CREEL PARK COURT RENOVATION AGREEMENT

THIS AGREEMENT is made and entered into as of the <u>Y</u> 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. <u>Duties of CBA</u>. 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. <u>Term</u>. 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. <u>Assurances</u>. 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. <u>Payment Terms</u>. 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. <u>Termination</u>. 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. <u>Insurance</u>. 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.

Indemnification. To the maximum extent permitted by law, CBA shall indemnify, 7. 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 <u>Compliance with Laws</u>. 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 <u>"County Affiliates"</u>. For the purpose of this Section, County's affiliates include the County and its respective officers, directors, employees and agents.

7.3 <u>Notice of Incidents</u>. 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 <u>Survival</u>. The provisions of this Section shall survive the termination or expiration of this Agreement.

8. <u>Independent Contractor</u>. 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. <u>Assignment and Transfer</u>. 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. <u>Entire Agreement</u>. 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. <u>Notices</u>. 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. <u>Liens</u>. 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. <u>Severability</u>. 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. <u>Open Records Act</u>. The Georgia Open Records Act, O.C.G.A. § 50-18-70 <u>et seq</u>., 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.

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

Applicable Law. This Agreement shall be governed by, construed under, performed and 16. 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:

Attest:

John H. Eaves, Chairman

Commissioners

Approved:

ELLIS, VICE (HAIR BY: Title: CBA Sports and Consulting, LLC

Attest:

Secretary/Assistant Secretary (Affix Corporate Seal)

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

Approved as to Content:

Fulton County Board of

Tony M. Phillips, Director Fulton County Parks & Recreation

Approved as to Form:

Office of the County Attorney

ITEM #17-0507 RCS 6 121,17 RECESS MEE

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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) <u>Commercial General Liability</u> 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) <u>Automobile Liability</u> 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) <u>Workers' Compensation</u> 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) <u>Umbrella and/or Excess Liability</u> 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.

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) <u>Commercial General Liability</u> 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) <u>Automobile Liability</u> 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) <u>Workers' Compensation</u> 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) <u>Umbrella and/or Excess Liability</u> 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) <u>Commercial General Liability</u> 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) <u>Workers' Compensation</u> 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) <u>Umbrella and/or Excess Liability</u> 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.

Sports Construction Specialists	SPORT COUR	τ
31 5 Martine, Bong, R. (N	<u>Proposal</u> een created expressly for Atlant	Date: 3/3/17 ta Hawks - Creel Park
CBA Rep: Jay Lilley	Full Court Court Size 60' x 83'	
4" Thick, Reinforced Concrete SUB-BASE	NA	
SPORT COURT® Suspended FIBA CERTIFIED Athl	etic System PowerGame	
Basketball Goal System with POLYCARBONATE B	ACKBOARD 4 Amer. Eagle 48-72	

PAINTED ITEMS

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GAME LINES CUSTOM LOGO

Initial Permitting Costs Applied	NA	NA	
Project Sub-Total	44,461.18	845	
Sales Tax Fulton		-	
	× .		
Shipping	3,711.48	÷	
Project Price	\$48,172.66		
Less Hawks Preferred Partner Pricing	(4,880.87)	8. 1 1	
Site Preparation Cost	\$4,347.50	energia de la compañía	
(Project & Site Prep) TOTAL	\$47,639.29	ne oznaczona dzielowe	

(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

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