

**AGREEMENT FOR PROFESSIONAL PLANNING AND LANDSCAPE ARCHITECTURE SERVICES ON
A DEFINED SCOPE OF SERVICES BASIS**

This Agreement for Professional Planning and Landscape Architecture Services (“Agreement”) is entered into by the **City of Jonesboro** a **City of the First Class** of the State of **Arkansas** (“Client”), duly authorized to act by the **City Council** of said Client, and **HALFF ASSOCIATES, INC.**, a Texas corporation, acting through a duly authorized officer (“Planner and Landscape Architect”), relative to Planner and Landscape Architect providing professional Planning and Landscape Architecture services to Client. Client and Planner and Landscape Architect may be collectively referred to as the “Parties” or individually as a “Party”.

W I T N E S S E T H:

For the mutual promises and benefits herein described, Client and Planner and Landscape Architect agree as follows:

I. TERM OF AGREEMENT. This Agreement shall become effective on the date of its execution by both Parties and shall continue in effect thereafter until terminated as provided herein.

II. SERVICES TO BE PERFORMED BY PLANNER AND LANDSCAPE ARCHITECT. Planner and Landscape Architect shall provide to Client basic Planning and Landscape Architecture services as described in the Scope of Services attachment and fully incorporated herein as “**Exhibit A**” which services may include, but will not be limited to, those services normally rendered by a Planner and Landscape Architect to a **City of the First Class**. Planner and Landscape Architect shall perform its obligations under this Agreement as an independent contractor and not as an agent or fiduciary of any other party.

III. COMPENSATION. Client agrees to pay monthly invoices or their undisputed portions within thirty (30) calendar days of receipt. Payment later than thirty (30) calendar days shall include interest at one percent (1%) per month or lesser maximum enforceable interest rate, from the date Client received the invoice until the date Planner and Landscape Architect receives payment. Such interest is due and payable when the overdue payment is made.

It is understood and agreed by the Parties that Planner and Landscape Architect’s receipt of payment(s) from Client is not contingent upon Client’s receipt of payment, funding, reimbursement, or any other remuneration from others.

Time-related charges will be billed as specified in this Agreement. Unless stated otherwise in this Agreement, direct expenses, subcontracted services, and direct costs will be billed at actual cost plus a service charge of ten percent (10%). Mileage will be billed at current IRS rates.

IV. CLIENT’S OBLIGATIONS. Client agrees that it will (i) designate a specific person to act as Client’s representative, (ii) provide Planner and Landscape Architect with any previous studies, reports, data, budget constraints, special Client requirements, or other pertinent information known to Client, when necessitated by a project, (iii) provide site access, and to provide those services described in the attached Scope of Services, assist Planner and Landscape Architect in obtaining access to property necessary for performance of Planner and Landscape Architect’s work for Client, (iv) make prompt payments in response to Planner and Landscape Architect’s statements and (v) respond in a timely manner to requests from Planner and Landscape Architect. Planner and Landscape Architect is entitled to rely upon and use, without independent verification and without liability, all information and services provided by Client or Client’s representatives.

V. TERMINATION OF WORK. Either Client or Planner and Landscape Architect may terminate this Agreement at any time with or without cause upon giving the other Party ten (10) calendar days’ prior written notice. Client agrees that termination of Planner and Landscape Architect for Client’s convenience shall only be utilized in good faith and shall not be utilized if either the purpose or the result of such termination is the performance of all or part of Planner and Landscape Architect’s services under this Agreement by Client or by another service provider. Following Planner and Landscape Architect’s receipt of such termination notice Client shall, within ten (10) calendar days of Client’s receipt of Planner and Landscape Architect’s final invoice, pay Planner and Landscape Architect for all services rendered and all costs incurred up to the date of Planner and Landscape Architect’s receipt of such notice of termination.

VI. OWNERSHIP OF DOCUMENTS. Upon Planner and Landscape Architect's completion of services and receipt of payment in full, Planner and Landscape Architect shall grant to Client a non-exclusive license to possess the final drawings and instruments produced in connection with Planner and Landscape Architect's performance of the work under this Agreement, if any. Said drawings and instruments may be copied, duplicated, reproduced, and used by Client for the purpose of constructing, operating, and maintaining the improvements. Client agrees that such documents are not intended or represented to be suitable for reuse by Client or others for purposes outside the Scope of Services of this Agreement. Notwithstanding the foregoing, Client understands and agrees that any and all computer programs, GIS applications, proprietary data or processes, and certain other items related to the services performable under this Agreement are and shall remain the sole and exclusive property of Planner and Landscape Architect and may not be used or reused, in any form, by Client without the express written authorization of Planner and Landscape Architect. Client agrees that any reuse by Client, or by those who obtain said information from or through Client, without written verification or adaptation by Planner and Landscape Architect, will be at Client's sole risk and without liability or legal exposure to Planner and Landscape Architect or to Planner and Landscape Architect's employees, agents, representatives, officers, directors, affiliates, shareholders, owners, members, managers, attorneys, subsidiary entities, advisors, subconsultants or independent contractors or associates. Planner and Landscape Architect may reuse all drawings, reports, data, and other information developed in performing the services described by this Agreement in Planner and Landscape Architect's other activities. Under no circumstances shall delivery of electronic files for use by Client be deemed a sale by Planner and Landscape Architect, and Planner and Landscape Architect makes no warranties, either express or implied, of merchantability or fitness for any particular purpose. In no event shall Planner and Landscape Architect be liable for any damages, including but not limited to indirect or consequential damages, as a result of Client's unauthorized use or reuse of the electronic files. Client is aware that differences may exist between the electronic files delivered and the printed hard-copy original documents. In the event of a conflict between the signed original documents prepared by Planner and Landscape Architect and any electronic or other files or data provided, it is understood and agreed that the original signed or sealed hard-copy documents shall govern.

VII. NOTICES. Any notices to be given hereunder by either Party to the other may be affected either by personal delivery, in writing, or by registered or certified mail.

VIII. SOLE PARTIES AND ENTIRE AGREEMENT. This Agreement shall not create any rights or benefits to anyone except Client and Planner and Landscape Architect and contains the entire Agreement between the Parties. Oral modifications to this Agreement shall have no force or effect.

IX. INSURANCE. Planner and Landscape Architect shall, at its own expense, purchase, maintain and keep in force throughout the duration of this Agreement and for a period of four (4) years thereafter, professional liability insurance. The limits of liability shall be \$2,000,000 per claim and in the aggregate. Planner and Landscape Architect shall submit to Client a certificate of insurance prior to commencing any work for Client.

X. PROMPT PERFORMANCE BY PLANNER AND LANDSCAPE ARCHITECT. All services provided by Planner and Landscape Architect hereunder shall be performed in accordance with the degree of care and skill ordinarily exercised under similar circumstances by competent members of the Planning and Landscape Architecture profession in the State of **Arkansas** applicable to such Planning and Landscape Architecture services contemplated by this Agreement.

XI. CLIENT OBJECTION TO PERSONNEL. If at any time after entering into this Agreement Client has any reasonable objection to any of Planner and Landscape Architect's personnel, or any personnel, professionals and/or consultants retained by Planner and Landscape Architect, Planner and Landscape Architect shall promptly propose substitutes to whom Client has no reasonable objection, and Planner and Landscape Architect's compensation shall be equitably adjusted to reflect any difference in Planner and Landscape Architect's costs occasioned by such substitution.

XII. ASSIGNMENT AND DELEGATION. Neither Client nor Planner and Landscape Architect may assign their rights or delegate their duties without the written consent of the other Party. This Agreement is binding on Client and Planner and Landscape Architect to the fullest extent permitted by law. Nothing herein is to be construed as creating any personal liability on the part of any Client officer, employee or agent.

XIII. JURISDICTION AND VENUE. This Agreement shall be administered under the substantive laws of the State of **Arkansas** (and not its conflicts of law principles) which shall be used to govern all matters arising out of, or relating to, this Agreement and all of the transactions it contemplates, including without limitation, its validity, interpretation, construction, performance and enforcement. Exclusive venue shall lie in any court of competent jurisdiction in **Craighead County, Arkansas**.

XIV. INTEGRATION, MERGER AND SEVERABILITY. This Agreement and the Scope of Services, including fee and schedule are fully incorporated herein and represent the entire understanding of Client and Planner and Landscape Architect. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. The Agreement may not be modified or altered except in writing signed by both Parties. This Agreement constitutes, represents and is intended by the Parties to be the complete and final statement and expression of all the terms and arrangements between the Parties to this Agreement with respect to the matters provided for in this Agreement. This Agreement supersedes any and all prior or contemporaneous agreements, understandings, negotiations, and discussions between the Parties and all such matters are merged into this Agreement. Should any one or more of the provisions contained in this Agreement be determined by a court of competent jurisdiction or by legislative pronouncement to be void, invalid, illegal, or unenforceable in any respect, such voiding, invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be considered as if the entirety of such void, invalid, illegal, or unenforceable provision had never been contained in this Agreement.

XV. EXCLUSIVITY OF REMEDIES. The Parties acknowledge and agree that the remedies set forth in this Agreement (Agreed Remedies) are and shall remain the Parties' sole and exclusive remedy with respect to any claim arising from, or out of, or related to, the subject matter of this Agreement. The Parties agree that Planner and Landscape Architect is to have no liability or responsibility whatsoever to Client for any claim(s) or loss(es) of any nature, except as set forth in this Agreement. No Party shall be able to avoid the limitations expressly set forth in this Agreement by electing to pursue some other remedy.

XVI. TIMELINESS OF PERFORMANCE. Planner and Landscape Architect shall perform its professional services with due and reasonable diligence consistent with sound professional practices.

XVII. DISPUTE RESOLUTION. In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to schedule a series of no less than two (2) meetings of senior personnel of Client and Planner and Landscape Architect in which the disagreement or conflict will be discussed. The first of such meetings will be scheduled as soon as possible following identification of such disagreement or conflict and the second meeting must occur within thirty (30) calendar days following the initial meeting. Subsequent meetings, if any, may be scheduled upon mutual agreement of the Parties. The Parties agree that these two (2) meetings are conditions precedent to the institution of legal proceedings unless such meetings will adversely affect the rights of one or more of the Parties as such rights relate to statutes of limitation or repose.

XVIII. PROJECT ENHANCEMENT/BETTERMENT. IF A COMPONENT OF CLIENT'S PROJECT IS OMITTED FROM PLANNER AND LANDSCAPE ARCHITECT'S CONTRACT DOCUMENTS DUE TO THE BREACH OF CONTRACT OR NEGLIGENCE OF PLANNER AND LANDSCAPE ARCHITECT, PLANNER AND LANDSCAPE ARCHITECT WILL NOT BE LIABLE TO CLIENT TO THE EXTENT OF ANY BETTERMENT OR ADDED VALUE TO THE PROJECT. SPECIFICALLY, CLIENT WILL BE RESPONSIBLE FOR THE AMOUNT IT WOULD HAVE PAID TO THE CONSTRUCTION CONTRACTOR (OR SUPPLIER OR SUBCONTRACTOR OR OTHER) FOR THE COMPONENT AS IF SUCH HAD BEEN INCLUDED IN PLANNER AND LANDSCAPE ARCHITECT'S CONTRACT DOCUMENTS. NOTWITHSTANDING THE FOREGOING, PLANNER AND LANDSCAPE ARCHITECT WILL BE RESPONSIBLE, IF AT ALL, TO THE EXTENT REASONABLE AND NECESSARY TO PLACE CLIENT IN THE SAME POSITION IT WOULD HAVE BEEN BUT FOR SUCH BREACH OR NEGLIGENCE, FOR THE REASONABLE (I) RETROFIT EXPENSE, (II) WASTE, OR (III) INTERVENING INCREASE IN THE COST OF THE COMPONENT FURNISHED THROUGH A CHANGE ORDER FROM THE CONTRACTOR. TO THE EXTENT THAT THE CONTRACTOR PROVIDED UNIT PRICING, CLIENT UNDERSTANDS AND AGREES THAT THE ISSUE OF INTERVENING UNIT COST INCREASES WOULD ONLY BE APPLICABLE TO NEWLY IDENTIFIED ITEMS, NOT INCREASES IN QUANTITY OF EXISTING ITEMS.

IF IT IS NECESSARY TO REPLACE A COMPONENT OF THE PROJECT DUE TO THE BREACH OF CONTRACT OR NEGLIGENCE OF PLANNER AND LANDSCAPE ARCHITECT, PLANNER AND LANDSCAPE ARCHITECT WILL NOT BE LIABLE TO CLIENT FOR THE ENHANCEMENT OR UPGRADE OF THE COMPONENT BEYOND THAT ORIGINALLY INCLUDED IN THE CONTRACT DOCUMENTS. IN ADDITION, IF THE COMPONENT HAS AN IDENTIFIABLE USEFUL LIFE THAT IS LESS THAN THE SYSTEM/STRUCTURE/IMPROVEMENT ITSELF, THE DAMAGES OF THE OWNER SHALL BE REDUCED TO THE EXTENT THAT THE USEFUL LIFE OF THE COMPONENT WILL BE EXTENDED BY THE REPLACEMENT THEREOF.

SHOULD THERE BE AN ALLEGATION OF ERROR, NEGLIGENCE, BREACH OR OTHER DEFICIENCY IN THE SERVICES OF PLANNER AND LANDSCAPE ARCHITECT OR ANY OF ITS CONSULTANTS, AND SHOULD SUCH

ALLEGATION RELATE TO A CONDITION, COMPONENT, OR ITEM IN THE SERVICES OR THE PROJECT THAT IS ALLEGED OR OTHERWISE CLAIMED TO BE INACCURATE OR OMITTED FROM PLANNER AND LANDSCAPE ARCHITECT'S DRAWINGS, INSTRUMENTS OR OTHER DOCUMENTS PREPARED UNDER THIS AGREEMENT. IT IS UNDERSTOOD AND AGREED BY ALL PARTIES THAT PLANNER AND LANDSCAPE ARCHITECT AND ITS CONSULTANT'S LIABILITY, IF ANY, SHALL EXCLUDE ANY AND ALL DAMAGES, COSTS, OR EXPENSES THAT CREATE OR RESULT IN ADDED VALUE, UPGRADE, BETTERMENT OR ENHANCEMENT OF THE PROJECT AS SUCH RELATE TO THE INACCURATE OR OMITTED CONDITION, COMPONENT, OR ITEM AS ORIGINALLY DESIGNED.

XIX. AGREED REMEDIES

A. IT IS THE INTENT OF THE PARTIES TO THIS AGREEMENT THAT PLANNER AND LANDSCAPE ARCHITECT'S SERVICES UNDER THIS AGREEMENT SHALL NOT SUBJECT PLANNER AND LANDSCAPE ARCHITECT'S INDIVIDUAL EMPLOYEES, OFFICERS OR DIRECTORS TO ANY PERSONAL LEGAL EXPOSURE FOR CLAIMS AND RISKS ASSOCIATED WITH THE SERVICES THAT ARE EITHER PERFORMED OR PERFORMABLE UNDER THIS AGREEMENT.

B. IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT TO BOTH CLIENT AND PLANNER AND LANDSCAPE ARCHITECT AND ACKNOWLEDGING THAT THE ALLOCATION OF RISKS AND LIMITATIONS OF REMEDIES ARE BUSINESS UNDERSTANDINGS BETWEEN THE PARTIES AND THESE RISKS AND REMEDIES SHALL APPLY TO ALL POSSIBLE LEGAL THEORIES OF RECOVERY, CLIENT AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT OR ANY REFERENCE TO INSURANCE OR THE EXISTENCE OF APPLICABLE INSURANCE COVERAGE, THAT THE TOTAL LIABILITY, IN THE AGGREGATE, OF PLANNER AND LANDSCAPE ARCHITECT AND PLANNER AND LANDSCAPE ARCHITECT'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS TO CLIENT OR TO ANYONE CLAIMING BY, THROUGH OR UNDER CLIENT, FOR ANY AND ALL CLAIMS, LOSSES, COSTS OR DAMAGES WHATSOEVER ARISING OUT OF, RESULTING FROM, OR IN ANY WAY RELATED TO, THE SERVICES UNDER THIS AGREEMENT FROM ANY CAUSE OR CAUSES OF PLANNER AND LANDSCAPE ARCHITECT OR PLANNER AND LANDSCAPE ARCHITECT'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS, SHALL NOT EXCEED PLANNER AND LANDSCAPE ARCHITECT'S FEE RECEIVED FOR THE SERVICES PERFORMED, ADJUSTED DOWNWARD TO ACCOUNT FOR SUBCONSULTANT/SUBCONTRACTOR FEES INCURRED AND REIMBURSABLE EXPENSES UNDER THIS AGREEMENT OR \$500,000, WHICHEVER IS LOWER. INCREASED LIMITS MAY BE NEGOTIATED FOR AN ADDITIONAL FEE.

C. NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT, PLANNER AND LANDSCAPE ARCHITECT SHALL HAVE NO LIABILITY TO CLIENT FOR CONTINGENT, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF USE, REVENUE OR PROFIT; OPERATING COSTS AND FACILITY DOWNTIME; OR OTHER SIMILAR BUSINESS INTERRUPTION LOSSES, HOWEVER, THE SAME MAY BE CAUSED.

D. CLIENT MAY NOT ASSERT ANY CLAIM AGAINST PLANNER AND LANDSCAPE ARCHITECT AFTER THE SHORTER OF (1) THREE (3) YEARS FROM SUBSTANTIAL COMPLETION OF SERVICES GIVING RISE TO THE CLAIM, OR (2) THE STATUTE OF LIMITATION PROVIDED BY LAW.

XX. WAIVER. Any failure by Planner and Landscape Architect to require strict compliance with any provision of this Agreement shall not be construed as a waiver of such provision, and Planner and Landscape Architect may subsequently require strict compliance at any time, notwithstanding any prior failure to do so.

XXI. SIGNATORIES. Client and Planner and Landscape Architect mutually warrant and represent that the representation of each who is executing this Agreement on behalf of Client or Planner and Landscape Architect, respectively, has full authority to execute this Agreement and bind the entity so represented.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties, having read and understood this Agreement, have executed such in duplicate copies, each of which shall have full dignity and force as an original, on the ____ day of _____, 20__.

HALFF ASSOCIATES, INC.

CLIENT: CITY OF JONESBORO, Arkansas

By: _____
Signature

Printed Name

Title

Date

By: _____
Signature

Printed Name

Title

Date