

**CITY OF DALTON
PARKS AND RECREATION DEPARTMENT**
GENERAL CONSTRUCTION AGREEMENT

THIS GENERAL CONSTRUCTION AGREEMENT is made and entered into on this ____ day of _____, 20____ by and between the City of Dalton, a Georgia Municipal Corporation, hereinafter referred to as "CITY", and Signature Tennis Courts, Inc., hereinafter referred to as "CONTRACTOR".

WHERAS, CITY owns certain real property located at Brookwood Park upon which the Parks and Recreation Department operates tennis courts; and

WHEREAS, CITY desires to refurbish the surface and construct Pickleball Courts upon said property; and

WHEREAS, CONTRACTOR desires to construct the project to the CITY's specifications; and

WITNESSETH: That the parties hereto for the considerations hereinafter mentioned covenant and agree as follows

1. CONSTRUCTION SITE: The real property upon which the project shall be constructed is located at Brookwood Park, hereinafter "PROPERTY".

2. USE OF PROPERTY: CONTRACTOR shall have use and possession of the PROPERTY at the following days and times to complete the project:

Days: _____

Time of day: _____

In the event that CONTRACTOR should desire to use the PROPERTY on additional dates or times, CONTRACTOR shall obtain written authorization from the Director of the Parks and Recreation Department. CONTRACTOR shall not restrict the public use of or access to the PROPERTY except as may be authorized by the Director. The PROPERTY shall be occupied and used in conformity with all laws, statutes, ordinances, rules, restrictions and orders of any federal, state or municipal governments or agencies thereof having jurisdiction over the use of the PROPERTY. The PROPERTY shall be used for construction of the subject project and related storage only and not for any other commercial operations. The storage of flammable liquids, gases, fuels, lubricating or waste oil, acids, paint and solvents or other dangerous

materials is prohibited except that such materials may be kept and stored in proper receptacles and secured from access by the public at the PROPERTY during construction as may be necessary for use in the operation of CONTRACTOR for completion of the subject project. Any such substances shall be delivered in such amount, and stored and used only as approved by the CITY and in accordance with applicable federal, state and local statutes, ordinances, rules and regulations in force during the term of the Agreement.

3. PROJECT: The CONTRACTOR shall convert 2 existing tennis courts to 6 permanent pickleball courts to include the following project:

- (a) clean courts as necessary.
- (b) install 12 net post foundations. (Any dirt remove from digging out net post foundations shall be spread on site as designated by CITY.)
- (c) fill all structural cracks with E330 crack filler and install multi-layered Rite Way crack repair system over all structural cracks (1/16 inch or larger).)The Rite Way product shall not bubble, has no hollow sound and incorporates a micro sealant moisture barrier over the cracks.)
- (d) fill all low lying areas and paving joints with acrylic patch binder. (Note: These areas will improve but will not be perfect.)
- (e) apply 3 coats of black and 3 coats of Sportsmaster full acrylic playing surface. (Colors will be royal blue and light green unless specified otherwise.)
- (f) stripe 6 regulation pickleball courts with one coat of primer and two coats of texturized white line paint.
- (g) install 6 new sets of pickleball net posts and 6 new pickleball nets.
- (h) clean work site thoroughly.
- (i) remove tennis net and install 4 foot high fencing as divider between the two sets of 3 pickleball courts with opening as specified in plans.
- (j) provide 5 year warranty on all repairs to existing cracks with Rite Way product. If any area fails, the cracks will be completely repaired and are will be re-color coated. (This warranty does not include any new cracks that may develop in the future.)

4. DATE OF COMMENCEMENT: The CONTRACTOR shall commence work on the project on _____, 20____. If no date is provided, then the date of commencement shall be ten days from execution of this Agreement.

5. DATE OF COMPLETION: The CONTRACTOR shall complete the project on or before _____, 20 ____.

6. CONTRACT SUM: The CITY shall pay to CONTRACTOR the total sum of \$ 28,500.00 Dollars for the complete performance of the project and terms of this Agreement. In addition, CITY shall pay to CONTRACTOR for any additional work performed pursuant to any mutually agreed to change orders. All change orders shall be in writing signed by both parties.

7. CONTRACT PENALTY: The CONTRACTOR shall pay to the CITY the amount of \$100.00 Dollars per calendar day for unexcused delay in completion of the project past the date of completion.

8. PAYMENT: The CITY shall pay the contract sum to CONTRACTOR upon complete performance of the project and terms of this Agreement. CONTRACTOR shall provide to CITY an Affidavit from the CONTRACTOR stating the CONTRACTOR has fully performed all terms of the Agreement. Final payment shall be made no later than 30 days after receipt of said Affidavit. Payment shall be made via electronic funds transfer (EFT).

9. SURRENDER OF PROPERTY: CONTRACTOR shall, no later than 5 days after completion of the project, surrender possession of the PROPERTY and remove all vehicles, equipment, supplies, construction debris, waste and refuse from the PROPERTY. CONTRACTOR shall reimburse CITY for the cost of removal of any such items remaining on the PROPERTY after 5 days. CITY may have any such items stored at CONTRACTOR'S risk and expense. All personal property remaining on the PROPERTY or possession of the CITY after 30 days shall be deemed abandoned by the CONTRACTOR and may be disposed of by CITY without liability to CONTRACTOR. All permanent improvements to the PROPERTY shall become the property of the CITY.

10. CONTRACTOR COVENANTS: CONTRACTOR covenants and agrees:

- (a) to use the PROPERTY in a safe, careful and lawful manner;
- (b) to promptly report in writing to CITY any defective condition known to CONTRACTOR which the CITY is required to repair;
- (c) to promptly report in writing to CITY any damage to or injuries sustained on the PROPERTY and to promptly repair any damage to the PROPERTY which is made necessary by any act of CONTRACTOR, its employees, agents, patrons or invitees;
- (d) to keep the PROPERTY in a clean and orderly condition and to protect from loss, damage or theft any supplies or materials necessary for completion of the project;
- (e) to permit CITY and its employees and agents access to the PROPERTY at all reasonable times for the purposes of making repairs, inspecting the PROPERTY, and inspecting the progress of the project;
- (f) to use only employees and subcontractors qualified to complete the work with sufficient experience in same or substantially similar projects;
- (g) to use only properly licensed employees or subcontractors for any work requiring a specialty or professional license issued by the State of Georgia;
- (h) to use only new materials appropriate for completion of the project;

(i) to perform all work on the project in a good and workmanlike manner, free from faults and defects, and in conformance with the terms of this Agreement.

11. INDEMNITY: CONTRACTOR shall indemnify CITY from and hold CITY harmless against all claims, demands and judgments for loss, damage or injury to person or property, resulting from or incurring by reason of CONTRACTOR'S use and occupancy or non-occupancy of the PROPERTY or by the negligence or willful acts of CONTRACTOR, its agents, officers, employees, invitees or licensees and from all expenses incurred by CITY as a result thereof including, without limitation, reasonable attorneys' fees and expenses and court costs, except if arising from or caused by the sole fault or negligence of CITY or any of CITY's employees, agents or representatives acting on behalf of the CITY.

Additionally, CONTRACTOR agrees that all personal property that may be at any time at the PROPERTY shall be at CONTRACTOR's sole risk or at the risk of those claiming through CONTRACTOR and that CITY shall not be liable for any damage to or loss of such personal property except if arising from or caused by the sole fault or negligence of CITY.

12. INSURANCE: CONTRACTOR agrees to carry at its own expense through the term of this Agreement the types and amounts of insurance required to maintain status as a Vendor of the City of Dalton. CONTRACTOR shall provide CITY with copies or evidence of such insurance coverage prior to the commencement date of the Agreement. Such insurance policies shall name CITY as an additional insured and shall be issued by such insurance companies and on such forms as may be approved by CITY.

13. ASSIGNMENT: CONTRACTOR may not assign all or any portion of the Agreement without the prior written permission of CITY.

14. SUBCONTRACTORS: The CONTRACTOR shall provide written notice to CITY of CONTRACTOR'S intent to use a subcontractor for any portion of the project. CITY shall be entitled to reject any subcontractor it deems not qualified to complete the project. Any subcontractor approved for work on the project shall abide by any and all terms of this Agreement.

15. NON-WAIVER OF DEFAULT: The failure or delay by either party hereto to enforce or exercise at any time any of the rights or remedies or other provisions of this Agreement shall not be construed to be a waiver thereof, not affect the validity of any part of this Agreement or the right of either party thereafter to enforce each and every such right or remedy or other provision. No waiver of any default or breach of the Agreement shall be held to be a waiver of any other default and breach.

16. NOTICES: Any notice required or permitted to be given under this Agreement or by law shall be deemed to have been given if reduced in writing and delivered in person or mailed by certified mail, return receipt requested, postage prepaid to the party who is to receive such notice.

Such notice to CITY shall be mailed to:

City of Dalton
ATTN: City Administrator
P.O. Box 1205
Dalton, GA 30722-1205

Such notice to CONTRACTOR shall be mailed to:

Signature Tennis Courts, Inc.
ATTN: Mike Imbornone
1025 Rose Creek Drive
Suite 620-244
Woodstock, GA 30189

When so mailed, the notice shall be deemed to have been given as of third (3rd) day after the date it was mailed. The addresses may be changed by giving written notice thereof to the other party.

17. **CONTRACT DOCUMENTS:** The Agreement shall include the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Addenda relating to bidding and proposal requirements, and any other written information provided by the CITY in anticipation of receiving bids or proposals, if any, except as specifically excluded herein, and the CONTRACTOR'S bid or proposal. The terms of this Agreement shall supersede any terms in the above-referenced documents in direct conflict with the terms of this Agreement.

18. **VENDOR:** CONTRACTOR shall register and remain active as a Vendor of the CITY by completing the City of Dalton Vendor Packet and fully comply with any and all requirements of said Vendor.

19. **TERMINATION OF CONTRACT:** In the event that CONTRACTOR defaults or neglects to perform work on the project in accordance with the terms of this Agreement, CITY may terminate this Agreement. Prior to termination of this Agreement, CITY shall provide written notice to CONTRACTOR of any default and provide CONTRACTOR ten (10) days to correct said default or deficiency.

20. **WARRANTY:** CONTRACTOR shall provide to CITY a general warranty for labor and materials and guarantees that the work on the project it performs shall be free from any defects in workmanship and materials for a period of two (2) years from the date of completion in addition to any additional warranty provided in Section 3 - Project description.

21. **MISCELLANEOUS PROVISIONS:**

(a) **Governing Law; Venue.** This Agreement is being executed and delivered in the State of Georgia and shall be construed and enforced in accordance with the laws of that state. The exclusive jurisdiction and venue for any action arising out of this Agreement shall be the Superior Court of Whitfield County Georgia, and the parties hereby waive any and all objections

or defenses thereto.

(b) Successors and Assigns. This Agreement and the respective rights and obligations of the parties hereto shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties. CONTRACTOR shall not assign its rights or obligations under this Agreement without the prior written consent of the CITY.

(c) Severability of Invalid Provisions. If any provision of this Agreement shall be deemed invalid, void or unenforceable, the remaining provisions hereof shall not be affected or impaired, and such remaining provisions shall remain in full force and effect.

(d) Complete Agreement; Amendments. This Agreement constitutes the entire agreement between the parties hereto; it supersedes all previous understandings and agreements between the parties, if any, and no oral or implied representation or understanding shall vary its terms, and it may not be amended except by written instrument executed by both parties hereto.

(e) Remedies Cumulative. All rights, powers, and privileges conferred hereunder upon the parties hereto shall be cumulative, but not restrictive to those given by law.

(f) Time is of the Essence. Time is of the essence of this Agreement in each and all of its provisions.

(g) Attorney Fees. In the event the CITY must enforce the terms of this Agreement by filing a civil action against CONTRACTOR, then CONTRACTOR shall pay an amount equal to fifteen percent (15%) of the contract sum as attorney fees.

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

CONTRACTOR:

CONTRACTOR:

By: _____

Title: _____

CITY:

CITY OF DALTON, GEORGIA

By: _____
MAYOR

Attest: _____
CITY CLERK