

Contract   
Appendix A   
Non-Collusion



**City of Jonesboro  
Community Development Block Grant**

**CONTRACTOR PROVISIONS**

**AGREEMENT:** This AGREEMENT made this 6<sup>th</sup> day of Sept, 2013, by and between  
City of Jonesboro, Arkansas hereinafter called OWNER, City of Jonesboro, hereinafter called  
ADMINISTRATOR OF CDBG FUNDS, and Aqua Construction Int'l Inc., hereinafter called  
CONTRACTOR.

1. **CONTRACT LOCATION, AMOUNT, PAYMENT:** Upon completion of contract and City inspection approval of (permitted items); that for and in consideration of the payment and agreement hereinafter mentioned, the CONTRACTOR hereby agrees with the OWNER to commence and complete the new construction described as follows:

Location: 1506 North Church St. Jonesboro, AR 72401

Description: Furnish and install spray pad equipment for children of all skill levels and abilities at Parker Park Community Center. It is the intention of the City of Jonesboro; Parks & Recreation Department to have a complete spray pad furnished with installation performed by a certified installer. The specifications document indicates a large (approximately 2,500 square feet) play environment containing a variety of play events for children including those who are physically and developmentally challenged. Equipment for the Spray Pad shall be of an appropriate color scheme and include a variety of play components.

hereinafter called the PROJECT, for the sum of this project is not to exceed \$197,200.00 dollars and all other work in connection therewith, under the terms as stated in the Specs of the CONTRACT, and at his or her (its or their) own cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendent labor, insurance and other accessories and service(s) necessary to complete the said PROJECT in accordance with the conditions and prices stated in the Description of Work and Specs of the CONTRACT (Appendix A), and other drawings and printed or written explanatory matter thereof, the specifications and CONTRACT documents thereof as prepared by the Grants & Community Development Office, all of which are made a part hereof and collectively evidence and constitute the CONTRACT. Payments will be paid as follows, subject to the Owner's acceptance of work done:

Percent of Work Done (Amount)	Project Completion Date	Payment
_____	_____	_____ 1 draw per month _____

2. **TIME OF PERFORMANCE:** OWNER shall provide written authorization to CONTRACTOR to commence

work. The CONTRACTOR agrees to commence work on the project within ten (10) calendar days after issuance by the Owner of a "Notice to Proceed". The CONTRACTOR agrees to complete work on the PROJECT within 90 consecutive calendar days after Notice to Proceed is issued. In the event the work to be performed as set forth is not completed as stated, the liquidated damages provision of this agreement shall apply in the amount of twenty five dollars (\$25.00) per day for each calendar day. If CONTRACTOR fails to commence work within 7 days of the date of the OWNER'S notification to commence, as extended by the ADMINISTRATOR OF CDBG FUNDS, the CONTRACTOR shall be assessed liquidated damages in favor of the ADMINISTRATOR OF CDBG FUNDS in the amount of one hundred dollars (\$100.00) per day for each calendar day in excess of the number of days, as provided herein, unless the ADMINISTRATOR OF CDBG FUNDS determines the delay is beyond the CONTRACTOR'S control. The ADMINISTRATOR OF CDBG FUNDS will have the right to consider the CONTRACTOR ineligible to bid future projects, and all Housing Assistance contracts approved, but for which Notices to Proceed have not been issued, may be considered null and void. If completion is delayed for reasons beyond the CONTRACTOR'S control, CONTRACTOR shall provide timely notice to the OWNER of the reasons for such delay. If such good cause is claimed by obligation to substantiate its claim by adequate documentation. In the event CONTRACTOR shall fail to complete work within the agreed upon period and fails to provide evidence of good cause for such delay, OWNER shall have the right to declare CONTRACTOR in default. In such event, OWNER shall be responsible for providing written notice to CONTRACTOR by registered mail of such default. If CONTRACTOR fails to remedy such default within fifteen (15) calendar days of such notice, OWNER shall have the right to select a substitute CONTRACTOR. If the expense of finishing the work exceeds the unpaid balance on this Contract, the CONTRACTOR shall pay the difference to the OWNER.

If, through any cause, the CONTRACTOR fails to fulfill in a timely and proper manner the obligations under this CONTRACT, the ADMINISTRATOR OF CDBG FUNDS shall have the right to terminate this CONTRACTOR by giving written notice to the CONTRACTOR of such termination and specifying the effective date of such termination. Upon termination of a contract, the work accomplished in the specified manner under said contract shall be compensated for in a manner based upon the itemized bid submitted by the CONTRACTOR prior to the initiation of said contract.

3. WARRANTY: For good and valuable consideration, CONTRACTOR hereby agrees to provide a full one (1) year warranty to the OWNER, which shall extend to subsequent owners of the property to be improved. The warranty shall provide that improvements, hardware and fixtures of whatever kind or nature installed or constructed on said property by the CONTRACTOR are of good quality and free from defects in workmanship or materials or deficiencies subject to the warranty contained in this paragraph provided. CONTRACTOR and OWNER agree, however, that the warranty set forth in this paragraph shall apply only to such deficiencies and defects as to which OWNER or subsequent owners shall have given written notice to the CONTRACTOR, at its principal place of business, within one (1) year from the date of CONTRACTOR'S request for final payment, stating that all work under contract has been completed.

The CONTRACTOR agrees that before payment is made on a completed and approved PROJECT, the CONTRACTOR will furnish the OWNER and the ADMINISTRATOR OF CDBG FUNDS, (1) manufacturers warranties and/or guarantees on all warrantable products and materials installed in the PROJECT, including but not limited to: stream jets, dumping buckets, upward spray rings, fan jet sprays, fan sprays, water tents, water pillars, arch jets, airplane slide, powder coated seating benches and other splash pad related equipment. (2) CONTRACTOR'S warranty which is valid for one (1) year from the date of final payment.

The CONTRACTOR agrees to remedy any defects in the CONTRACTOR'S work and materials and any damage resulting there from which may appear within a period of one (1) year from the date of final acceptance of the work which is the date upon which final payment is made for the PROJECT. If the CONTRACTOR refuses to remedy defects or damage as determined by the ADMINISTRATOR OF CDBG FUNDS, the ADMINISTRATOR OF CDBG FUNDS will have the right to consider the CONTRACTOR ineligible to bid future projects of the CONTRACTOR, approved but for which Notices to Proceed have not been issued, may be considered null and void.

4. SCOPE OF WORK: The OWNER agrees that only the items listed in the CONTRACT and Description of Work are to be accomplished by the CONTRACTOR, acknowledges that it the CONTRACTOR reviewed the

CONTRACTOR'S Proposal and that such proposal is accurate and consistent as to the name of CONTRACTOR, scope of work that the CONTRACTOR will undertake, and price (Appendix A). CONTRACTOR acknowledges the performance requirement established in the write up and warrants that all work undertaken will conform to said specifications. The OWNER and the CONTRACTOR agree that the City of Jonesboro Grants & Community Development Department shall make final determination of satisfactory performance of items required by the CONTRACT and the Description of Work with exception of permitted items. The OWNER agrees that upon successful completion of the PROJECT and issuance of a grant and/or a loan to pay for the cost of this PROJECT, he or she will use funds so provided to pay for the cost of the PROJECT. The OWNER agrees that he or she will provide notice of defects in workmanship or materials installed in the PROJECT within a reasonable period of time.

The CONTRACTOR will not be responsible for defects caused by acts of the occupants, by occupant's abuse, neglect or inadequate maintenance, or by Acts of God. Nothing contained herein shall limit the right of the OWNER to proceed by legal means to recover from the CONTRACTOR, or third parties other than the ADMINISTRATOR OF CDBG FUNDS, for damages to the premises or personal property located therein.

5. CHANGE ORDERS: OWNER and CONTRACTOR expressly agree that no material changes or alterations in the description of work or price provided above shall be made unless in writing and mutually agreed to by both parties and authorized by the City of Jonesboro. It is recognized by the parties that the ADMINISTRATOR OF CDBG FUNDS shall make a grant and/or loan to the OWNER which shall be used to pay in whole or in part the cost of the CONTRACT, subject to additions and deductions in written and signed change orders, as provided in the Work Description and Housing Specs of the CONTRACT. It is recognized by the parties that the ADMINISTRATOR OF CDBG FUNDS participation in this CONTRACT arises from a project of the ADMINISTRATOR OF CDBG FUNDS to promote the health, safety and welfare of the inhabitants of the City by providing incentives for the renovation, rehabilitation and new Construction of private housing, thereby assisting in the elimination of urban blight and deterioration and the social and police power problems created for the City and its inhabitants thereby. The contract will specify the total compensation and limit the sum of all Change Orders (CO) to a maximum of 15%. Compensation for each Change Order will be based on a Lump Sum Compensation for services rendered and negotiated prior to each Change Order being issued.

6. HOLD HARMLESS: The CONTRACTOR agrees that the ADMINISTRATOR OF CDBG FUNDS shall have the right to act for the OWNER in taking all actions necessary to insure the full and complete performance of the obligations of the CONTRACTOR under this CONTRACT. The CONTRACTOR agrees to hold the ADMINISTRATOR OF CDBG FUNDS harmless, defend and indemnify the OWNER, the ADMINISTRATOR OF CDBG FUNDS, and the City of Jonesboro from liability and claim for damages because of bodily injury, death, property damage, sickness, disease or illness and from any and all claims, actions, suits, charges and judgments whatsoever, including legal fees and expenses arising from CONTRACTOR'S Performance under this agreement to install or construct housing rehabilitation to be paid for out of the proceeds of the OWNER'S rehabilitation loan. CONTRACTOR is acting in the capacity of an independent CONTRACTOR with respect to the OWNER with reference to this contract.

The ADMINISTRATOR OF CDBG FUNDS shall have the authority as set forth in the preceding sentence and agrees that any and all claims which may arise in favor of the real property being rehabilitated by this CONTRACT and any and all claims arising on behalf of the OWNER individually shall be brought and pursued against the CONTRACTOR and shall not be pursued or otherwise prosecuted against the ADMINISTRATOR OF CDBG FUNDS, and further agrees that all sums disbursed by the ADMINISTRATOR OF CDBG FUNDS to the OWNER for the payment of all or a part of this CONTRACT shall be used for that purpose, according to the guidelines established by the ADMINISTRATOR OF CDBG FUNDS.

7. DEBARMENT: All contractors and subcontractors names' will be checked to verify that they are not found on the U.S. Department of Housing & Urban Development Government wide Debarment and Suspension list.

8. LIEN WAIVERS: CONTRACTOR agrees to protect, defend, and indemnify OWNER from any claims for unpaid work, labor, or materials with respect to CONTRACTOR'S Performance. Final payment shall not be

due until the CONTRACTOR has delivered to the OWNER complete release of all liens for work completed arising out of Contractor's Performance or a receipt in full covering all labor and materials for which a lien could be filed or a bond satisfactory to the OWNER indemnifying him against any lien.

9. PERMITS AND CODES: CONTRACTOR agrees to secure and pay for all necessary permits and licenses required for CONTRACTOR'S Performance and to adhere to applicable local codes and requirements whether or not covered by the specifications and drawings for the work, including any CONTRACTOR registration requirements.

10. REMOVAL OF DEBRIS: Upon completion of work, CONTRACTOR agrees to remove all construction debris and surplus material from the property and leave the property in a neat and broom clear condition.

11. SUBCONTRACTORS: CONTRACTOR agrees that all the warranties contained herein shall apply to all work performed under the CONTRACT, including that performed by any Subcontractors.

12. RESOLUTION OF DISPUTES: All claims or disputes between the OWNER and CONTRACTOR arising out of or related to the work shall be decided by arbitration in accordance with the construction industry arbitration rules of the Arkansas Contractors Licensing Board unless the parties mutually agree otherwise. The OWNER and CONTRACTOR shall submit all disputes or claims, regardless of the extent of the work's progress, to the Arkansas Contractors Licensing Board (501-372-4661) and Better Business Bureau (800-482-8448) unless the parties mutually agree otherwise. Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement, and shall be made within a reasonable time after the dispute has arisen. The award rendered by the arbitration shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. If the arbitrator's award is in a sum which is less than that which was offered in settlement by the CONTRACTOR, the arbitrator may award costs and attorney's fees in favor of the CONTRACTOR. If the award of the arbitrator is in a sum greater than that, which was offered in settlement by the OWNER, the arbitrator may award costs and attorney's fees in favor of the OWNER.

13. PROHIBITION OF KICKBACKS: Neither the CONTRACTOR nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm, or person to submit a collusive or sham Bid in connection with the CONTRACTOR for which the attached Bid has been submitted or to refrain from bidding in connection with such CONTRACT, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm, or person to fix any overhead, profit, or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement, any advantage against the City of Jonesboro or any person interested in the proposed CONTRACT. No member of the City Council, or other Officer of the City of Jonesboro, or the Jonesboro Community Development Citizen Advisory Committee, or any person in the employ of the City or Citizen Advisory Committee is directly or indirectly interested in the bid, or the work to which it relates, or in any portion of the profits thereof. The price or prices quoted are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

14. INTEREST OF MEMBERS, OFFICERS, EMPLOYEES OF PUBLIC BODY MEMBERS OF LOCAL GOVERNING BODY, OR OTHER PUBLIC OFFICIALS: No member, officer, or employee of the Public Body, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under the Agreement.

15. PROHIBITION OF BONUS OR COMMISSION: The assistance provided under this Agreement shall not be used in payment of any bonus or commission for the purpose of obtaining county approval of the application for such assistance.

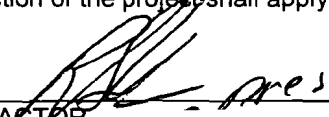
16. ACKNOWLEDGEMENT: The above warranties are in addition to, and not in limitation of, any and all other rights and remedies to which the OWNER, or subsequent owners, may be entitled, at law or in equity, and shall survive the conveyance of title, delivery of possession of the property, or other final settlement made by the OWNER and shall be binding on the undersigned notwithstanding any provision to the contrary contained in any instrument heretofore, and thereafter executed by the OWNER.

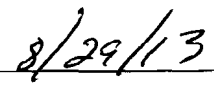
17. INSURANCE: Contractor shall maintain all appropriate forms of insurance, but not limited to:

1. Worker's Compensation \$100,000 or Certificate of Non-Coverage
2. Comprehensive General Liability with limits of not less than \$100,000 per occurrence

Contractor shall hold OWNER harmless for any accident that may occur "on" or "to and from" the job site that, in any way, relates to subcontractor's work on the aforementioned project. Commencement of this project will not occur until contractor has provided proof of insured coverage.

All applicable laws, ordinances and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the contract throughout.

  
\_\_\_\_\_  
CONTRACTOR

  
\_\_\_\_\_  
DATE

## EQUAL OPPORTUNITY PROVISIONS

1. CIVIL RIGHTS ACT OF 1964 COMPLIANCE

During the performance of this CONTRACT, the CONTRACTOR agrees to comply with the following requirements:

2. SECTION 503 HANDICAPPED COMPLIANCE (IF \$2,500 OR OVER)

During the performance of this CONTRACT, the CONTRACTOR agrees to comply with the following requirements:

### AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS

(a) The CONTRACTOR will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The CONTRACTOR agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: Employment, upgrading, promotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(b) The CONTRACTOR agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.

(c) In the event of the CONTRACTOR'S noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.

(d) The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the Contracting Officer. Such notices shall state the CONTRACTOR'S obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

(e) The CONTRACTOR will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the CONTRACTOR is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment of physically and mentally handicapped individuals.

(f) The CONTRACTOR will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contractor Compliance Programs may direct to enforce such provisions, including action for noncompliance.

3. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974  
COMPLIANCE

During the performance of this CONTRACT, the CONTRACTOR agrees to comply with the following requirements:

- (a) No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.
- (b) Whenever the Secretary determines that a State or unit of general local government which is a recipient of assistance under this title has failed to comply with subsection (a) or an applicable regulation, he shall notify the Governor of such State or the Chief Executive Officer of such unit of local government of the noncompliance and shall request the Governor or the Chief Executive Officer to secure compliance. If within a reasonable period of time, not to exceed sixty (60) days, the Governor or the Chief Executive Officer fails or refuses to secure compliance, the Secretary is authorized to (1) refer the matter to the Attorney General with a recommendation that appropriate civil action be instituted; (2) exercise the powers and functions provided by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000 d); (3) exercise the powers and functions provided for in Section III (A) of this Act; or (4) take such other action as may be provided by law.
- (c) When a matter is referred to the attorney General pursuant to subsection (b), or whenever he has reason to believe that a State Government or unit of general local government is engaged in a pattern or practice in violation of the provisions of this Section, the Attorney General may bring a civil action in any appropriate United States District Court for such relief as may be appropriate, including injunctive relief.

CONTRACTOR: \_\_\_\_\_

Date: 8/29/12

ADMINISTRATOR OF CDBG FUNDS: \_\_\_\_\_

Date: 8/29/12

BY:

Ann Barré  
CDBG Coordinator  
City of Jonesboro