

AGREEMENT

This Agreement is entered into as of the _____ day of _____, 20____, by and between _____ (“Party One” or “The Customer”) and **Sonrise Landscaping** (“Party Two” or “The Contractor”) (collectively the “Parties”).

NOW, THEREFORE, in consideration of the mutual premises and covenants contained in this Agreement, and all subsequent or applicable Change Orders marked Exhibit A as required; it is hereby agreed by and between the Parties as follows:

Article 1 PARTY ONE OBLIGATIONS

Party One (_____) does hereby covenant and agree that it shall:

1.1 Accept liability for marking private lines and private items on property. These are not handled by Okie, and might be in direct conflict with installation of project. This includes, but is not limited to, marking locations of termite bait traps, landscape light wiring, Dog Guard fence wiring, gas lamps, propane lines, septic lines, pool pipes, and pool electrical.

1.2 If applicable, notify Party Two of utility easement restrictions, deed restrictions, or neighborhood covenants.

1.3 If applicable, notify Party Two of property boundaries; preferably with location of property pins, as Party Two is unable to commence construction for project(s) where boundaries are not clearly marked. Ex., property boundaries are needed for privacy fence installations, for sprinkler system installations, and for drainage system installations that adjoin neighbor property lines.

1.4 If applicable, Party One agrees to arrange for movement (or temporary line installation) for phone or cable lines if they are found to be in conflict with project as listed in Article 2.1 and Article 2.2; and only if the project location cannot be modified within the conflicting utility lines.

1.5 If applicable, Party One agrees to provide an outdoor GFCI with waterproof cover to plug items into. Ex., sump pump for drainage system, heat cable for back-flow preventor, outdoor sprinkler system timer, or landscape lighting transformer. Or, if sprinkler system timer is installed in garage, Party One agrees to provide wall receptacle for timer.

Article 2 PARTY TWO OBLIGATIONS

Party Two (**Sonrise Landscaping**) does hereby covenant and agree that it shall:

2.1 Party Two will call Okie for marking of utility lines. (Okie does not mark water lines, and does not mark private lines listed above in Article 1.2)

2.2 Okie is frequently unable to mark gas lines due to gas line pipe installed without tracer wire. If the location of gas line, or location of phone or cable lines are in conflict with area for drainage pipe or sprinkler pipe; the design may need to be altered.

2.3 Scope of work to include:

- * _____
- * _____
- * _____
- * _____
- * _____
- * _____
- * _____
- * _____
- * _____
- * _____

Article 3 REPRESENTATIONS AND WARRANTIES OF THE PARTIES

Party One hereby represents and warrants:

- 3.1 All invoices and amendment change orders will be paid in full on date of project completion, as project deemed completed by Party Two.
- 3.2 Party One accepts a reasonable time frame of 30 days for any punch list details to be completed that may materialize after completion of project, as deemed completed by Party Two.

Party Two hereby represents and warrants:

- 3.3 Work shall have a general warranty period of one (1) year. Refer to Article 7 for complete warranty specifics of inclusions/exclusions applicable to this one (1) year warranty.
- 3.4 Upon written request from Party One; Party Two will supply proof of insurance coverage. Party Two represents to be certified, licensed, insured, and lists Janice & Marcy Harmon as Agents of Record (918.251.2511).
- 3.5 Party Two represents membership with the Home Builder's Association of Greater Tulsa (HBA), certification with the Interlocking Concrete Paver Institute (ICPI), certification with the Landscape Lighting Manufacturer's Association (LLMA), and certification with Rainbird as a Rainbird Select Contractor.

Article 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

- 4.1 The date to commence work shall be on or about [redacted] week(s) from date of this Agreement, excluding any unforeseen scheduling problems, weather delays, or back-ordered materials.
- 4.2 The substantial completion of work will occur [redacted] week(s) after commencement, subject to amendments to this Agreement, and also subject to unforeseen scheduling problems, weather delays, or back-ordered products. The Agreement completion time will be measured from the date of commencement to the date of final inspection.
- 4.3 A work day and work week are 8:00 a.m. to 5:00 p.m., Mon. through Fri., with holidays and weekends excluded. Party Two reserves the right to work on Sat. or Sun. under various circumstances; but are not included as work days for scheduling.
- 4.4 With weather forecasts of rain, snow, excessive heat or cold; Party Two reserves the right to alter day and time of project work schedule. Ex., Party Two summer crew may work 6:00 a.m. to 3:00 p.m. Party Two will not work if weather causes unsafe working conditions, or if rain/snow has caused the area(s) to be too muddy for installation of constructed products.

Article 5 FINANCIAL TERMS

5.1 Party One accepts Agreement price of \$ _____ (_____)

for scope of work listed in Article 2.3, to include all costs, unless otherwise stated:

5.2 Agreement prices are good for 30 days from date of Agreement.

5.3 Party One may request in writing an as-built CAD generated drawing for project, from the Party Two landscape architect, for a minimum additional cost of \$500 per drawn item.

5.4 Party Two accepts checks and PayPal. Use of PayPal will include an additional 3% service fee. All payments by Party One can be made directly on the secure webpage of Party Two at: www.SonriseLandscaping.com

5.5 A 50% retainer from Party One is required with the Agreement. For projects budgeted from one (1) to four (4) business days; the remaining balance is due on date of completion.

5.6 For projects exceeding five (5) business days, as listed in Article 4.2, and/or budgeted to exceed \$15,000, as listed in Article 5.1, an additional 25% is due at the end of the seventh (7th) working day for a total of 75% due by end of seventh (7) work day; with the remaining balance due on date of completion.

5.7 All balances are due in full on date of project completion, as deemed completed by Party Two. Invoices more than seven (7) days late will incur a \$50 service charge, unless previous arrangements have been approved. If an invoice becomes thirty (30) days late for any reason, interest will be added at 1.5% per month.

5.8 Party One is hereby given notice that the described property is subject to mechanics and material men labor liens which will be filed if any payment is not paid within sixty (60) days of invoice. All supplies used on the project shall remain the property of Party Two until final payment is made, and Party Two reserves the right to enter the property of Party One for removal of materials if payment is not made.

5.9 Bounced checks will incur a \$50 service charge. If a check bounces, Party Two will accept a cashier's check, or PayPal; but will no longer accept personal checks from Party One.

5.10 All warranties will be void if payments are not received within sixty (60) days of invoice; but will be re-instated from original date when account is paid in full. If an invoice becomes ninety (90) days late for any reason, an additional \$500 will be added to past due balance, and legal documents will be served to Party One for a court date.

Article 6 CONDITIONS

6.1 Party One and Party Two reserve the legal right to rescind in writing this Agreement within ten (10) business days of project commencing; with full refund of any deposited retainers. A "Mutual Rescission and Release Agreement" will be drawn up and submitted for approval. Party One accepts that if project is rescinded with less than ten (10) business days notice; that Party Two will have unrecoverable costs (Ex., restocking fees from suppliers) that will be subtracted from the deposited retainer before refunding.

6.2 After project commences, changes in this Agreement by Party One will require a written change of work order, with additional cost(s) listed. The project will not re-commence without written approval from Party One.

6.3 If applicable, conditions beyond the control of Party Two such as removal of excessive rocks, roots, boulders, or hidden concrete will require additional labor to remove and dispose. These are items unforeseen with pricing of original Agreement. All additional equipment costs associated, such as hydraulic jack hammers or stump grinders will be outlined in a written change of work order together with the additional labor charge. The project will not re-commence without written approval from Party One.

6.4 Party Two may have leftover materials upon completion of project. Excess materials are not eligible for purchase or credit. Excess materials will be returned to inventory, and are deemed to be a surplus; used in case of breakage, defects, or mathematical miscalculations.

6.5 Party One and Party Two mutually waive all rights of subrogation against each other for any and all claims and damages to property under this Agreement from an independent 3rd party. Ex., American Waste is contracted by Party Two to deliver a dumpster, and in the process of delivering the dumpster, the driver knocks over and breaks a basketball goal, or scratches the driveway of Party One with a deep rut. Party One reserves the right to seek and/or sue for damages directly from this 3rd party, but removes Party Two from all liability.

6.6 Party One accepts that unforeseen issues with construction may alter the desired end result, necessitating an Amendment to the Agreement. Ex., a large tree and tree roots are removed to make room for a retaining wall; but unbeknownst to any party is the fact that by removing said tree, a new water flow drainage issue has been created necessitating an Amendment, and additional costs to Party One for correction of newly discovered issue.

Article 7 WARRANTIES

7.1 Party Two provides a one (1) year warranty for all manufactured parts or materials used for lawn sprinkler systems, drainage systems, sump pumps, retaining walls, landscape lighting, fireplace inserts, kitchen inserts, patio pavers, decorative fence, cedar fence, and pergola's; or any other type of manufactured part not listed but used for completion of project for Party One.

7.2 Manufactured parts warranties are void if Party One has tampered with the installation after completion of project. Party Two warranties the parts or materials for one (1) year. The manufacturer's warranty may extend past that duration. Ex., material warranties are, but are not limited to: lawn sprinkler timers, sump pumps, landscape lighting transformers; three (3) years total, landscape lighting fixtures; ten (10) years total, LED bulbs; fifteen (15) years total, and a lifetime warranty on retaining wall blocks, schedule 40 steel fence posts, and patio pavers. It is the responsibility of Party One to seek out replacement directly from the manufacturer for all items exceeding the one (1) year warranty provided by Party Two.

7.3 Party Two provides a one (1) year labor warranty.

7.4 Party Two provides a one (1) year craftsmanship warranty for items not provided with a manufacturer's warranty. Ex., mortared retaining walls, mortared flagstone patios, mortared fireplaces, and pergola's.

7.5 There is no warranty coverage for landscaping items: new or transplanted plants, trees, flowers, shrubs, sod, seed, or for neighbor landscaping accidentally killed that has roots encroaching on the property of Party One. Party Two accepts no liability for proper watering, fertilizing or for items that fail to live due to hail, freeze, drought, disease, bugs, excessive water, sun, shade, customer neglect, and other conditions beyond the control of Party Two.

7.6 There is no warranty coverage for any product or service as a result of: home power surges, fire, customer tampering, accidental digging, rodent burrowing, accidents by vehicles, accidents by lawn power equipment, lightning, freezing, sink-holes or collapse due to sink-holes, earthquakes, floods, random acts of nature, water leaks, mildew, mold, moisture in ducts, sprinkler line clogging from hard water, drainage line clogging from roots or leaves, sump pump line clogging, wind, theft, vandalism, explosion, or other acts beyond the control of Party Two.

7.7 There is no warranty coverage for concrete cracking, or color matching of grout, mortar, or concrete. Cuts required in sidewalks or driveways for drainage grates will be patched, but the new concrete patch will never match the old concrete due to differences in tensile strength, color, consistency, and smoothness.

7.8 Pressure treated wood posts and wood rails have been known to warp as the wood dries and ages. Party Two provides a one (1) year fence warranty, and will replace wood posts or rails with severe warping. Party Two recommends schedule 40 steel posts for fencing.

Article 8 GENERAL PROVISIONS

8.1 Notices. Any notice, or other communication provided for herein or given hereunder to a party hereto shall be in writing and shall be given by delivery, by facsimile, by e-mail, or by postal mail (registered or certified mail, postage prepaid, return receipt requested) to the respective party as follows:

If to Party One:

If to Party Two:

| | | |
|---------------------------------|---------------|------------------------|
| Sonrise Landscaping | PO Box 140777 | Broken Arrow, OK 74014 |
| Or: Mike@SonriseLandscaping.com | | Or: 918.486.7797 Fax |

8.2 Successors and Assigns. This Agreement is intended to bind and inure to the benefit of and be enforceable by the Parties, and their respective successors, assigns, heirs, executors and administrators; provided, that neither party may assign any duties or her rights hereunder without the written consent of the other party.

8.3 Waiver and Amendment. Neither party may waive any of the terms or conditions of this Agreement, nor may this Agreement be amended or modified, except by a duly signed writing referring to the specific provision to be waived, amended or modified.

8.4 Entire Agreement. This Agreement constitutes the entire Agreement with respect to the subject matter hereof, and supersedes all other prior Agreements and understandings, both written and oral, among the parties hereto and their affiliates.

8.5 Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provisions had never been contained herein.

8.6 Governing Law. This Agreement shall be governed by the laws of the state of Oklahoma, without regard to its conflicts of law provisions.

8.7 Voluntary Execution of Agreement. This Agreement is executed voluntarily and without any duress or undue influence on the part or behalf of the Parties, with the full intent of releasing all claims. The Parties acknowledge that:

- (a) they have read this Agreement;
- (b) they have been represented, or, in the alternative, have had the opportunity to obtain representation, in the preparation, negotiation, and execution of this Agreement by legal counsel of their own choice;
- (c) they understand the terms and consequences of this Agreement and of the releases it contains; and
- (d) they are fully aware of the legal and binding effect of this Agreement.

8.8 Counterparts/Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. For purposes of this Agreement, use of a facsimile, e-mail or other electronic medium shall have the same force and effect as an original signature.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

PARTY ONE:

PARTY TWO:

_____, Customer

Mike Fournier, Contractor

(Signed Name / Printed Name / Title)

(Signed Name / Printed Name / Title)