

BOC Meeting Date  
6/21/2017**Requesting Agency**

Parks and Recreation

**Commission Districts Affected**

5 and 6

**Requested Action** *(Identify appropriate Action or Motion, purpose, cost, timeframe, etc.)*

Request approval to (A) accept a donation from the Atlanta Hawks Foundation, Inc., in the amount of \$47,639.29 for renovation of basketball courts at Creel Park; (B) enter into a Memorandum of Understanding (MOU) with the Atlanta Hawks Foundation, Inc. to provide for use of the donation; (C) to enter into Creel Park Court Renovation Agreement with CBA Sports to renovate the basketball courts at Creel Park, using the donation from the Atlanta Hawks Foundation, Inc., with the County authorized to expend up to \$2,499 for the renovation work, (D) authorize the Chairman to execute the MOU and CBA Agreement, and (E) authorize the County Attorney to approve the form and substance of the MOU and the CBA Agreement and make any modifications, prior to execution by the Chairman.

**Requirement for Board Action** *(Cite specific Board policy, statute or code requirement)*

Fulton County Code Sec. 1-117 gives the Board of Commissioners exclusive jurisdiction over County properties and expenditures of funds in most instances; and O.C.G.A. Sec. 36-10-1 provides for contracts with the County to be in writings and entered on the minutes of the Board of Commissioners.

**Is this Item related to a Strategic Priority Area?** *(If yes, note strategic priority area below)*

Yes All People are culturally and recreationally enriched

**Is this a purchasing item?**

No

**Summary & Background**

*(First sentence includes Agency recommendation. Provide an executive summary of the action that gives an overview of the relevant details for the item.)*

Scope of Work: The following Memorandum of Understanding (MOU) with the Atlanta Hawks Foundation, Inc. will provide for and make available various recreation programs and the use of the donation. The Agenda Item also provides authorization the department to enter into Creel Park Court Renovation Agreement with CBA Sports to renovate the basketball courts. CBA Sports is the preferred court renovation contractor for the Hawks Foundation and the Hawks Foundation require the County to use CBA Sports to ensure compliance with its requirements. The County is required to provide for any potential cost overruns on the renovation and Parks and Recreation is request authority to expend of up to \$2,499 for the renovation work.

Community Impact: Fulton County Parks and Recreation have positive economic, social and quality of life impacts on our communities while promoting healthy lifestyles.

Departmental Recommendation: The departmental recommends BOC approval.

**Agency Director Approval****County Manager's Approval****Typed Name and Title**

Tony Phillips, Director  
Department of Parks & Recreation

**Phone**

404.612.5347

**Signature****Date**

6/1/20017

Program Implications: The program implications are to improve health and promote healthy communities through quality programming, optimal use of park and facility space, and sustainable strategic planning. The department also promotes the implementation of a collective vision for comprehensive and coherent coordination efforts between parks and community partners.

Community Issues/Concerns: Citizens have addressed concerns for quality parks and multipurpose ball fields and basketball courts for expansion and growth of recreational athletic programs. Our department has worked diligently to foster relationships and provide effective communication with athletic associations for capital improvement planning.

Department Issues/Concerns: The continued support and collaborative efforts for capital improvement programs and renovation projects.

History of BOC Agenda Item: The BOC approved this item type on July 20, 2016 (item #16-0557 and on May 5, 2015 (item #15-0380).

<b>Contract &amp; Compliance Information</b>	<i>(Provide Contractor and Subcontractor details.)</i>
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[Click here to enter text.](#)

Continued

<b>Solicitation Information</b>	<b>NON-MFBE</b>	<b>MBE</b>	<b>FBE</b>	<b>TOTAL</b>
No. Bid Notices Sent:				
No. Bids Received:				
<b>Total Contract Value</b>	.			
<b>Total M/FBE Values</b>	.			
<b>Total Prime Value</b>	.			
<b>Fiscal Impact / Funding Source</b>		<i>(Include projected cost, approved budget amount and account number, source of funds, and any future funding requirements.)</i>		
461-640-AH17-1160				
<b>Exhibits Attached</b>		<i>(Provide copies of originals, number exhibits consecutively, and label all exhibits in the upper right corner.)</i>		
Exhibit 1: Memorandum of Understanding Between Fulton County, Georgia and the Atlanta Hawks Foundation, Inc. for Donations to Fulton County's Youth Basketball Program; for the Renovation of the Outdoor Basketball Court at Creel Park				
Exhibit 2: Creel Park Court Renovation Agreement				
Exhibit 3: CBA Sports Project Proposal				
<b>Source of Additional Information</b>		<i>(Type Name, Title, Agency and Phone)</i>		
Monica Manning, Administrative Manager, Dept. of Parks & Recreation 404.612.3753				

**Procurement****Contract Attached:**  
Yes**Previous Contracts:**  
Yes**Solicitation Number:**  
.**Submitting Agency:**  
.**Staff Contact:**  
.**Contact Phone:**  
.**Description:.****FINANCIAL SUMMARY****Total Contract Value:**

Original Approved Amount: \$47,639.29

Previous Adjustments: .

This Request: .

TOTAL: \$47,639.29

**MBE/FBE Participation:**

Amount: . %: .

Amount: . %: .

Amount: . %: .

Amount: . %: .

**Grant Information Summary:**

Amount Requested: Click here to enter text.

☐

Cash

Match Required: Click here to enter text.

☐

In-Kind

Start Date: Click here to enter text.

☐

Approval to Award

End Date:

☐

Apply &amp; Accept

Match Account \$: .

**Funding Line 1:****Funding Line 2:****Funding Line 3:****Funding Line 4:**

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**KEY CONTRACT TERMS****Start Date:**

6/5/2017

**End Date:**

12/29/2017

**Cost Adjustment:**

n/a

**Renewal/Extension Terms:**

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**ROUTING & APPROVALS**

(Do not edit below this line)

X	Originating Department:	Phillips, Tony	Date: 6/15/2017
X	County Attorney:	Stewart, Denval	Date: 6/14/2017
.	Purchasing/Contract Compliance:	.	Date: .
.	Finance/Budget Analyst/Grants Admin:	.	Date: .
.	Grants Management:	.	Date: .
X	County Manager:	Anderson, Dick	Date: 6/15/2017

**CREEL PARK COURT RENOVATION AGREEMENT**

THIS AGREEMENT is made and entered into as of the \_\_\_\_\_ day of June, 2017, by and between FULTON COUNTY, GEORGIA, a political subdivision of the State of Georgia ("County") and CBA SPORTS AND CONSULTING, LLC ("CBA"), a limited liability company, both acting through their representative authorized officials signing below.

**WITNESSETH:**

WHEREAS, on May 6, 2015, pursuant to O.C.G.A. § 36-64-6, the Fulton County Board of Commissioners approved a Memorandum of Understanding to accept a donation from the Atlanta Hawks Foundation, Inc., in the total amount of \$47,639.29 at no cost to Fulton County for the renovation of the outdoor basketball court at Creel Park through its Hawks Court Renovation Program (Agenda Item # 15-0380) attached hereto as Exhibit "A"; and

WHEREAS, as a condition of said donation, the County is required to utilize CBA to perform the court renovation; and

WHEREAS, the Fulton County Board of Commissioners expressly authorized the County to enter into a Court Renovation Agreement with CBA for the purpose of completing the court renovation at Welcome All Park; and

WHEREAS, the Fulton County Board of Commissioners further approved a set aside of \$2,499.00 which may be expended towards the completion of the court renovation in the event of project overruns; and

WHEREAS, CBA possesses the staff, materials and equipment necessary to complete the court renovation project without delay and is willing to do so; and

WHEREAS, the parties desire to enter into this agreement in order to establish the obligations and responsibilities of each party, delineate the relationship among the parties hereto, and address any other matters which may be necessary or convenient in order to assure the successful implementation of the project.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Duties of CBA. CBA shall act as an independent contractor for this project and agrees to perform in a timely and professional manner those tasks to be performed by CBA in accordance with this Agreement and the Scope of Work. CBA further agrees to work in coordination with the County and the Atlanta Hawks Foundation in furtherance of the goals and objectives of the project. Specifically, the activities of CBA in connection with the project shall include, but not necessarily be limited to, the following:

- (a) Furnishing all materials, labor, tools, equipment and appurtenances necessary for the court renovation including, but not limited to, the PowerGame Suspended Flooring and line striping;
- (b) Complete installation of the flooring system and related components including the interlocking, suspended, synthetic, modular tile system with the supportive acoustical underlayment, application of game lines, and backstop installation;
- (c) Provision of a secure, clean and dry location for on-site storage of material as may be needed for the duration of the project;
- (d) Provision of complete use and care instructions for the system upon completion of the project;
- (e) Restoration of the project site to its original condition upon completion of the project; and
- (f) Performance of any additional work items referenced in the Scope of Work and/or PowerGame Specifications attached hereto as Exhibit "B".

2. Term. The term of this Agreement shall commence upon issuance of the Notice to Proceed and continue in full force and effect for thirty (30) consecutive calendar days.

3. Assurances. CBA shall observe and abide by, and shall require its contractors (if any) to observe and abide by the terms, conditions and provisions set forth in this Agreement and Exhibit "B". Time is of the essence and CBA represents that it has secured or will secure, at its own expense, all personnel necessary to complete the project by July 15, 2017. CBA further represents that all personnel engaged in the project by CBA shall be fully qualified and authorized to perform such services.

4. Payment Terms. In accordance with the Memorandum of Understanding between the County and the Atlanta Hawks Foundation attached hereto as Exhibit "A", the County has accepted a donation in the amount of \$47,639.29 to cover the cost of the project. CBA has estimated its total reimbursable expenses for the project to be \$47,639.29. The County has also appropriated funds in the amount of \$2,499.00 to cover potential project cost overruns.

Following completion of the project, CBA shall submit an invoice in a form acceptable to the County and accompanied by all supporting documentation requested by the County, for payment of services that were rendered. The County shall review for approval of said invoices. The County shall have the right not to pay any invoice or part thereof if not properly supported, or if the costs requested or a part thereof, are determined by the County to be reasonably in excess of the actual work performed. CBA shall submit one original invoice and one copy to the County in accordance with Section 11 of this Agreement. CBA's invoice shall not exceed the total amount of funding appropriated by the Fulton County Board of Commissioners for this project.

5. Termination. Should CBA or its contractors fail to observe the terms or conditions of this Agreement and such failure continues more than ten (10) calendar days following delivery of notice of such failure by the County, the County may terminate this Agreement by delivery of notice to CBA. If the Agreement is terminated pursuant to this Section, the parties understand that it may be impractical for them to immediately stop the work. Accordingly, the parties agree that, in such instance CBA may continue to perform work until it has reach a point where it may reasonably and safely suspend the work. CBA shall be entitled to receive compensation for any satisfactory work completed as reasonably determined by the County. CBA shall be liable for any damage to the County resulting from CBA's refusal or failure to complete the work within the specified time period, and said damages shall include, but are not limited to, any additional costs associated with the County obtaining the services of another contractor to complete the project.

6. Insurance. CBA agrees to obtain and maintain during the term of this Agreement, all of the insurance required as specified in Exhibit "C", Insurance and Risk Management Forms, with the County as an additional insured and shall furnish to the County a Certificate of Insurance showing the required coverage. The cancellation of any policy of insurance required by this Agreement shall meet the requirements of notice under the laws of the State of Georgia.

7. Indemnification. To the maximum extent permitted by law, CBA shall indemnify, defend and hold the County and its affiliates harmless from and against all claims, demands, payments, suits, actions, judgments, settlements, and damages of every nature, degree and kind (including direct, indirect, consequential, incidental, and punitive damages), for any injury to or death to any person(s) (including, but not limited to the employees of the County, its affiliates, CBA or its contractors), for the loss of or damage to any property whatsoever (including, but not limited to property owned by or in the care, custody, or control of the County, its affiliates, CBA or its contractors, and environmental damages and any related remediation brought or recovered against the County and its affiliates), arising directly or indirectly from the negligence, recklessness or intentional wrongful misconduct of CBA, and its contractors, agents, employees, invitees, in the performance of work in connection with the project or activities incidental thereto, or from CBA's presence on or about the County's property. The foregoing indemnification obligation shall not be limited to the insurance coverage required by this Agreement, except to the extent required by law or otherwise expressly provided by this Agreement.

7.1 Compliance with Laws. CBA shall comply, and shall require its contractors to comply, with any federal, state, or local laws, statutes, codes, ordinances, rules, and regulations applicable to its construction and maintenance of the project. CBA shall indemnify, defend, and hold the County and its affiliates harmless with respect to any fines, penalties, liabilities, or other consequences arising from breaches of this Section.

7.2 "County Affiliates". For the purpose of this Section, County's affiliates include the County and its respective officers, directors, employees and agents.

7.3 Notice of Incidents. CBA and its contractor shall notify the County promptly of any loss, damage, injury or death arising out of or in connection with the project work.

7.4 Survival. The provisions of this Section shall survive the termination or expiration of this Agreement.

8. Independent Contractor. CBA shall perform the services under this Agreement as an independent contractor and nothing contained herein shall be construed to be inconsistent with such relationship or status. Nothing in this Agreement shall be interpreted or construed to constitute CBA or its agents or employees to be the agent, employee or representative of the County.

9. Assignment and Transfer. The rights, privileges and obligations under this Agreement shall not be assigned or transferred by either party without the prior written consent of the other.

10. Entire Agreement. This Agreement supersedes all prior negotiations, discussions, statements and agreements among the parties and constitutes the full, complete and entire agreement among the parties with respect to the project. No modification of or amendment to this Agreement shall be binding on any party hereto unless such modification or amendment shall be properly authorized, in writing, properly signed by all parties.

11. Notices. All notices shall be in writing and delivered in person or transmitted by certified mail, postage prepaid. The date upon which such notice is hand delivered, mailed or otherwise delivered shall be deemed the date of service of such notice.

Notice to the County shall be addressed as follows:

Fulton County Department of Parks & Recreation  
5440 Fulton Industrial Boulevard  
Atlanta, Georgia 30336  
Attn: Tony Phillips  
Assistant Director

Notices to CBA shall be addressed as follows:

[Please have vendor provide.]

12. Liens. CBA shall not permit or allow any liens to be imposed on any County property as a result of its activities without promptly discharging the same; provided however, that CBA may, to the extent permitted by applicable law, contest the legality of same if CBA so desires.

13. Severability. The parties agree that if any part, term or provision of this Agreement is held to be illegal, unenforceable or in conflict with any applicable federal, state, or local law or regulation, such part, term or provision shall be severable, with the remainder of the Agreement remaining valid and enforceable.

14. Open Records Act. The Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., applies to this Agreement. CBA acknowledges that any documents or computerized data provided to the



County by CBA may be subject to release to the public. CBA also acknowledges that documents and computerized data created or held by CBA in relation to this Agreement may be subject to release to the public, to include documents turned over to the County. CBA shall cooperate with and provide assistance to the County in rapidly responding to Open Records Act requests. CBA shall notify the County of any Open Records Act requests no later than 24 hours after receipt of any such requests. CBA shall promptly comply with the instructions or requests of the County in relation to responding to Open Records Act requests.

15. Authority. Each party to this Agreement represents to the other that it is duly authorized and legally empowered to enter into this Agreement.

16. Applicable Law. This Agreement shall be governed by, construed under, performed and enforced in accordance with the laws of the State of Georgia. Jurisdiction of litigation arising from this Agreement shall be in the Fulton County Superior Courts.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their duly authorized representatives as of the day and year first written above.

Approved:

\_\_\_\_\_  
John H. Eaves, Chairman  
Fulton County Board of Commissioners

Attest:

\_\_\_\_\_  
Tonya Grier, Interim Clerk  
Clerk to the Commission (Seal)

Approved as to Content:

\_\_\_\_\_  
Tony M. Phillips, Director  
Fulton County Parks & Recreation

Approved as to Form:

\_\_\_\_\_  
Office of the County Attorney

Approved:

\_\_\_\_\_  
By:  
Title:  
CBA Sports and Consulting, LLC

Attest:

\_\_\_\_\_  
Secretary/Assistant Secretary  
(Affix Corporate Seal)

**Exhibit A**  
**Memorandum of Understanding Between**  
**Fulton County, Georgia and the Atlanta Hawks Foundation, Inc.**

**Exhibit B**  
**Scope of Work and PowerGame Specifications**

**Exhibit C**  
**Insurance and Risk Management Form**

Throughout the term of this Agreement and until the Substantial Completion of the Construction and/or Renovation (hereinafter, "Work"), CBA (or its Contractor) shall provide and maintain in full force and effect without interruption, at no cost to the County the policies of insurance set forth hereinafter, which shall protect the County on a primary basis from any and all Claims arising out of or in connection with Work performed by CBA or its Contractor:

(i) Commercial General Liability insurance written on an occurrence basis covering the legal liability of County and Contractor during performance of the Work, with limits not less than \$1,000,000 each occurrence, \$2,000,000 in the aggregate and \$5,000 medical expense (any one person). Such insurance shall include coverage for contractual liability (applying to the terms and conditions of this Contract), products-completed operations liability, personal and advertising injury, property damage and bodily injury liability (including death). Policy shall also include coverage for (i) liability arising out of Contractor's use, operation and/or maintenance of any construction machinery/equipment in the performance of the Work; and (ii) owners and contractors protective.

(ii) Automobile Liability insurance covering liability arising out of the use, operation and/or maintenance of any auto (including owned, non-owned, leased, hired or borrowed), with limits not less than \$1,000,000 each accident combined single limit for bodily injury and property damage.

(iii) Workers' Compensation insurance covering County and Contractor employees who are engaged in the performance of the Work, with limits as required by statutory law, including Employer's Liability coverage with limits not less than \$1,000,000 each accident, \$1,000,000 disease-each employee and \$1,000,000 disease-policy limit.

(iv) Umbrella and/or Excess Liability insurance with limits not less than \$2,000,000 each occurrence shall apply in excess of the Commercial General Liability, Automobile Liability and Employer's Liability policy limits.

Other Duties, Representations, and Obligations

The policies of insurance maintained by CBA (or its Contractor) shall be issued by insurance companies authorized to transact business in the State of Georgia (i.e. Georgia Admitted Carrier) with A.M. Best ratings acceptable to Hawks Foundation, and primary to any insurance maintained by Hawks Foundation or the Indemnified Parties. Any insurance carried by the Hawks Foundation or the Indemnified Parties shall be excess of and non-contributing with the insurance carried by County and its Contractor. No purchase of any insurance by the Hawks Foundation or the County shall in any way be deemed to alter or amend the responsibilities of CBA under this Agreement.

Policies (i) and (ii) above shall be endorsed to name Fulton County Government as an Additional Insured, and shall include a waiver of subrogation in favor of Fulton County Government.

All insurance policies shall provide that coverage thereunder may not be materially changed, reduced or cancelled unless thirty (30) days prior written notice thereof is furnished to the County. CBA shall give immediate written notice to the County if any insurance required under this Agreement will be materially changed, reduced or cancelled.

It is hereby agreed and understood that the insurance requirements set forth above shall not be construed as a limitation of any potential liability on behalf of CBA. If the aggregate limits in the above policies are exhausted by the payment of claims or defense costs, CBA will be required to purchase an additional insurance to restore the required limits.

CBA shall bear all costs of all deductibles and shall remain solely and fully liable for the full amount of any Claim not covered by insurance.

CBA shall contractually require its Contractor and any subcontractors to comply with the insurance requirements set forth in this Agreement.

Certificates of Insurance.

Upon execution of this Agreement and prior to the beginning of any Work, CBA shall furnish the County with a certificate(s) of insurance certifying that the appropriate insurance is in place and that the policies have been properly endorsed to meet the insurance requirements as set forth in this Agreement.

**MEMORANDUM OF UNDERSTANDING BETWEEN FULTON COUNTY, GEORGIA AND THE ATLANTA HAWKS FOUNDATION, INC. FOR DONATIONS TO FULTON COUNTY'S YOUTH BASKETBALL PROGRAM; FOR THE RENOVATION OF THE OUTDOOR BASKETBALL COURT AT CREEL PARK; AND FOR OTHER PURPOSES**

**THIS MEMORANDUM OF UNDERSTANDING** ("MOU") is made and entered into upon all parties affixing their signatures on this document between **Fulton County Georgia**, a political subdivision of the State of Georgia (the "**County**"), acting through, and on behalf of its **Parks and Recreation Department** (the "**Department**"), and the **Atlanta Hawks Foundation, Inc.**, a Georgia non-profit corporation (the "**Foundation**").

**WHEREAS**, state law (O.C.G.A. § 36-64-6) authorizes a governing body which is vested the power to provide, establish, maintain, and conduct a recreation program, may by approval, accept any grant or devise of real estate or any gift or bequest of money or other personal property or any donation, the principal or income of which is to be applied for either temporary or permanent use for playgrounds or recreation purposes; and

**WHEREAS**, the Foundation forges partnerships with local agencies in order to benefit children with an interest in basketball through the operation of youth basketball camps and the renovation of local basketball courts in deserving metro Atlanta neighborhoods; and

**WHEREAS**, the County operates the following recreational facility: Creel Park located at 2775 Creel Road, College Park, Georgia 30349 (referred to as the "**County Facility**"); and

**WHEREAS**, the County and the Foundation are mutually interested in providing and making available recreation programs and activities at the County Facilities for the use and benefit of the children of Fulton County, Georgia; and

**WHEREAS**, the Foundation has also offered to include the County in its Court Renovation Program (also, the "**Work**"), by offering \$47,639.29 for the renovation of the outdoor basketball court at Creel Park, and a contribution for its continued maintenance, conditioned on the County retaining the services of the Foundation's preferred contractor to perform the work and the County agreeing to be responsible for any reasonable cost overruns as provided below in the body of MOU and for the subsequent upkeep of said court; and

**WHEREAS**, for the benefit of the children of Fulton County, the Board of Commissioners deems it to be in the best interest of its citizens to accept both donations from the Foundation under the terms and conditions of this MOU.

**NOW, THEREFORE**, in consideration of the mutual benefits to inure to both parties, it is hereby agreed as follows:

1. **The Foundation agrees to:**

(a) Provide a donation to the County for court renovation at Creel Park located at 2775 Creel Road, College Park, Georgia 30349, subject to the conditions imposed herein, as follows:

- The Foundation will donate Forty five Thousand Dollars (\$47,639.29) for the purpose of the County renovating the outdoor basketball court located at Creel Park (“Subject Property”) through its Hawks Court Renovation Program (or “Work”). The Foundation agrees that the amount being donated is a reasonable estimate of the cost to provide the complete renovation project, conditioned on to the County retaining CBA Sports, Inc., to perform the renovation.

(b) Create invitations for the dedication ceremony to be held at a mutually agreeable time, and provide carnival attractions for the same.

(c) Provide public relations support for the dedication ceremony.

(d) Comply with all statutes, ordinances, rules, orders, regulations and requirements of federal, state, county and city governments where applicable.

2. **The County agrees to:**

(a) Formally accept the donation of the County’s portion of the basketball camp registration fees and the \$63,598.90 for renovation of the basketball court at Creel Park.

- As a condition of this donation, the County agrees to retain the services of the Foundation’s preferred court renovation provider, CBA Sports, Inc., (“CBA Sports”) to perform the Work. CBA Sports is a sports construction firm specializing in performance athletic surfacing, sports floor systems, and sports components for both indoor and outdoor sports flooring projects, for clients ranging from UGA, Georgia Tech, GSU, FSU, and the Atlanta Hawks and has proven to be able to perform the renovation up to the standards acceptable to the Foundation.
- CBA Sports shall be required to execute a contract with the County for the provision of the court renovation services specified in this MOU that comports with applicable laws, with the County Attorney having the right to finalize the form and substance of such contract, which is attached hereto as **Exhibit D**.
- As a condition of the donation, the County agrees to be responsible for the reasonable costs not to exceed 2,499.00 incurred by CBA Sports for the Work above the donation amount of \$47,639.29 and will set aside funds

for this contingency. The County agrees to make available the \$2,499.00 to cover any such contingency. The County may increase this amount in its agreement with CBA Sports at its discretion pursuant to the County's change order process as codified in Fulton County Code Section § 102-420, which is incorporated by reference as if fully set forth herein.

- The County will be responsible for the future maintenance and upkeep of the Work.
- (b) Host a dedication ceremony to be held at a mutually agreeable time once the Creel Park basketball court renovation project is complete.
- (c) Assist with public relations support, subject to the Foundation's prior approval.
- (d) Obtain any permits, approvals or other requirements for the court renovation at Creel Park or as it pertains to the basketball activities at the County Facilities.
- (e) The Foundation will be provided information regarding the Work as it progresses to completion and will provided an opportunity to pre- approve the Work as it pertains to the placement of its logo(s).
- (f) Serve as an on-site, day-to-day liaison with the project contractor.
- (g) Provide maintenance and continuous upkeep of the renovated basketball courts.
- (h) Provide proof satisfactory to Foundation that any contractor utilized by the County, including CBA Sports, Inc. will include the Foundation and the Atlanta Hawks as among those that said contractor agrees to indemnify, defend and hold harmless as outlined in **Exhibit A**. Neither the Foundation nor the Atlanta Hawks will be liable for any acts or omissions of any contractor utilized by the County.
- (i) Provide and maintain all appropriate Insurance during the course of renovation/construction as outlined in **Exhibit B**.
- (j) Provide and maintain all appropriate Insurance following the completion of renovation/construction as outlined in **Exhibit C**.
- (k) Provide the balance of fees required for the court renovation project beyond the Sixty Three Thousand Five Hundred Ninety Eight Dollars and Ninety cents (\$47,639.29) the Foundation is pledging to County, which the County estimates to not exceed \$2,499.00.
- 

### 3. **General Conditions:**

- (a) This MOU will begin on the effective date, **June 5, 2017**, and will continue as follows:



- (i) as it relates to the basketball camps at Welcome All Park, through June 8, 2017; and
  - (ii) continue for a period of five (5) years from the date of the completion of the Work at Creel Park, as it relates to the County's future maintenance and upkeep of the Work which will include but not be limited to the maintenance of the Atlanta Hawks logo(s) on the renovated basketball court. At the end of such five (5) year period, County and Foundation will agree to negotiate in good faith regarding the continued use of the Hawks logo(s) on the renovated basketball court.
- (b) This MOU may be modified only by a written agreement, approved by the Fulton County Board of Commissioners, signed by both Foundation and the Chairman of the Board of Commissioners.
- (c) For purposes of this MOU, any notices required to be sent to Foundation will be hand delivered or mailed to Atlanta Hawks Foundation, Inc., 101 Marietta Street, Suite 1900, Atlanta, Georgia 30303, Attn.: Director. Any notices required to be sent to the County will be hand delivered or mailed to the Fulton County Department of Parks & Recreation, 5565 Stonewall Tell Road, College Park, Georgia 30349, Attn.: Director.
- (d) This MOU constitutes the entire MOU between the Parties; it supersedes any prior MOU or understandings between them oral or written, with respect to the matters addresses herein, all of which are hereby cancelled. This MOU may not be amended or modified except by an instrument in writing signed by both Parties hereto. Waiver of any term or condition of this MOU will be effective in writing and will not be construed as a waiver of any subsequent breach or waiver of the same term or condition, or a waiver of any other term or condition of this MOU. Nothing herein will constitute or be considered a limitation upon or waiver of the parties' rights under all applicable laws of the State of Georgia.
- (e) This MOU will inure to the benefit of and be binding upon the Parties hereto, their successors and assigns.
- (f) In the event any provision or portion of this MOU is held by any Court of competent jurisdiction to be invalid or unenforceable, such holding will not affect the remainder hereof, and the remaining provisions will continue in full force and effect.
- (g) This MOU will be governed by the laws of the State of Georgia.

**IN WITNESS WHEREOF**, the parties have set their hands and affixed their seals this the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Approved:

\_\_\_\_\_  
John H. Eaves, Chairman  
Fulton County Board of Commissioners

Approved:

\_\_\_\_\_  
David Lee, Executive Director  
Atlanta Hawks Foundation, Inc.

Attest:

\_\_\_\_\_  
Tonya Grier  
Interim Clerk to the Commission

Approved as to Content

\_\_\_\_\_  
Tony Phillips, Director Parks and Recreation

Approved as to Form:

\_\_\_\_\_  
Office of the County Attorney

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**EXHIBIT A**  
**Indemnification Requirements**

To the fullest extent permitted by law, Fulton County, acting through its Parks & Recreation Department ("County"), **shall obtain from its contractor(s) performing the renovation work ("Work")**, along with any other indemnification the County may require from such contractor on the County's behalf, the following indemnification language in its contract with the contractor: contractor shall indemnify, defend and hold harmless the Atlanta Hawks Foundation, Inc. ("Foundation" or "Hawks Foundation"), Atlanta Hawks, L.P., Atlanta Hawks Management, LLC, ATL Hawks, LLC, and each of their respective parent, subsidiary and affiliated companies, officers, directors, shareholders, sponsors, agents and employees (collectively, the "Indemnified Parties") from and against any and all claims, actions, suits, proceedings, judgments, settlements, demands, damages, liabilities, losses or expenses, including reasonable attorney's fees (collectively, "Claims") arising out of, related to or caused in any manner by (i) the construction, renovation, use, operation or maintenance of the basketball court at Creel Park, which improvements are funded in whole or in part by the Hawks Foundation through its Pledge/Donation to the County; (ii) the contractor(s)' performance or non-performance of the Work, including any Claim for bodily injury, death, personal injury or property damage; (ii) any negligent or grossly negligent action, inaction, omission or intentional misconduct of the contractor(s); (iii) any conduct or activities of contractor(s) which violates any applicable state or local law, rule, regulation or ordinance; (iv) County's misrepresentation or breach of any of obligations, representations or warranties contained in this Agreement; and/or (v) contractor(s)'s failure or alleged failure to comply with all laws relating to labor relations, fair employment practices, safety and similar rules and regulations, including without limitation, the requirements of the Occupational Safety and Health Act (OSHA) of 1970 and with all Equal Employment Opportunity (EEO) provisions as required by law, regulation or executive order.

County's contractor(s) shall be responsible for indemnification even if the Claim(s) are caused in part by the Hawks Foundation or any of the other Indemnified Parties; provided that County's contractor(s) shall not be liable hereunder to the extent such Claim(s) are caused by the sole negligence or willful misconduct of the Hawks Foundation or any of the Indemnified Parties.

The indemnification required by this Paragraph is in no way limited to the amount(s) of insurance required under the Memorandum of Understanding and the Exhibits B and C referenced therein. It is expressly acknowledged by the parties that nothing herein shall be construed as the County having an obligation, under law or contract, to indemnify the Hawks Foundation or any other person, party or entity.

For purposes of the insurance and indemnity provisions in this Memorandum of Understanding, the term "County's contractor(s)" shall be defined to expressly include County's contractors or anyone directly or indirectly employed by County to perform the Work.

**EXHIBIT B**  
**Insurance during Construction/Renovation**

Throughout the term of this Agreement and until the Substantial Completion of the Construction and/or Renovation (hereinafter, "Work"), Fulton County will require that its Contractor(s) shall provide and maintain in full force and effect without interruption, at no cost to the Atlanta Hawks Foundation, Inc. ("Foundation" or "Hawks Foundation"), the policies of insurance set forth hereinafter, which shall protect County, its Contractor, Hawks Foundation and the Indemnified Parties on a primary basis from any and all Claims arising out of or in connection with Work performed by County through any of the County's Contractors:

(i) Commercial General Liability insurance written on an occurrence basis covering the legal liability of County and Contractor during performance of the Work, with limits not less than \$1,000,000 each occurrence, \$2,000,000 in the aggregate and \$5,000 medical expense (any one person). Such insurance shall include coverage for contractual liability (applying to the terms and conditions of this Contract), products-completed operations liability, personal and advertising injury, property damage and bodily injury liability (including death). Policy shall also include coverage for (i) liability arising out of Contractor's use, operation and/or maintenance of any construction machinery/equipment in the performance of the Work; and (ii) owners and contractors protective.

(ii) Automobile Liability insurance covering liability arising out of the use, operation and/or maintenance of any auto (including owned, non-owned, leased, hired or borrowed), with limits not less than \$1,000,000 each accident combined single limit for bodily injury and property damage.

(iii) Workers' Compensation insurance covering County and Contractor employees who are engaged in the performance of the Work, with limits as required by statutory law, including Employer's Liability coverage with limits not less than \$1,000,000 each accident, \$1,000,000 disease-each employee and \$1,000,000 disease-policy limit.

(iv) Umbrella and/or Excess Liability insurance with limits not less than \$2,000,000 each occurrence shall apply in excess of the Commercial General Liability, Automobile Liability and Employer's Liability policy limits.

Other Duties, Representations, and Obligations

The policies of insurance maintained by the County Contractor) shall be issued by insurance companies authorized to transact business in the State of Georgia (i.e. Georgia Admitted Carrier) with A.M. Best ratings acceptable to Hawks Foundation, and primary to any insurance maintained by Hawks Foundation or the Indemnified Parties. Any insurance carried by the Hawks Foundation or related entities shall be excess of and non-contributing with the insurance carried by any County Contractor. No purchase of any insurance by Hawks Foundation or related entities shall in any way be deemed to alter or amend the responsibilities of County under this Agreement.

Policies (i) and (ii) above shall be endorsed to name the Hawks Foundation as Additional Insureds, and shall include a waiver of subrogation in favor of the Additional Insureds.

All insurance policies shall provide that coverage thereunder may not be materially changed, reduced or cancelled unless thirty (30) days prior written notice thereof is furnished to Hawks Foundation. County shall require its contractor to give immediate written notice to Hawks Foundation if any insurance required under this Agreement will be materially changed, reduced or cancelled.

County shall contractually require its Contractor and any subcontractors to comply with the insurance requirements set forth in this Agreement.

Certificates of Insurance

Upon execution of this Agreement and prior to the beginning of any Work, County shall furnish Hawks Foundation with a certificate(s) of insurance certifying that the appropriate insurance is in place and that the policies have been properly endorsed to meet the insurance requirements as set forth in this Agreement.

**EXHIBIT C****Insurance Requirements following the Completion of Construction and/or Renovation**

Throughout the term of this Agreement following the Substantial Completion of the Work, Fulton County ("County") shall provide and maintain in full force and effect without interruption, at no cost to the Atlanta Hawks Foundation, Inc. ("Foundation" or "Hawks Foundation") the policies of insurance set forth hereinafter, which shall protect County, Hawks Foundation and the Indemnified Parties on a primary basis from any and all Claims arising out of or in connection with the use, operation or maintenance of the basketball courts and improvements:

(i) Commercial General Liability insurance written on an occurrence basis with limits not less than \$1,000,000 each occurrence, \$2,000,000 in the aggregate and \$5,000 medical expense (any one person). Such insurance shall include coverage for contractual liability (applying to the terms and conditions of this Contract), products-completed operations liability, personal and advertising injury, participant legal liability, property damage and bodily injury liability (including death).

(ii) Workers' Compensation insurance covering County employees who are engaged in the operating and maintaining the basketball courts, with limits as required by statutory law, including Employer's Liability coverage with limits not less than \$1,000,000 each accident, \$1,000,000 disease-each employee and \$1,000,000 disease-policy limit.

(iii) Umbrella and/or Excess Liability insurance with limits not less than \$2,000,000 each occurrence shall apply in excess of the Commercial General Liability and Employer's Liability policy limits.

**Other Duties, Representations, and Obligations**

The policies of insurance maintained by County shall be issued by insurance companies authorized to transact business in the State of Georgia (i.e. Georgia Admitted Carrier) with A.M. Best ratings acceptable to Hawks Foundation, and primary to any insurance maintained by Hawks Foundation or the Indemnified Parties. Any insurance carried by the Hawks Foundation or the Indemnified Parties shall be excess of and non-contributing with the insurance carried by County. No purchase of any insurance by Hawks Foundation or the Indemnified Parties shall in any way be deemed to alter or amend the responsibilities of County under this Agreement.

Policy (i) above shall be endorsed to name the Hawks Foundation and the Indemnified Parties as Additional Insureds, and shall include a waiver of subrogation in favor of the Additional Insureds.

All insurance policies shall provide that coverage thereunder may not be materially changed, reduced or cancelled unless thirty (30) days prior written notice thereof is furnished to Hawks Foundation. County shall give immediate written notice to Hawks Foundation if any insurance

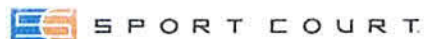
required under this Agreement will be materially changed, reduced or cancelled. County shall bear all costs of all deductibles.

Certificates of Insurance

Upon completion of the Work, County shall furnish Hawks Foundation with a certificate(s) of insurance certifying that the appropriate insurance is in place and that the policies have been properly endorsed to meet the insurance requirements as set forth in this Agreement. County hereby agrees to furnish renewal insurance certificates throughout the term of the Agreement, as appropriate.



3115 Meacock Bridge Rd. / Norcross, GA 30071  
770-797-9990 / 770-797-9992 fax

Proposal

Date: 3/3/17

This CBA Proposal has been created expressly for Atlanta Hawks - Creel Park

CBA Rep: Jay LilleyCourt Size Full Court  
60' x 83'

4" Thick, Reinforced Concrete SUB-BASE

NA

SPORT COURT® Suspended **FIBA CERTIFIED** Athletic System**PowerGame**Basketball Goal System with **POLYCARBONATE BACKBOARD**  
and all pads included4  
Amer. Eagle 48-72

## PAINTED ITEMS

GAME LINES  
CUSTOM LOGO

Initial Permitting Costs Applied

NA

NA

Project Sub-Total

44,461.18

-

Sales Tax *Fulton*

-

-

*Shipping*

3,711.48

-

Project Price

\$48,172.66

Less Hawks Preferred Partner Pricing

(4,880.87)

-

Site Preparation Cost

\$4,347.50

*(Project & Site Prep) TOTAL***\$47,639.29***(price includes; installation, court cleanup and )*

\*\*\* This proposal is valid for 30 c

All New SPORT COURT® Surfacing is backed by a **15 year limited warranty**  
All New SPORT COURT® Components & Concrete Construction - **10 year limited warranty**

*Thanks for the opportunity to serve you.*

770.797.9990

800.547.7299

770.797.9992 fax



Project Description: Sport Court® PowerGame Textured™ Performance Athletic Surfacing for a 83'x60' court  
--- Colors --- Court - TITANIUM / Lanes - BRIGHT RED / Lane Border & Borders - BLACK / Lines - VOLT GREEN  
- 4 AE Goals

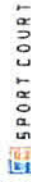
Plan:

COLOR  
OPTION  
(5/4/17)

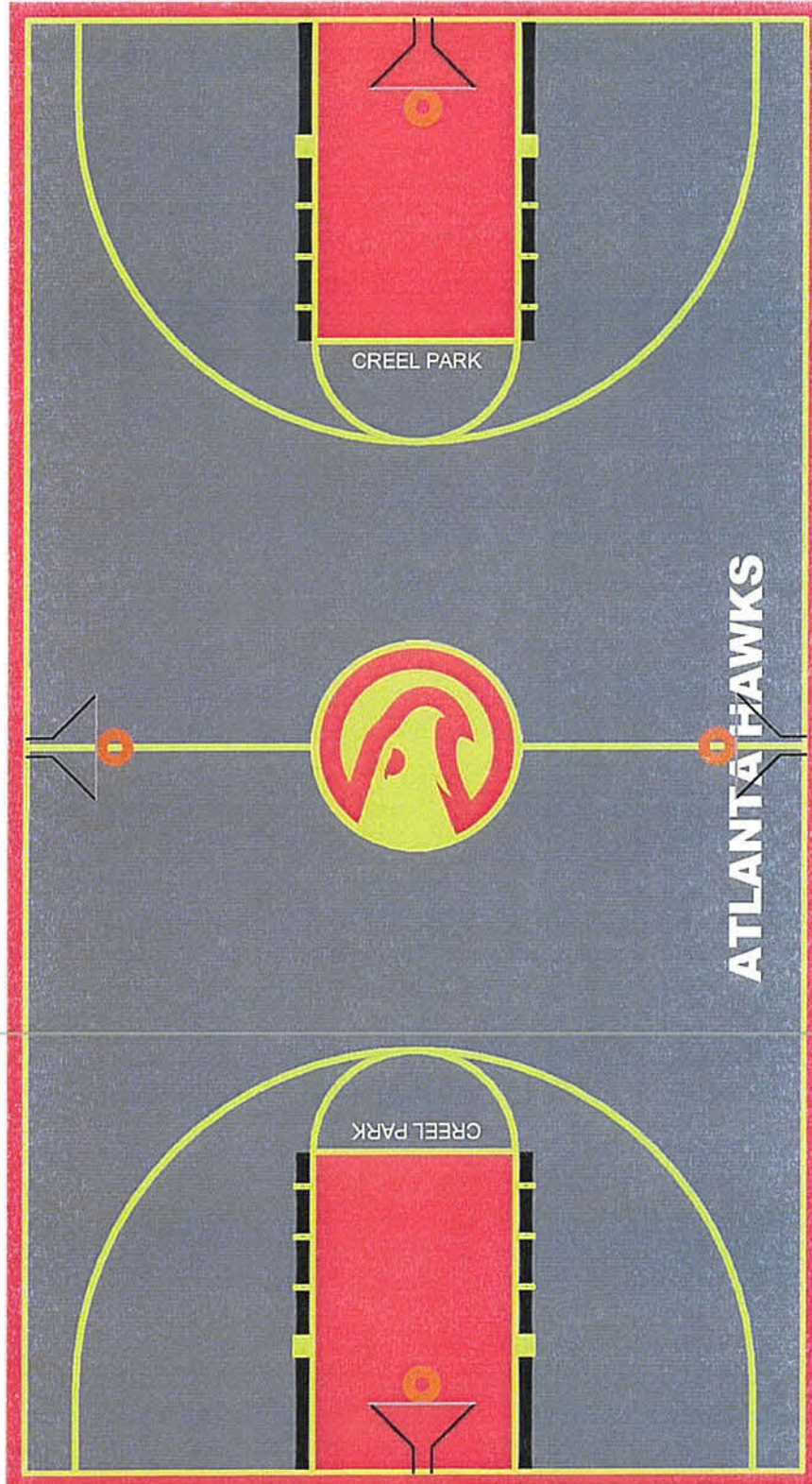
CREEL PARK RECREATION CENTER

2775 Creel Rd  
College Park, Ga 30349

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THE DRAWINGS ON THIS PLAN ARE FOR DESIGN PURPOSES ONLY. FINAL INSTALLATION MAY VARY IN COLOR SHADE & LINE LOCATION.



3115 Medlock Bridge Rd  
Norcross, GA 30071  
770-797-9990



Prepared by: Jay Lilley

DATE: 5/10/17

DRAWING APPROVED BY--