Agreement shall, nevertheless, be construed, performed, and enforced as if the invalidated or unenforceable provision had not been included in the text of the Agreement.

27. Governing Law.

27.1. This Agreement shall be construed in accordance with the laws of the State of Utah, regardless of any choice or conflict of law rules.

27.2. Each party agrees that any legal action or proceeding with respect to this Agreement may only be brought in the courts of Utah County, in the State of Utah. Consequently, each party hereby submits itself unconditionally to the jurisdiction and venue of the aforementioned courts. Each party hereby waives, and agrees not to assert by way of motion, as a defense, counterclaim, or otherwise, in any action associated with this Agreement that:

27.2.1. Any party hereto it is not personally subject to the jurisdiction of the aforementioned courts for any reason other than the failure to properly serve process.

27.2.2. Any party or its property is exempt or immune from jurisdiction of the aforementioned courts, or from any legal action commenced in said courts (whether before or after judgment).

27.2.3. To the fullest extent allowed by law, that:

27.2.3.1. The action in any such court set forth above is brought in an inconvenient forum.

27.2.3.2. The venue of any such action is improper.

27.2.3.3. This Agreement, or the subject matter hereof, may not be heard by said courts.

27.3. Notwithstanding the foregoing, other Federal, State, and municipal laws, regulations, rules, orders, and ordinances may be applicable to this Agreement. SPOHN RANCH shall comply with any such applicable law, including (but not limited to) obtaining any permits required to perform the Scope of Service.

28. Third-Party Beneficiaries.

28.1. This Agreement is not meant to create any rights or benefits (whether intended or incidental) for any third party. Only the named parties to this Agreement may enforce the terms and conditions hereof.

29. Entire Agreement.

29.1. All agreements, covenants, representations and warranties – express or implied, oral or written – of the parties concerning the subject matter hereof are contained solely in this Agreement, subject to any implied warranties and conditions imposed upon the parties by Utah law. No other agreements, covenants, representations, or warranties – express or implied, oral or written – have been made by any party to any other party concerning the subject matter hereof. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants, and warranties concerning the subject matter hereof are merged herein. This is an integrated agreement

30. Duplicate Originals.

30.1. This Agreement may be executed in identical duplicate originals, each of which shall be deemed to be an original, and all of which shall be deemed to constitute one and the same instrument.

31. Signatures.

31.1. The City and SPOHN RANCH voluntarily enter into this Agreement, as evidenced by affixing their respective signatures, below.

City:

SPOHN RANCH:

Lehi City
By: Bert Wilson
Its: Mayor

SPOHN RANCH Inc.
By:
Its:

Dated: _____

Dated: _____

Attest:

Marilyn Banasky, City Recorder

Dated: _____