

**STATE OF ARKANSAS
SERVICES AGREEMENT**

City of Jonesboro

This AGREEMENT is made and entered into on this ____ day of _____, 20____, by and between the City of Jonesboro, a political subdivision of the State of Arkansas, having its principal place of business at 515 W. Washington Ave., Jonesboro, AR 72401 ("**City**"), and Barre Landscape Construction located at 41 Lieblong Road, Greenbrier, AR 72058 ("**Contractor**").

In consideration of the covenants hereinafter set forth, the parties mutually agree as follows:

1. **CONTRACT PERIOD** – This Agreement shall begin on the date the NOTICE TO PROCEED is received by **Contractor** and shall be completed within thirty (30) days of equipment delivery.
2. **SCOPE OF SERVICES** – City of Jonesboro has employed **Contractor** to provide and install playground equipment at Lewellen Park. These services to be provided by **Contractor** are set forth more fully in City of Jonesboro Bid No. 2012:32.
3. **PRICE** – City of Jonesboro agrees to pay **Contractor** the total sum not to exceed thirty-five thousand six hundred eighty-two dollars (\$35,682.00).
4. **STANDARD OF CARE** – Services performed by **Contractor** will be conducted in a manner consistent with that level of care and skill exercised by members of the profession with **Contractor's** experience and qualifications currently providing similar services.
5. **DOCUMENTS** – In connection with the performance of the services, **Contractor** may deliver to City of Jonesboro five or more reports or other written documents reflecting services provided. All such reports or other written documents shall become the property of City of Jonesboro upon delivery; however, all original data gathered by **Contractor** and work papers produced by **Contractor** in the performance of services are, and shall remain the sole and exclusive property of **Contractor**.
6. **PAYMENT TERMS** – **Contractor** will submit monthly service invoices, which shall include a detailed listing of charges, to City of Jonesboro and a final bill upon completion of services. City of Jonesboro shall notify **Contractor** within ten (10) days of receipt of an invoice of any dispute with the invoice and **Contractor**, upon such notice, shall provide back-up data to City of Jonesboro and **Contractor** will, therefore, promptly resolve any disputed items. Payment on undisputed invoice amounts is due upon receipt of the invoice by City of Jonesboro and is past due thirty (30) days from the date the invoice is received by the **City**, then **Contractor** shall have the right to either suspend all services provided pursuant to this Agreement, without prejudice, or terminate this Agreement in accordance with the provisions of Section 17.

NO INTEREST OR OTHER LATE PENALTIES SHALL ACCRUE ON LATE PAYMENTS.

7. **NON-APPROPRIATION** – It is understood and agreed by the parties that in the event funds are not appropriated in the current fiscal year or any subsequent fiscal years, this contract will become null and void and the City of Jonesboro will only be required to pay for services completed to the satisfaction of the City.
8. **INSURANCE** – **Contractor** agrees to maintain and keep in force during the life of this Agreement, with a company or companies authorized to do business in Arkansas, the following minimum insurance coverage's:

Worker's Compensation
Coverage A – State of AR Statutory
Coverage B – Employers Liability
\$1,000,000 Each Accident
\$1,000,000 Disease, Per Employee
\$1,000,000 Disease, Policy Limit

Comprehensive Liability - \$1,000,000 per occurrence – combined single limit / \$2,000,000 general aggregate to include products and completed operations.

Automobile \$1,000,000 per occurrence single limit (Coverage shall include bodily injury and property damage and cover all vehicles including owned, non-owned and hired)

No deviation will be accepted unless, in the CITY'S sole discretion, it is more advantageous to the City of Jonesboro (I.e. \$1,000,000 – a \$2,000,000 or \$5,000,000 limit would be acceptable.)

Certificates for all such policies of insurance shall be provided to the City of Jonesboro upon the execution of this Agreement.

9. **INDEMNIFICATION** – The contractor agrees to indemnify and save harmless the City of Jonesboro of and all City of Jonesboro officers, agents and employees from any and all claims, suites, actions, legal proceedings, damages, costs, expenses & attorney fees of every name and description, arising out of or resulting from the use of any materials furnished by the contractor, or any work done in the performance of the contract arising out of a willful or negligent act or omission of the provider, its officers, agents and employees; provided that such liability is not attributable to a willful or negligent act or omission on the part of the City, its officers, agents and employees.

10. **DISPOSAL OF SAMPLES, MATERIALS AND CONTAMINATED EQUIPMENT** – All uncontaminated samples obtained pursuant to this Agreement remain the property and responsibility of the **City**. These samples or other specimens will be disposed of sixty (60) days after submission of **Contractor's** report. Upon written request, **Contractor** will store samples for longer periods of time or transmit the samples to the City of Jonesboro for a mutually acceptable charge.

All contaminated samples and materials (containing or potentially containing hazardous constituents) obtained pursuant to the Agreement remain the property and responsibility of **Contractor** and shall be returned to the **Contractor** for proper disposal. It is understood and agreed that **Contractor** is responsible as a handler, generator, operator, treater, storer, transporter, or disposer of hazardous or toxic substances, waste or materials found or identified at the site.

11. **CONTROL OF JOB SITE AND ACTIVITY** – **Contractor** shall be responsible for its activities, that of its employees on any site and the activities of any consultants, contractors and/or subcontractors for maintaining a safe job site.

12. **COMPLIANCE WITH CODES AND STANDARDS** – **Contractor's** professional services shall incorporate those federal, state and local laws, regulations, codes and standards that are applicable at the time **Contractor** rendered its services. **Contractor** shall not be responsible for any claim or liability for injury or loss allegedly arising from **Contractor's** failure to abide by

federal, state or local laws, regulations, codes and standards that were not in effect or publicly announced at the time **Contractor** rendered its services.

13. **PUBLIC RESPONSIBILITY** – The City of Jonesboro has a duty to conform to applicable codes, standards, regulations and ordinances with regard to public health and safety. **Contractor** will at all times alert the City of Jonesboro to any matter of which **Contractor** becomes aware and believes requires the City of Jonesboro to issue a notice or report to certain public officials, or to otherwise conform with applicable codes, standards, regulations or ordinances. If the City of Jonesboro decides to disregard **Contractor's** recommendations in these respects, Contractor shall employ its best judgment in deciding whether or not it should notify public officials.
14. **CLIENT LITIGATION** – **Contractor** agrees to produce documents, witnesses and/or general assistance to any litigation, arbitration or mediation involving the **City**, if the City of Jonesboro requests such documents, witnesses and/or general assistance. The City of Jonesboro shall reimburse **Contractor** for all direct expenses incurred and time according to **Contractor's** rate schedule as of the date of the execution of this Agreement.
15. **CONFIDENTIALITY** – **Contractor** will maintain as confidential any documents or information provided by the City of Jonesboro and will not release, distribute or publish same to any third party without prior permission from the **City**, unless compelled by law or order of a court or regulatory body of competent jurisdiction. Such release will occur only after prior notice to the **City**.
16. **NOTICES** – All notices made pursuant to the Agreement shall be in writing and delivered personally or sent by registered or certified mail, return receipt requested, to the parties at their respective addresses set forth below:

Steve Kent, Purchasing Agent
City of Jonesboro
515 W. Washington Ave.
Jonesboro, AR 72401

Any party may change the person to whom notices are to be sent by giving ten (10) calendar days written notice of such change to the other party.

17. **TERMINATION** – Should **Contractor** perform services provided pursuant to this Agreement in an unacceptable manner the City of Jonesboro may, by a thirty (30) day written notice to **Contractor**, without prejudice to any other right or remedy available to the **City**, terminate this Agreement.

Should the City of Jonesboro fail to make payment on any undisputed invoice amount within sixty (60) business days upon receipt of such invoice, **Contractor** may elect to either suspend the services provided or terminate this Agreement; provided, however, prior to termination, the City of Jonesboro shall be given notice of the default and an opportunity to cure such default within seven (7) business days. Should this Agreement be terminated by **Contractor**, **Contractor** shall be entitled to be paid only for the services actually completed as of the date of termination.

This Agreement may also be terminated pursuant to the pertinent portions of Section 6 or Section 7 herein.

18. **CONTRACT DOCUMENTS.** This Agreement, along with the provisions contained in City of Jonesboro Bid No. 2012:32 represents the entire agreement between the parties and supersedes any and all prior agreements, whether written or oral, that may exist between the parties regarding same. If there is a conflict between any of the terms of these contract documents the order of precedence of these contract documents shall be;

- A. Any amendment signed after the execution date of this agreement;
- B. This Agreement, and;
- C. City of Jonesboro Bid No. 2012:32

19. **ASSIGNMENT** – This Agreement may not be assigned by either party without the prior written consent of the other party.

20. **SEVERABILITY** – Should any section, paragraph, clause, phrase, or provision of this Agreement be determined invalid or held unconstitutional by a court of competent jurisdiction, such declaration shall not affect the validity of this Agreement as a whole or any part or provision thereof, other than the part so decided to be invalid or unconstitutional.

21. **APPLICABLE LAW AND VENUE** – The construction, interpretation and performance of this Agreement shall be governed and construed in accordance with the laws of the State of Arkansas. The City of Jonesboro and **Contractor** further agree that this Agreement shall be deemed to be made and performed in City of Jonesboro, Arkansas. For the purposes of venue, all suits or causes of action arising out of this Agreement shall be brought in the courts of State of Arkansas, Craighead County.

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

_____	<u>City of Jonesboro</u>
By:	By:
_____	_____
Signature	Signature
_____	<u>Harold Perrin</u>
Printed Name	Printed Name
_____	<u>Mayor</u>
Title	Title

Attested by:

Donna Jackson, City Clerk