

11-R-0264

(Do Not Write Above This Line)

**A RESOLUTION BY  
COMMUNITY  
DEVELOPMENT/HUMAN  
RESOURCES COMMITTEE**

**A RESOLUTION AUTHORIZING  
THE MAYOR OR HIS DESIGNEE, ON  
BEHALF OF THE CITY, TO ENTER  
INTO A MEMORANDUM OF  
UNDERSTANDING WITH THE  
BOARD OF REGENTS OF THE  
UNIVERSITY SYSTEM OF GEORGIA  
BY AND ON BEHALF OF GEORGIA  
STATE UNIVERSITY, REGARDING  
THE PROVISION OF  
MAINTENANCE AND OTHER  
SERVICES AT HURT PARK; AND  
FOR OTHER PURPOSES.**

*substitute*

**ADOPTED BY**

SEP 06 2011

**COUNCIL**

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred

Referred To:

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee \_\_\_\_\_  
 Date \_\_\_\_\_  
 Chair \_\_\_\_\_  
 Referred To \_\_\_\_\_

Committee *CD/MR*

Date *3/1/11*

Chair \_\_\_\_\_

Action  
 Fav, Adv, Hold (see rev. side)  
 Other \_\_\_\_\_

Members  
*[Signature]*

Refer To \_\_\_\_\_

Committee \_\_\_\_\_

Date \_\_\_\_\_

Chair \_\_\_\_\_

Action  
 Fav, Adv, Hold (see rev. side)  
 Other \_\_\_\_\_

Members \_\_\_\_\_

Refer To \_\_\_\_\_

Committee *CD/MR*

Date *8/30/11*

Chair *Joyen Shee*

Action  
 Fav, Adv, Hold (see rev. side)  
 Other *Subst*

Members  
*[Signature]*

Refer To \_\_\_\_\_

Committee \_\_\_\_\_

Date \_\_\_\_\_

Chair \_\_\_\_\_

Action  
 Fav, Adv, Hold (see rev. side)  
 Other \_\_\_\_\_

Members \_\_\_\_\_

Refer To \_\_\_\_\_

FINAL COUNCIL ACTION

- 2nd
- 1st & 2nd
- 3rd
- Consent
- V Vote
- RC Vote

CERTIFIED

**CERTIFIED**

SEP 06 2011

COUNCIL PRESIDENT PROTEM

**CERTIFIED**

SEP 06 2011

*Rhonda Vaughan Johnson*  
 MUNICIPAL CLERK

MAYOR'S ACTION

**APPROVED**

SEP 15 2011

WITHOUT SIGNATURE  
 BY OPERATION OF LAW



**SUBSTITUTE RESOLUTION BY  
COMMUNITY DEVELOPMENT/HUMAN RESOURCES COMMITTEE**

**11-R-0264**

**A RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE, ON BEHALF OF THE CITY, TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA BY AND ON BEHALF OF GEORGIA STATE UNIVERSITY, REGARDING THE PROVISION OF MAINTENANCE AND OTHER SERVICES AT HURT PARK; AND FOR OTHER PURPOSES.**

**WHEREAS**, Hurt Park (the “Park”) is a 1.87 acre park owned by the City of Atlanta (the “City”) located at 25 Courtland St. NE, at the intersection of Edgewood Avenue and Courtland Street; and

**WHEREAS**, the Park is located in the center of the Georgia State University (“University”) campus. The University is part of the Board of Regents of the University System of Georgia; and

**WHEREAS**, the Park is heavily utilized by University students for passive activity such as study and socializing. In addition, the Park is heavily programmed by the University, its departments/units, or officially-recognized University student organizations; and

**WHEREAS**, the University has been actively involved in maintaining and improving the Park since 1992, to the benefit of the University’s students and staff, the citizens of the City, and the City’s many visitors. To this end, the University has committed on an annual basis over \$27,000.00 toward the Park; and

**WHEREAS**, the University and the City agree they should enter a Memorandum of Understanding (“MOU”) that sets forth the responsibilities and privileges of each of the parties regarding the Park, including without limitation maintenance, improvements, and decision-making.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, AS FOLLOWS:**

**Section 1.**

The Mayor, on behalf of the City, is hereby authorized to enter into a Memorandum of Understanding with the Board of Regents of the University System of Georgia, by and on behalf of Georgia State University, regarding the roles and obligations of each of the two parties in the development, maintenance, and enhancement of the Park. The MOU shall be substantively similar to the memorandum attached hereto as Exhibit “A”, and shall at a minimum provide the following:



- a) The MOU shall make clear that the City owns the Park and shall have the authority to make all final decisions regarding the Park, but shall exercise its authority in the spirit of good faith cooperation with the University.
- b) The MOU shall provide the University with the authority and the responsibility to maintain, the Park in a manner consistent with the MOU.
- c) The MOU shall provide the University with the authority to develop and enhance the Park, and to provide programming in the Park, in a manner consistent with the MOU.
- d) The MOU shall provide the University with the authority to operate the Park's fountain, provided that it does so in compliance with applicable water conservation laws and that it pays the annual maintenance costs associated with the fountain.
- e) The MOU shall have a term of five years, with one renewal option of five years contingent upon the mutual consent of the University and the City.

**Section 2.**

To the extent that the University is donating time and resources to the City, the City hereby accepts the donation.

**Section 3.**

The City Attorney or her designee is hereby directed to prepare the MOU for execution by the Mayor, and the MOU shall be approved as to form by the City Attorney or her designee.

**Section 4.**

The MOU shall not become binding upon the City, and the City shall incur neither obligation nor liability thereunder until the same has been executed by the Mayor and delivered to Georgia State University.

A true copy,

A handwritten signature in black ink, appearing to be 'S. B. ...', written over a vertical line.

Deputy Municipal Clerk

ADOPTED by the Atlanta City Council  
APPROVED as per City Charter Section 2-403

Sept. 6, 2011  
Sept. 15, 2011



**Exhibit A**



## MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF ATLANTA AND GEORGIA STATE UNIVERSITY

This Memorandum of Understanding (“MOU”), dated this \_\_\_\_ day of \_\_\_\_\_, 2011, is between the City of Atlanta (“City”), a Georgia municipal corporation, and the Board of Regents of the University System of Georgia by and on behalf of Georgia State University (“GSU” or “University”), a unit of the University System of Georgia (collectively, “the Parties”).

### **I. Background**

Hurt Park (the “Park”) is a 1.87 acre City-owned park located at 25 Courtland Street NE, at the intersection of Edgewood Avenue and Courtland Street, in the heart of the City's academic, philanthropic, and community outreach districts. GSU has a student body of over 30,000; a faculty and staff of over 3,000; and a campus of buildings that surrounds the Park.

The location of the Park is an asset to GSU, and the University capitalizes on having this feature in the center of its campus. The Park is heavily utilized by students for passive activity such as study and socializing. In addition, the Park is heavily programmed by the University, its departments/units, or officially-recognized University student organizations.

GSU has been actively involved in maintaining and improving the Park since 1992, to the benefit of GSU students and staff, the citizens of the City, and the City's many visitors. To this end, GSU has committed on an annual basis over \$27,000 toward the Park. During many of these years, the City and GSU did not have a written agreement regarding the contributions made by GSU to the Park. During 2010, the City provided a special process to simplify GSU's ability to schedule events in the Park. In addition to authorizing this process through City legislation and setting forth the details of the process in writing, the City and GSU agreed that the contributions made by GSU in the Park should also be set forth in writing and should be authorized by City legislation.

The purpose of this MOU is to set forth the responsibilities and privileges of each of the Parties regarding the Park, and to create a foundation for a cooperative working relationship between them. These responsibilities may include without limitation the design, installation and maintenance of capital improvements in the Park; design, installation, and maintenance of environmentally friendly landscape improvements; design, organization and implementation of programs in the Park; and maintenance of the Park so that it is consistently in a safe and attractive condition. While pursuing the goals set forth in this MOU, the Parties will remain sensitive to the impact of work and activities in the Park upon the surrounding neighborhoods and will strive to accomplish these goals in a manner that minimizes disruption to the Park's neighbors.

### **II. General Agreements: Role of Each Party in Working Relationship**

The following is a list of agreements regarding the basic roles of the City and GSU in their working relationship established by this MOU.



- A. The City shall maintain ownership of the Park.
- B. The City shall maintain its authority to make all final decisions regarding the Park, but shall exercise this authority in the spirit of good faith cooperation with GSU.
- C. GSU may, but shall not be required to, prepare a Master Plan for the Park. In the event that GSU creates a Master Plan, it must include, but not be limited to, Park specifications, a blueprint for capital improvements, landscape details, objectives for programming activities within the Park, and a blueprint for Park management decisions. GSU must comply with the City's review and approval process for park master plans, said process to be established by the Commissioner of the Department of Parks, Recreation and Cultural Affairs (the "Commissioner"), and to be provided to GSU with reasonable prior notice. The City's review and approval process shall include, but not be limited to, a presentation by GSU to the appropriate Neighborhood Planning Unit(s) for review and comment, review and comment by the Urban Design Commission, and approval by the Atlanta City Council and Mayor. The Master Plan will not be deemed final, nor shall it be implemented, until after GSU has successfully completed the Master Plan review and approval process. As used hereinafter in this MOU, "Master Plan" shall refer to a Park Master Plan that has been approved as set forth in this subsection II.C. Where no such Master Plan exists, any requirement herein that relates to the Master Plan shall be disregarded until such time as a Master Plan is created and approved pursuant to this section.
- D. All City decisions regarding the Park that arise from this MOU or the Master Plan (i) shall be made by the Commissioner or her/his designee, unless the Commissioner, the City Attorney, the Atlanta Mayor or the Atlanta City Council determines that the decision should be made in some other manner and (ii) shall be communicated in writing to GSU.
- E. The City and GSU shall operate, develop, maintain, and manage the Park together, in good faith cooperation, consistent with this MOU and the Master Plan.
- F. Project proposals and implementation plans for improvements and other initiatives in the Park shall be prepared by GSU, based on available and anticipated funds and the Master Plan. GSU shall comply with the City's review and approval process for park projects, improvements and initiatives, said process to be established by the Commissioner. GSU shall be responsible for determining any and all other governmental bodies and/or regulatory agencies from which approval must be obtained. GSU shall not begin work on these projects, improvements or other initiatives until it has successfully completed the City's review and approval process, and it has received written approval from any other governmental body or regulatory agency from which approval is required.



GSU shall be responsible for implementing the projects, improvements or other initiatives that have been approved as set forth in section II. F. above. The timetable for such implementation shall be included in the proposal and implementation plans prepared by GSU pursuant to section II.F. Contingent upon the requisite approvals being received, these projects may include, without limitation: creation of a Study Hall area with tables and chairs; construction of a stage for performances and lighting and wireless networks; installation of storage boxes for recreational equipment; refurbishment of Park lighting; refurbishment of Park fountains; and improvement of Park landscaping.

- H. When a decision regarding the Park is to be made solely by the Commissioner, the Commissioner shall review, provide feedback on, and if appropriate, provide approval of any and all submissions by GSU within thirty (30) days of receipt thereof. In the event that the approval process requires more than Commissioner approval, as determined pursuant to section II.D. above, this thirty-day time limit shall not apply.
- I. The Parties performed a walk through inspection of the Park immediately prior to executing this MOU. At the time of executing this MOU, neither the City nor GSU is aware of any safety hazard that exists in Hurt Park.
- J. The City shall have the right to reasonably oversee all work performed upon the Park by or on behalf of GSU, including but not limited to projects, construction of capital improvements, landscaping, and other initiatives. Though the City has the right to reasonably oversee the work, it is not obligated to do so. In addition, though the City has the right to suspend a Park project being performed by or on behalf of GSU if the project creates a safety hazard, it is not obligated to inspect the work to determine if a safety hazard exists, and shall not be deemed liable by GSU in the event that the City does not detect a safety hazard. The quality and safety of the work performed by or on behalf of GSU is the responsibility of GSU and not the City.
- K. GSU shall have primary responsibility for raising additional funds for the Park, and will oversee the use of funds it raises, making certain that the funds are utilized consistent with this MOU and the Master Plan. GSU may solicit and receive funds from individuals, foundations, governmental organizations, and corporate sponsors. In the event that a private sponsor requests recognition for its contribution in the form of on-site signs or other notices to the public that shall remain in the Park for greater than six months, GSU is not authorized to agree to such recognition unless and until receiving approval from the Commissioner and the City Council. Where the sign or other public notice shall remain in the Park for six months or less, GSU must receive prior written approval from the Commissioner, provided, however, that where the sign or other public notice pertains to GSU programming in the Park and shall remain in the Park for two



weeks or less, no approval shall be required. All signs related to sponsors and sponsorship in the Park shall be consistent in overall shape and dimensions.

- L. Other parties may contribute to the improvement of the Park, as long as all gifts are in conformance with the Master Plan and are subject to City approval and oversight.
- M. The City shall be responsible for any claim, damage, loss or expense arising from the Park that is attributable to intentional or negligent acts, errors, or omissions by the City, its consultants/contractors or their officers, agents or employees, or, its consultants'/contractors' subconsultants/subcontractors, or their officers, agent or employees. GSU shall be responsible for any claim, damage, loss or expense arising from the Park that is attributable to intentional or negligent acts, errors, or omissions by GSU, its consultants/contractors or their officers, agents or employees, or, its consultants'/contractors' subconsultants/subcontractors, or their officers, agent or employees. Neither this MOU, nor this provision specifically, shall waive the City's nor GSU's right to be indemnified, defended and/or held harmless by consultants, contractors, their subconsultants and/or subcontractors, the officers, agents or employees of those companies, or any one else performing work at or related to the Park.
- N. Any personnel employed by or volunteering on behalf of GSU shall be deemed "employees" or "volunteers" respectively of GSU, and shall not be deemed employees or volunteers of the City. GSU shall remain responsible for the supervision, management and control of such employees and volunteers and any payroll, taxation or other employment obligation incident to their work. Any personnel employed by or volunteering on behalf of the City shall be deemed "employees" or "volunteers" respectively of the City, and shall not be deemed employees or volunteers of GSU. The City or its designee shall remain responsible for the supervision, management and control of such City employees and volunteers and any payroll, taxation or other employment obligation incident to their work.
- O. GSU is a self-insured state entity covered by the Tort Claims Act and the State of Georgia Broad Form Insurance.
- P. The City and GSU shall not discriminate based upon race, creed, color, religion, sex, national origin, marital status, age, physical handicap, sexual orientation, or gender identity in the implementation of this MOU and the Master Plan.
- Q. GSU shall maintain records and accounts in connection with the performance of this MOU that will accurately document all funds received by GSU and all costs incurred by GSU, both direct and indirect, of whatever nature, at all times for the previous eight (8) years unless otherwise specified by applicable law. The City or its designated representatives shall have the right to examine and copy the records and accounts at all reasonable times during GSU's normal business hours, with



reasonable advance notification. The City reserves the right to audit, at its own expense, GSU's records and accounts relating to Hurt Park and/or this MOU. Any such audit will be commenced within one year of the expiration of this MOU.

- R. Title to all of GSU's Park improvements of such a nature as cannot be removed without substantial damage to the Park, or some portion thereof, shall vest in the City upon completion of construction or installation.
- S. The City amended Chapter 142 of the Atlanta Code of Ordinances in 2010 to establish a procedure by which GSU will obtain permits for its Outdoor Events. This procedure is set forth in Code Section 142-64, and GSU will abide by the provisions therein. To facilitate the sharing of information regarding the Park, GSU and the Commissioner shall meet in January of each year of the Term of this MOU to discuss Outdoor Festivals, other outdoor events, and Park programming being scheduled by GSU for the upcoming year.
- T. When new improvements are completed by GSU, GSU will submit copies of "as built" drawings to the Commissioner for future reference.

### **III. City Responsibilities**

In addition to the responsibilities listed above, the City shall have the following responsibilities:

- A. Maintain the full range of existing commitments to the Park, including basic maintenance, repairs, litter control, and utilities commitments, and provide a letter reflecting those commitments to GSU upon request for fundraising purposes.
- B. Provide sanitation services for the Park at no cost to GSU, except that GSU shall be responsible for its own sanitation services costs for Outdoor Festivals, Assemblies, Large Gatherings, or other outdoor events sponsored by GSU, where the City Code of Ordinances requires the sponsor to assume the sanitation costs. Sanitation services provided at the Park by the City shall be commensurate with the sanitation services provided at the City's other parks.
- C. Provide, or arrange and pay for the utilities necessary for standard lighting in the Park. GSU shall pay the additional utility costs associated with GSU activities in the Park, including without limitation those activities described in section IV. L. below. In the event that the cost for water usage exceeds \$2,000 in a calendar year, the City will pay the portion of bills that exceeds \$2,000 for said year.
- D. Make all modifications to the Park that may become necessary to comply with safety regulations and other state and federal law together with all costs associated therewith, within a timeframe required by law or any other agreement between the City and a legal entity with jurisdiction over the Park.



While the City and the University police departments are autonomous of one another with sole discretion concerning the nature and procedure for their respective law enforcement decision-making, each shall have coterminous rights to enforce federal, state, and local laws within the boundaries of the Park.

- F. Provide and maintain a sign in a prominent place in the Park stating the Park's name and the City's ownership thereof.
- G. Provide and maintain a sign or signs in a prominent place or places in the Park listing Park rules. Not all of the Park rules set forth in the Atlanta Code of Ordinances will be listed on the sign(s). Each and every Park rule set forth in the Atlanta Code of Ordinances will apply to and shall be enforceable in the Park, including without limitation those rules that are not posted on the sign(s). The content of the sign(s) containing the Park rules will be determined by the City, after receiving input from GSU.
- H. Protect the Park and the projects, improvements, and initiatives therein by coordinating the management of events held in the Park with GSU, such that the management is consistent with the City of Atlanta Outdoor Events Ordinance and with the design features and other guidelines set forth in the Master Plan.
- I. Use commercially reasonable efforts to ensure that all funds committed by the City to the Park are used effectively, efficiently, and as intended.

#### **IV. GSU Responsibilities**

In addition to the responsibilities listed above, GSU shall have the following responsibilities:

- A. Seek to raise money to support projects, improvements, and initiatives for enhancing the Park.
- B. Create an environmentally-friendly Park design that will include, but is not limited to, green spaces, lighting, and native plant landscaping, and that is consistent with the Master Plan if one exists.
- C. Perform, or cause to be performed, and pay for the maintenance, repair, and general upkeep of the Park, as set forth specifically in Section IV.D. through IV.K. below.
- D. In addition to the maintenance performed by or at the direction of the City, pursuant to sections III.A. and III.B. above, GSU will cut the grass and provide other lawn maintenance in the Park. GSU will plant and maintain the Park's flower beds, and for that purpose, may acquire flowers at no cost from the City's greenhouse to the extent that such flowers are available. To the extent GSU deems reasonably appropriate and necessary, GSU may provide additional maintenance so that the Park remains in a safe and attractive condition, and so



that all projects, improvements, infrastructure and initiatives are adequately maintained to protect the investments made and to meet the design requirements of the Master Plan. With regard to any maintenance to be undertaken by GSU, GSU shall submit an annual maintenance plan setting forth the maintenance activities sought to be undertaken to the Commissioner no later than December 1 of each year. GSU shall not begin said additional maintenance until the maintenance plan is approved in writing by the Commissioner.

- E. Maintain all other plants and vegetation planted in the Park, in addition to those set forth in subsection IV.D. above. Such maintenance shall meet the design requirements of the Master Plan if/when one exists.
- F. Support and manage the maintenance activities of third parties hired or retained by GSU to improve and protect the Park consistent with this MOU and the Master Plan.
- G. In addition to the garbage collection and litter control performed by the City, GSU will pick up litter from around the Park at a minimum of five times per week.
- H. The University shall be responsible for snow and ice removal according to City specifications within the boundaries of the Park and from City sidewalks bordering the perimeter of the Park; provided, however, that in the event of snow or ice which in the reasonable opinion of the University is of emergency proportions, University may temporarily close all or portions of said Park and/or sidewalks, until such time as University can effect the removal of the snow and ice. This provision notwithstanding, the University shall contact the Commissioner via email and telephone immediately upon making such decision, and the Commissioner shall have the right to open the Park and/or sidewalk at any time.
- I. If GSU elects to operate the Park's fountain, it shall pay the annual maintenance costs for the Park's fountain, except that where GSU incurs budget reductions, it may modify or reduce this obligation to accommodate its financial restrictions. The maintenance cap established in Section IV.K. below shall not apply to maintenance of the Park's fountain.
- J. Support and implement any water conservation rules, policies, and/or practices adopted or endorsed by the City, including without limitation rules that may pertain to the operation of the Park's fountain.
- K. For any particular repair or maintenance that exceeds a cost to GSU of over \$1,000, the City shall pay for any portion of GSU's cost above \$1,000, provided that GSU did not allow the repairs to accumulate to such a degree that the aggregate of expenses exceeds \$1,000 total. Where the City does not have adequate funds to provide the necessary repairs costing greater than \$1,000, the Commissioner may consult with GSU to determine what if any financial resources the University may contribute to the project at issue. In no event shall



GSU be required to assist with the payment of any repair or maintenance except as set forth in Section II.M. above. Where adequate financial resources are not available for any required repair or maintenance, and where the Commissioner reasonably determines that failure to perform the repair or maintenance will result in a material risk to the safety of people and/or property, the Commissioner, at her/his sole discretion, may terminate this MOU without cause at no cost to the City by written notice to GSU. The \$1,000 cap and the GSU and City obligations established by this Section IV.K. shall not apply to the extent that the maintenance or repair expenses arise as set forth in Section II.M. above, in which case the provisions of said Section II.M. of this MOU shall apply.

- L. Organize, design, implement and/or support programming activities in the Park consistent with this MOU and the Master Plan, and in compliance with Atlanta Code of Ordinances Chapter 142.
- M. Serve as the major catalyst for interested parties to be involved with the Park through advocacy, volunteer, and/or fundraising activities, and through working with the GSU Administration.
- N. Notify the Commissioner or her/his designee within twenty-four hours of a GSU staff member at a director level or above, learning of a non-routine safety, sanitary, and/or maintenance issue that needs to be addressed in the Park regardless of whether GSU intends to resolve the issue.
- O. Notify the Commissioner within three hours or sooner of learning of any emergency event regarding or arising in the Park that involves the media, the police or fire departments or emergency medical services,.
- P. Use all commercially reasonable efforts to ensure that all funds committed by or to GSU for use regarding the Park are used effectively, efficiently, and as intended.
- Q. Section IV.P. above shall survive the termination or expiration of this MOU.

**V. Contractors Performing Work on the Park**

- A. GSU shall require all vendors, contractors and subcontractors performing any work related to this MOU to sign an agreement with GSU that includes the following indemnification provision, with the exception that the name of the contractor or subcontractor shall replace "Contractor" as used herein below:



“Indemnification and Hold Harmless Clause”

(1) Releases and Indemnification:

Contractor hereby releases and shall indemnify, defend, and hold harmless the City of Atlanta, its elected officials, officers, agents, employees, authorized representatives, successors, and assigns, as well as the Board of Regents of the University System of Georgia by and on behalf of Georgia State University, its 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, judgments, 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 to 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.

- B. Every vendor, contractor and subcontractor that performs work related to the Park for or on behalf of GSU, shall comply with the State of Georgia insurance requirements. Compliance shall be required by all contractors of any tier.



## **VI. Term of MOU**

This MOU will commence as of the date of its full execution, as shall be reflected on the first page of the MOU, and the MOU will continue in effect for five (5) years. Upon mutual agreement of the Parties, as indicated in writing, the Parties may renew this MOU for one additional five-year term.

## **VII. Suspension of Work and Termination of MOU**

- A. In the event that the City reasonably determines that any work being performed on the Park, or any failure to perform work on the Park, is materially inconsistent with this MOU, the Master Plan, and/or the project, improvement or initiative plans approved as set forth in section II. above, the City shall immediately contact GSU in writing and shall articulate the corrective action required. The City shall state the number of days that GSU shall have to implement the corrective action, and shall make such determination based upon the seriousness of the matter, the safety implications of the matter, and the amount of time that it would reasonably take to implement that type of correction. The City shall be reasonable with regard to granting extensions of time if GSU indicates that it needs additional time and is making a good faith effort to implement the corrective action.
1. GSU shall use all commercially reasonable efforts to implement the corrective action within the time set forth by the City in its written notice. In the event that GSU needs additional time to implement the corrective action, it shall request an extension of time for a defined time period.
  2. In the event that GSU does not make a good faith effort to implement the corrective action within the time frame established by the City, either originally or in an extension of time, the City shall have the right to suspend the offending project until the corrective action is implemented, at no cost to the City.
  3. In the event that the offending action is a failure to perform work, including but not limited to maintenance work, and in the event that GSU does not make a good faith effort to implement the corrective action within the time frame established by the City, either originally or in an extension of time, the City shall have the right to perform the work or direct that the work be performed. Where the City contracts with a third party to perform the work, said third party shall be selected according to the rules set forth in the City's Procurement Code. GSU shall reimburse the City for the reasonable cost of performing the work.
  4. In the event that the City and GSU disagree about the corrective action to be implemented, the Parties may attend non-binding mediation (with each party being responsible for its own costs) in an attempt to resolve the matter. The work at issue shall be suspended until the completion of the non-binding



mediation. Should the Parties be unable to resolve the corrective action issue after non-binding mediation, the City shall have the right to terminate this MOU for cause, at no cost to the City.

- B. In the event that the City reasonably determines that any work being performed on the Park creates a safety hazard, the City shall suspend the work immediately and shall bear no cost associated with the suspension. The City shall immediately notify GSU, in writing and by telephone, that the work has been suspended and the corrective action required. The work shall remain suspended until the corrective action is implemented.
- C. In the event that the City reasonably determines that any failure to perform work on the Park is creating a safety hazard, the City may close the Park, and shall bear no cost associated with the closure. The City shall immediately notify GSU, in writing and by telephone that the Park has been closed and the corrective action required. The City may keep the Park closed until the corrective action is implemented.
- D. Either Party shall have the right to terminate this MOU without cause at any time prior to the MOU's expiration by giving written notice to the other Party at least sixty (60) days prior to the date such termination is to be effective, and such termination shall be at no cost to either of the Parties.

#### **VIII. Notices**

- A. Any and all notices given hereunder (not related to Outdoor Events being held in Hurt Park and regulated by Atlanta Code of Ordinances section 142-64) shall be addressed to the other party at the following address and/or telephone number, or at any other address and/or telephone number provided in writing in the future.
  - 1. George Dusenbury  
Commissioner, Department of Parks, Recreation and Cultural Affairs  
City of Atlanta  
233 Peachtree Street, Suite 1700  
Atlanta, Georgia 30303  
(404) 546-6762
  - 2. Jerry Rackliffe  
Senior Vice President – Finance & Administration  
X  
X  
X  
X



B.

Any and all notices given hereunder (related to the scheduling of Hurt Park) shall be addressed to the other party at the following address, telephone number, and/or email address, or at any other address, telephone number, and/or email address provided in writing in the future.

1. X  
X  
X  
X

2. Richard Heller  
Executive Director – Student/University Center  
Student University Center  
360 Student Center  
44 Courtland Street  
Atlanta, Georgia 30303-3973  
(404) 413-1860  
stdrlh@langate.gsu.edu

#### **IX. Miscellaneous Provisions**

- A. No Party may assign its obligations under this MOU to another person or entity without the written consent of the other Parties.
- B. The waiver by a party of any breach of any provision contained in this MOU shall not be deemed to be a waiver of such provision on any subsequent breach of the same or any other provision contained in this MOU. Any such waiver must be in a properly signed writing in order to be effective, and no such waiver or waivers shall serve to establish a course of performance between the parties contradictory to the terms hereof.
- C. This MOU shall be governed by the laws of the State of Georgia.
- D. This MOU embodies the entire agreement of the parties hereto relating to the subject matter hereof. This MOU supersedes all prior agreements and understandings and all rights and obligations thereunder are hereby cancelled and terminated. No amendment or modification of this MOU shall be binding and valid unless it is in writing and signed by the parties hereto or their authorized representatives.

[Signatures on Following Page]



IN WITNESS WHEREOF, the City and GSU have caused this MOU to be executed by their duly authorized officials, the day and year first above written.

ATTEST:  
Sworn to and subscribed  
Before me this \_\_\_\_ day  
of \_\_\_\_\_, 2011.

**BOARD OF REGENTS OF THE UNIVERSITY  
SYSTEM OF GEORGIA BY AND ON  
BEHALF OF GEORGIA STATE UNIVERSITY**

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
MARK P. BECKER, PRESIDENT

ATTEST:

**CITY OF ATLANTA:**

\_\_\_\_\_  
Municipal Clerk (Seal)

\_\_\_\_\_  
KASIM REED, MAYOR

RECOMMENDED:

APPROVED:

\_\_\_\_\_  
Commissioner,  
Department of Parks, Recreation,  
and Cultural Affairs

\_\_\_\_\_  
Chief Procurement Officer

APPROVED AS TO FORM:

\_\_\_\_\_  
Senior Assistant City Attorney

RCS# 1358  
9/06/11  
2:37 PM

Atlanta City Council

REGULAR SESSION

CONSENT

CONSENT AGENDA SECTION I

ADOPT

YEAS: 11  
NAYS: 0  
ABSTENTIONS: 0  
NOT VOTING: 3  
EXCUSED: 0  
ABSENT 2

Y Smith	NV Archibong	Y Moore	Y Bond
Y Hall	Y Wan	Y Martin	B Watson
Y Young	NV Shook	NV Bottoms	Y Willis
Y Winslow	Y Adrean	Y Sheperd	B Mitchell

CONSENT