

**MEMORANDUM OF UNDERSTANDING BETWEEN DEKALB COUNTY, GEORGIA
AND THE ATLANTA HAWKS FOUNDATION, INC.**

This Memorandum of Understanding ("Agreement") is hereby made and entered into by and between **DeKalb County**, a political subdivision of the State of Georgia (the "County"), on behalf of the **Recreation, Parks, and Cultural Affairs 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 programs, the renovation and construction of local basketball courts and the renovation and construction of local recreation facilities across metropolitan Atlanta neighborhoods as part of the Hawks Court and Recreational Facilities Renovation Program; and

WHEREAS, the County operates a recreational facility at N.H. Scott Park located at 2230 Tilson Road, Decatur, Georgia 30032 (the "Facility"), which is in need of site improvements; and

WHEREAS, the Hawks Foundation has partnered with the County previously to provide outdoor basketball courts and youth basketball programming to meet the Department's mission of serving children and families through quality spaces and best-in-class programming; and

WHEREAS, the County is appreciative of the partnership with the Foundation and are mutually interested in continuing to provide and make available recreation programs and activities at the Facility for the use and benefit of children and families of DeKalb County, Georgia; and

WHEREAS, the Foundation has offered to include the County and its Facility in its Court and Recreational Facilities Renovation Program (hereinafter referred to as, "Project"), by offering a donation to the County of enhancements and site improvements valued at approximately Eighty-five Thousand and 00/100 Dollars (\$85,000.00), which will include renovations to the N.H. Scott Recreation Center and existing basketball courts in N.H. Scott Park; and

WHEREAS, the site improvements to N.H. Scott Recreation Center and the existing courts will enhance N.H. Scott Park and the Governing Authority of the County deems it to be in the best interest of its citizens to accept the donation from the Foundation under the terms and conditions of this Agreement, for the benefit of the children and families of DeKalb County.

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

1. Foundation agrees to:

The Foundation, in consideration of its interest to provide funding for the construction/renovation of basketball courts and recreational facilities across metropolitan Atlanta neighborhoods and in consideration of its mission in benefiting children with an interest in basketball, as well as for other good and valuable consideration, makes the following pledge (the “Pledge”) to the County:

- a) Provide a donation of enhancements and site improvements valued at approximately Eighty-five Thousand and 00/100 Dollars (\$85,000.00) to the County for specifically, the Project;
- b) Pledge and manage the expenditure of the Pledge for the Project;
- c) Obtain any permits, approvals, or other requirements for the construction of the Project;
- d) Serve as an on-site, day-to-day liaison with the Project contractors at N.H. Scott Park, located at 2230 Tilson Road, Decatur, Georgia 30032;
- e) Provide and maintain all appropriate insurance during the construction/renovation Project as provided by the County;
- f) Provide Hawks players, coaches, cheerleaders or mascots (subject to their availability), to take part in a community celebration to be held at a mutually agreeable date and time to unveil the renovated Facility (the “Dedication”);
- g) Provide carnival elements (i.e. inflatables, dance team, mascots, etc.) and a basketball clinic, games and more for the Dedication;
- h) Provide public relations support for the Dedication; and
- i) Provide additional youth basketball programming once the Project is completed as agreed upon by both parties.

2. County agrees to:

- a) Provide maintenance and continuous upkeep of the site improvements within the Facility after the completion of the Project, which shall include but not limited to litter removal, cleaning, general servicing, on-going repairs subject to any vendor warranties;
- b) Deliver programming of the Facility to meet the Department’s mission and needs as intended by the agreed-upon enhancements and site improvements of the Facility for the duration of the agreement;

- c) Secure high-profile people in the community (e.g. community and business leaders) and community members to participate in the Dedication to be held at a mutually agreeable date and time;
- d) Assist with public relations support, subject to the Foundation's prior approval. Any materials that the County wishes to issue that include the Foundation's or the Atlanta Hawks name or logo must be pre-approved, in writing, by the Foundation prior to issuance;
- e) Be responsible for any claim, damage, loss or expense arising from the Project that is attributable to acts, errors, or omissions by the County, its consultants/contractors or their officers, agents or employees, or, its consultants'/contractors' sub-consultants/sub-contractors, or their officers, agents or employees;
- f) Indemnify, defend, and hold harmless the Foundation as outlined in Exhibit A to the extent of Georgia law;
- g) Provide and maintain all appropriate insurance following the completion of the construction/renovation Project as outlined in Exhibit C; and
- h) Provide the balance of fees required for the Project beyond the Pledge amount.

3. General Conditions:

- a) This Agreement shall begin on the effective date, _____, 2022, and continue until through and including _____, 2032, subject to early termination, pursuant to the terms of this Agreement. Either party may terminate this Agreement without further obligation by giving the other party thirty (30) days prior written notice.
- b) The County authorizes the Foundation's installation of Atlanta Hawks ("Hawks"), a professional member team of the National Basketball Association ("NBA"), name and/or logo at the site improvements at N.H. Scott Recreation Center and N.H. Scott Park.
- c) The Foundation reserves the right, but not the obligation, to present sponsorship opportunities to third parties who may want to sponsor the Project. The Foundation and County shall have the right to approve all sponsorship signage. The County shall notify potential sponsors that their signage is subject to approval by the Foundation and County.
- d) For the purposes of this Agreement, any notices required to be sent by either party shall be delivered as appropriate:
 - o Atlanta Hawks Foundation, Inc. at 101 Marietta Street, Suite 1900, Atlanta, Georgia 30303, Attn: Executive Director; and
 - o DeKalb County c/o Department of Recreation, Parks, and Cultural Affairs at 1950

West Exchange Place, Suite 400, Tucker, Georgia 30084, Attn: Director.

- e) The Foundation and County are and shall be independent contractors to one another, and nothing contained in this Agreement shall be deemed to cause this Agreement to create an agency, partnership, or joint venture between the parties. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer/employee between the Foundation and the County.
- f) This Agreement shall insure to the benefit of and be binding upon the parties hereto, their successors and assigns;
- g) This Agreement and all matters related thereto shall be governed by, subject to, and construed only in accordance with the laws of State of Georgia, without application of its conflict of laws principles.
- h) Any modifications or changes to this Agreement shall made in writing, approved and signed by both parties.

(remainder of page left intentionally blank)

IN WITNESS WHEREOF, the Atlanta Hawks Foundation, Inc. and DeKalb County have executed this Agreement by their duly authorized officers on the dates indicated below.

Michael Thurmond
Chief Executive Officer
DeKalb County, Georgia

David Lee
Executive Director
Atlanta Hawks Foundation, Inc.

Attest:

58-1762732
Federal Tax I.D. #

Clerk to the
Chief Executive Officer and
Board of Commissioners of
DeKalb County, Georgia

APPROVED AS TO SUBSTANCE:

Chuck Ellis
Director
Department of Recreation, Parks and Cultural Affairs
DeKalb County, Georgia

APPROVED AS TO FORM:

Attorney
DeKalb County, Georgia

Exhibit A
Indemnification Requirements

To the fullest extent permitted by law, the County agrees to use its best efforts to compel all contractors and consultants and sub-contractors and sub-consultants performing any work in connection to this Agreement to sign an agreement with the County that includes the following indemnification provision, with the exception that the name of the contractor or consultant or sub-contractor or sub-consultant shall replace “Contractor” as used herein below:

(1) Releases and Indemnification:

Contractor hereby releases and shall indemnify, defend, and hold harmless the Hawks Foundation, the Hawks Parties, and the County, its elected officials, officers, agents, employees, authorized representatives, successors, and assigns from and against any and all suits, actions, legal or administrative proceedings, claims, debts, demands, damages, liabilities, injuries, obligations, losses, judgements, charges, interest, attorneys’ fees, costs, causes of action of every kind and character, whether in law or equity, and expenses of every kind or nature, whether arising before or after the termination of this Agreement and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, or claimed to be caused occasioned, or contributed in whole or in part, by reason of any act, omission, fault or negligence whether active or passive of Contractor, its officers, employees, agents, subcontractors or of anyone acting under its direction or control or on its behalf in connection with or incidental to this Agreement.

(2) Negligence and Waiver:

Contractor’s aforesaid release, indemnity, and hold harmless obligations, or portions or applications thereof, shall apply even in the event of the fault or negligence, whether active or passive, or strict liability of the parties released, indemnified, or held harmless to the fullest extent permitted by law, but in no event shall they apply to liability caused by the willful misconduct or sole negligence of the party released, indemnified, or held harmless. Contractor specifically waives any immunity provided against this indemnity by any industrial insurance or workers’ compensation statute. Contractor further agrees that this agreement to indemnify, defend, and hold harmless the parties released shall not be limited to the limits or terms of the insurance, if any, required under this Agreement. This Indemnification and Hold Harmless provision shall survive any termination or expiration of this Agreement.

Exhibit B
Insurance Requirements during Construction/Renovation

Throughout the term of this Agreement and until the Substantial Completion of the Construction and/or Renovation (hereinafter, “Work”), DeKalb County (“County”) (or its Contractor) 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 and 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 County (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 Indemnified Parties 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 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.

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 the County. If the aggregate limits in the above policies are exhausted by the payment of claims or defense costs, County will be required to purchase an additional insurance to restore the required limits.

County 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.

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, DeKalb 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.

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 the County. If the aggregate limits in the above policies are exhausted by the payment of claims or defense costs, County will be required to purchase an additional insurance to restore the required limits.

County 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.

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.