

Construction Contract

This Construction Contract ("Contract") is made as of January 3, 2024 ("Effective Date") by and between The City of Forest Park ("Owner") of 5230 Jones Rd, Forest Park, Georgia 30297, and Penaloza Designs & Construction LLC ("Contractor") of 5530 Old Dixie Hwy Apt A7, Forest Park, Georgia 30297.

Penaloza Designs & Construction LLC desires to provide construction services to The City of Forest Park and The City of Forest Park desires to obtain such services from Penaloza Designs & Construction LLC.

Therefore, in consideration of the mutual promises set forth below, the parties agree as follows:

- 1. Description of Services.** Beginning on the Effective Date, Penaloza Designs & Construction LLC will provide to The City of Forest Park the services described in the attached Exhibit A (collectively, "Services").
- 2. Scope of Work.** Penaloza Designs & Construction LLC will provide all services, materials, and labor for the construction of the Basketball Court described in the attached "City of Forest Park Basketball Court Estimate" at the property of Perkins Park located at 5127 West St, Forest Park, Georgia, 30297 ("Worksite").

This includes building and construction materials, necessary labor and all required tools and machinery needed for the completion of construction.

Penaloza Designs & Construction LLC is only responsible for development of the basketball court, but not related to sewer or water systems, steps, driveways, patios, aprons, etc., unless they are specifically agreed to in writing.

- 3. Plans, Specifications, and Construction Documents.** The City of Forest Park will make available to Penaloza Designs & Construction LLC all plans, specifications, drawings, blueprints, and similar construction documents necessary for Penaloza Designs & Construction LLC to provide the Services described herein. Any such materials shall remain the property of The City of Forest Park. Penaloza Designs & Construction LLC will promptly return all such materials to The City of Forest Park upon completion of the Services.
- 4. Compliance With Laws.** Penaloza Designs & Construction LLC shall provide the Services in a workmanlike manner, and in compliance with all applicable federal, state and local laws and regulations, including, but not limited to all provisions of the Fair Labor Standards Act, the Americans with Disabilities Act, and the Federal Family and Medical Leave Act.
- 5. Work Site.** The City of Forest Park warrants that The City of Forest Park owns the property herein described and is authorized to enter into this Contract. Prior to the start of construction, The City of Forest Park shall provide an easily accessible building site, which meets all zoning requirements for the structure, and in which the boundaries of The City of Forest Park's property will be clearly identified by stakes at all corners of the property. The City of Forest Park shall maintain these stakes in proper position throughout construction.
- 6. Materials and/or Labor Provided.** Penaloza Designs & Construction LLC shall provide to The City of Forest Park a list of each and every party furnishing materials and/or labor to Penaloza Designs &

Construction LLC as part of the Services with regards to provision of the Services herein described. This list of materials and/or labor shall be attached to this Contract as Exhibit B. Penalosa Designs & Construction LLC declares, under the laws of Georgia, that this list is a true and correct statement of each and every party providing materials and/or labor as part of the Services herein described.

Penalosa Designs & Construction LLC may substitute materials only with the express written approval of The City of Forest Park, provided that the substituted materials are no lesser quality than those previously agreed upon by The City of Forest Park and Penalosa Designs & Construction LLC.

7. Payment. Payment shall be made to Penalosa Designs & Construction LLC, Forest Park, Georgia 30297. The City of Forest Park agrees to pay the total sum of \$59,750.00 as follows:

Event: Initial Payment - Gather Material & Equipment
Payment Amount: \$20,000.00

Event: Concrete Pour - Soil ready. Posts installed. Area is ready for Concrete Pour
Payment Amount: \$20,000.00

Event: Final Payment - Made once project is finalized.
Payment Amount: \$19,750.00

In addition to any other right or remedy provided by law, if The City of Forest Park fails to pay for the Services when due, Penalosa Designs & Construction LLC has the option to treat such failure to pay as a material breach of this Contract, and may cancel this Agreement and/or seek legal remedies.

8. Other Payment Provisions. It is important to note that timeliness and efficient completion of the project is dependent on payments being made on time. Any delays in payments could delay the time to completion of the project.

9. Term. Penalosa Designs & Construction LLC shall commence the work to be performed within 30 days of the Effective Date and shall complete the work on or before January 31, 2024, time being of the essence of this Contract.

Upon completion of the project, The City of Forest Park agrees to sign a Notice of Completion within 10 days after the completion of the Contract. If the project passes its final inspection and The City of Forest Park does not provide the Notice, Penalosa Designs & Construction LLC may sign the Notice of Completion on behalf of The City of Forest Park.

10. Permits. The City of Forest Park shall obtain all necessary building permits. Penalosa Designs & Construction LLC shall apply for and obtain any other necessary permits and licenses required by the local municipal/county government to do the work, the cost thereof shall be included as part of the Payment to Penalosa Designs & Construction LLC under this Contract.

11. Insurance. Before work begins under this Contract, Penalosa Designs & Construction LLC shall furnish certificates of insurance to The City of Forest Park substantiating that Penalosa Designs & Construction LLC has placed in force valid insurance covering its full liability under the Workers' Compensation laws of Georgia and shall furnish and maintain general liability insurance, and builder's risk insurance for injury to or death of a person or persons, and for personal injury or death suffered in any construction-related accident and property damage incurred in rendering the Services.

- 12. Indemnification.** With the exception that this section shall not be construed to require indemnification by Penaloza Designs & Construction LLC to a greater extent than permitted under the public policy of Georgia, Penaloza Designs & Construction LLC may agree to indemnify The City of Forest Park against, hold it harmless from and defend The City of Forest Park from all claims, loss, liability, and expense, including actual attorney's fees, arising out of or in connection with Penaloza Designs & Construction LLC's Services performed under this Contract. However, this indemnity does not extend to liability for loss or damage resulting from the sole negligence of The City of Forest Park or The City of Forest Park's agents or employees because it would violate Georgia's public policy.
- 13. Warranty.** Penaloza Designs & Construction LLC shall provide its services and meet its obligations under this Contract in a timely and workmanlike manner, using knowledge and recommendations for performing the Services which meet generally acceptable standards in Penaloza Designs & Construction LLC's community and region and will provide a standard of care equal to, or superior to, care used by service providers similar to Penaloza Designs & Construction LLC on similar projects. Penaloza Designs & Construction LLC shall construct the structure in conformance with the plans, specifications, and any breakdown and binder receipt signed by Penaloza Designs & Construction LLC and The City of Forest Park.
- 14. Free Access to the Worksite.** The City of Forest Park will allow free access to work areas for workers and vehicles and will allow areas for the storage of materials and debris. Driveways will be kept clear for the movement of vehicles during work hours. Penaloza Designs & Construction LLC will make reasonable efforts to protect driveways, lawns, shrubs, and other vegetation. Penaloza Designs & Construction LLC also agrees to keep the Worksite clean and orderly and to remove all debris as needed during the hours of work in order to maintain work conditions that do not cause health or safety hazards.
- 15. Utilities.** The City of Forest Park shall provide and maintain water and electrical service, connect permanent electrical service, gas service, or oil service, whichever is applicable, and tanks and lines to the building constructed under this Contract after an acceptable cover inspection has been completed, and prior to the installation of any inside wall cover. The City of Forest Park shall, at The City of Forest Park's expense, connect sewage disposal and water lines to said building prior to the start of construction, and at all times maintain sewage disposal and water lines during construction as applicable. The City of Forest Park shall permit Penaloza Designs & Construction LLC to use, at no cost, any electrical power and water use necessary to carry out and complete the work.
- 16. Inspection.** The City of Forest Park shall have the right to inspect all work performed under this Contract. All defects and uncompleted items shall be reported immediately. All work that needs to be inspected or tested and certified by an engineer as a condition of any government department or other state agency, or inspected and certified by the local health officer, shall be done at each necessary stage of construction and before further construction can continue. All inspection and certification will be done at The City of Forest Park's expense.
- 17. Default.** The occurrence of any of the following shall constitute a material default under this Contract:
- (a) The failure of The City of Forest Park to make a required payment when due.
 - (b) The insolvency of either party or if either party shall, either voluntarily or involuntarily, become a debtor of or seek protection under Title 11 of the United States Bankruptcy Code.

(c) A lawsuit is brought on any claim, seizure, lien or levy for labor performed or materials used on or furnished to the project by either party, or when there is a general assignment for the benefit of creditors, application or sale for or by any creditor or government agency brought against either party.

(d) The failure of The City of Forest Park to make the building site available or the failure of Penaloza Designs & Construction LLC to deliver the Services in the time and manner provided for in this Contract.

18. Remedies. In addition to any and all other rights a party may have available according to law of Georgia, if a party defaults by failing to substantially perform any provision, term or condition of this Contract (including without limitation the failure to make a monetary payment when due), the other party may terminate the Contract by providing written notice to the defaulting party. This notice shall describe with sufficient detail the nature of the default. The party receiving the said notice shall have 30 days from the effective date of said notice to cure the default(s) or begin substantial completion if completion cannot be made in 30 days. Unless waived by a party providing notice, the failure to cure or begin curing, the default(s) within such time period shall result in the automatic termination of this Contract.

19. Force Majeure. If performance of this Contract or any obligation thereunder is prevented, restricted, or interfered with by causes beyond either party's reasonable control ("Force Majeure"), and if the party unable to carry out its obligations gives the other party prompt written notice of such event, then the obligations of the party invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, but not be limited to, acts of God, plague, epidemics, pandemic, outbreaks of infectious disease, or any other public health crisis, including quarantine or other employee restrictions, fire, explosion, vandalism, storm, casualty, illness, injury, general unavailability of materials or other similar occurrence, orders or acts of military or civil authority, national emergencies, insurrections, riots, wars, strikes, lock-outs, work stoppages, or supplier failures. The excused party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. An act or omission shall be deemed within the reasonable control of a party if committed, omitted, or caused by such party, or its employees, officers, agents, or affiliates.

20. Reserved.

21. Entire Agreement. This Contract contains the entire agreement of the parties, and there are no other promises or conditions in any other contract or agreement whether oral or written concerning the subject matter of this Contract. Any amendments must be in writing and signed by each party. This Contract supersedes any prior written or oral agreements between the parties.

22. Severability. If any provision of this Contract will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Contract is invalid or unenforceable but that by limiting such provision, it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

- 23. Amendment.** This Contract may be modified or amended in writing if the writing is signed by each party.
- 24. Governing Law.** This Contract shall be construed in accordance with, and governed by the laws of Georgia, without regard to any choice of law provisions of Georgia or any other jurisdiction.
- 25. Notice.** Any notice or communication required or permitted under this Contract shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth in the opening paragraph or to such other address as one party may have furnished to the other in writing.
- 26. Waiver of Contractual Right.** The failure of either party to enforce any provision of this Contract shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Contract.
- 27. Assignment.** Neither party may assign or transfer this Contract without the prior written consent of the non-assigning party, which approval shall not be unreasonably withheld.
- 28. Signatories.** This Contract shall be signed on behalf of The City of Forest Park by Nigel Wattley, Director and on behalf of Penaloza Designs & Construction LLC by Leonardo Penaloza, Manager and shall be effective as of the date first written above.

The Owner:
The City of Forest Park

By: _____

Date: _____

Nigel Wattley
Director

The Contractor:
Penaloza Designs & Construction LLC
Contractor's License: _____

By: _____

Date: _____

Leonardo Penaloza
Manager

