

A RESOLUTION BY COUNCIL MEMBER(S) KWANZA HALL & IVORY LEE YOUNG AUTHORIZING THE MAYOR ON BEHALF OF THE CITY OF ATLANTA TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH SP5 ATLANTIC LAND DEVELOPER, LLC FOR THE PURPOSE OF PARTNERING WITH THE CITY OF ATLANTA TO PROVIDE TENNIS PROGRAMMING AT TENNIS COURTS LOCATED AT THE ATLANTIC STATION PROJECT ON BEHALF OF THE DEPARTMENT OF PARKS, RECREATION AND CULTURAL AFFAIRS; AND FOR OTHER PURPOSES.

Review List:

Atlanta City Council	Completed	06/20/2013 1:00 PM
Community Development & Human Resources Committee		Pending

HISTORY:

06/17/13	Atlanta City Council
----------	----------------------

Certified by Presiding Officer	Certified by Clerk
Mayor's Action <i>See Authentication Page Attachment</i>	

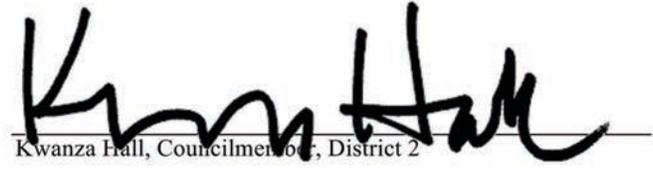
LEGISLATION HISTORY - BLUE BACK

CITY COUNCIL
ATLANTA, GEORGIA

13-O-1102

SPONSOR SIGNATURES


Ivory Lee Young Jr., Councilmember, District 3


Kwanza Hall, Councilmember, District 2

**AN ORDINANCE
BY COUNCILMEMBER(S) YOUNG JR., HALL**

A RESOLUTION BY COUNCIL MEMBER(S) KWANZA HALL & IVORY LEE YOUNG AUTHORIZING THE MAYOR ON BEHALF OF THE CITY OF ATLANTA TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH SP5 ATLANTIC LAND DEVELOPER, LLC FOR THE PURPOSE OF PARTNERING WITH THE CITY OF ATLANTA TO PROVIDE TENNIS PROGRAMMING AT TENNIS COURTS LOCATED AT THE ATLANTIC STATION PROJECT ON BEHALF OF THE DEPARTMENT OF PARKS, RECREATION AND CULTURAL AFFAIRS; AND FOR OTHER PURPOSES.

WHEREAS, SP5 ATLANTIC LAND DEVELOPER, LLC (“Owner”) owns and operates tennis courts located at the Atlantic Station Project in Atlanta, Georgia as described on Exhibit A attached hereto (“Center”); and

WHEREAS, the City of Atlanta (“City”) Department of Parks, Recreation and Cultural Affairs (“DPRCA”) operates recreational programming throughout the city of Atlanta, including tennis; and

WHEREAS, Owner and City desire to partner so that the City may use and provide programming at the Center at no cost to the City; and

WHEREAS, DPRCA recommends entering in a Memorandum of Understanding (“MOU”) with Owner regarding use of and programming at the Center.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, that the Mayor or his designee, on behalf of the City, is hereby authorized to enter into a Memorandum of Understanding (“MOU”) between the City and Owner in substantially similar form to the document attached hereto as Exhibit B.

BE IT FURTHER RESOLVED, that to the extent Owner is donating resources to the City, the City hereby accepts such donation.

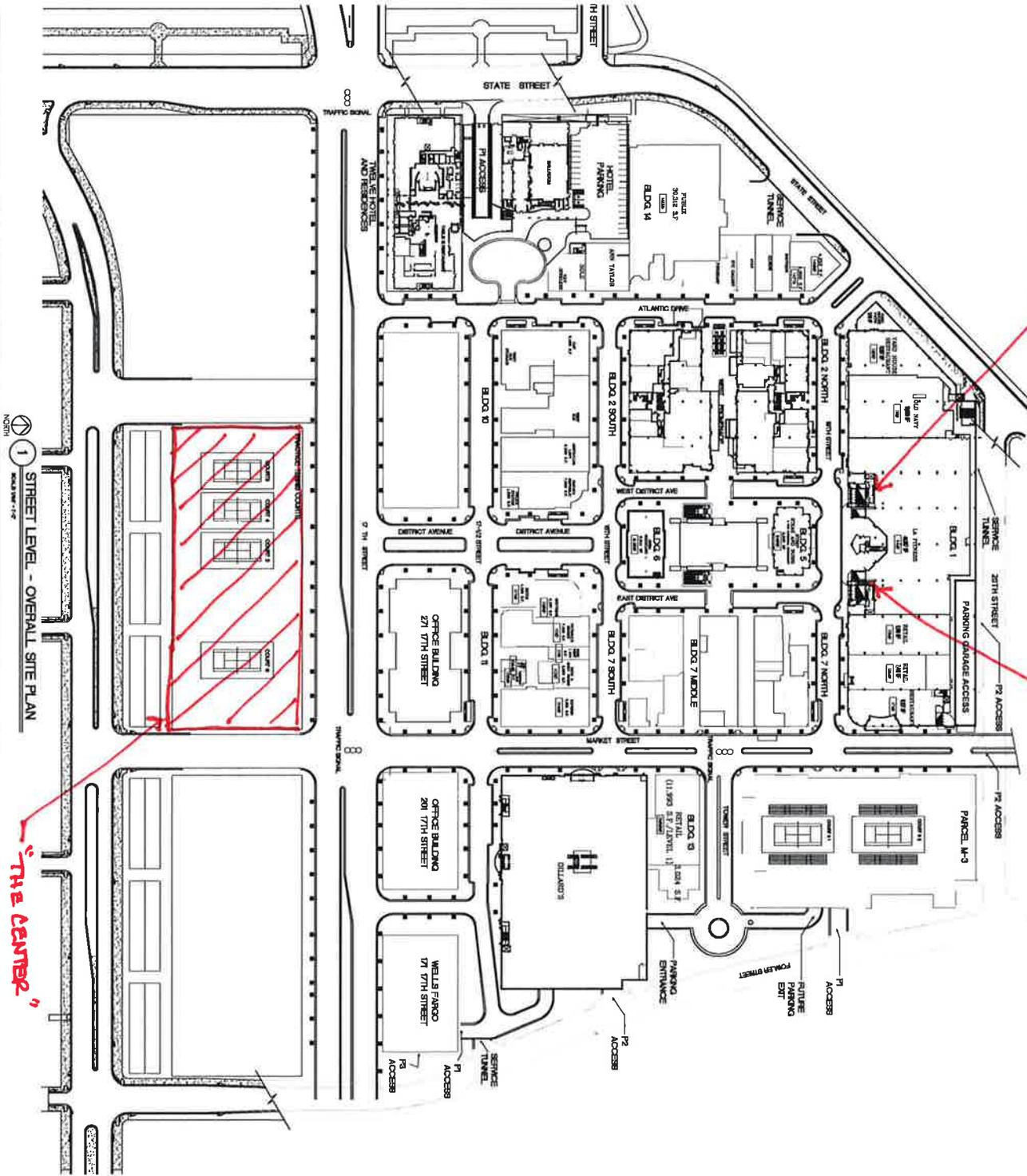
BE IT FURTHER RESOLVED, that the City Attorney, or her designee is hereby authorized to prepare the MOU for execution by the Mayor.

BE IT FINALLY RESOLVED, that the MOU shall not become binding on the City, and the City shall incur no obligation or liability under it until it has been executed by the Mayor, attested to by the Municipal Clerk, approved as to form by the City Attorney, and delivered to Owner.

EXHIBIT A

MEN'S RESTROOM

WOMEN'S RESTROOM



WAKEFIELD
BEASLEY &
ASSOCIATES

ARCHITECTS INTERIORS

The TOWN CENTER
at
THE ATLANTIC
STATION
PROJECT
TOURNAMENT
TENNIS
COURTS

Atlanta, Georgia
Atlantic Town
Center, LLC

NORTH
AMERICAN
PROPERTIES



SHEET LEVEL -
OVERALL
SITE PLAN
A-1

Exhibit B

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF ATLANTA AND SP5 Atlantic Land Developer, LLC

This Memorandum of Understanding (“MOU”), dated this ____ day of _____, 2013, is between the City of Atlanta (“City”) and the SP5 Atlantic Land Developer, LLC (“Owner”) (collectively, “the Parties”).

I. Background

Owner is a Delaware limited liability company that owns recreational tennis courts as more particularly described on Exhibit A, attached hereto and incorporated herein by this reference the (“Center”). Owner desires to have the City provide weekday and weekend tennis programming (the “Program”) at the Center. The purpose of this MOU is to lay the foundation for a cooperative working relationship between the Parties, and to establish the role of each Party in that relationship, as the Parties work together to continue the Program at the Center.

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 Owner in their working relationship established by this MOU.

- A. Owner shall own the Center.
- B. City shall provide or cause to be provided the Program at the Center. The City shall advise Owner regarding the needs and plans of the Center.
- C. The City shall be responsible for any claim, damage, loss or expense arising from the Program. Owner shall indemnify, defend and hold the City harmless from and against any claim, damage, loss or expense arising solely and directly from and attributable to the intentional or grossly negligent acts, errors or omissions of Owner, its agents, employees or contractors while acting within the scope of their agency, employment or contract. Neither this MOU, nor this provision specifically, shall waive the City’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 Center or the Program.

- D. The Program and all City activities at or relating to the Center shall conform to the Owner's "code of conduct," as set forth in Exhibit C, attached hereto and incorporated herein by this reference.

- E. The City and Owner 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.

- F. City shall owe no rental fees to Owner for use of the Center.

III. Owner Responsibilities

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

- A. Allow City to use the Center as the primary site for the Program activities, subject to the terms of this MOU.

- B. Provide space as is for the Program, including providing City with non-exclusive use of the tennis courts and existing restrooms as depicted on Exhibit A free of charge, all of which shall be provided in "AS IS, WHERE IS - WITH ALL FAULTS" condition, which the City hereby accepts.

- C. Provide, or arrange and pay for provision of all utilities at the Center during Owner-approved Program hours.

- D. Help identify appropriate youth and adult participants for referral to the Program.

- E. Provide daily trash removal for Center.

Notwithstanding the foregoing, Owner shall not be obligated to incur any cost in connection with the foregoing that exceeds the amount budgeted therefor by Owner, in Owner's sole and absolute discretion.

IV. CITY Responsibilities

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

- A. Operate the Program at the Center consistent with this MOU and during the hours of operation as listed on Exhibit B attached hereto, and incorporated herein by reference.
- B. Conduct Program special events throughout the year as and to the extent mutually agreed by the City and Owner.
- C. Provide registration data on youth and other participants enrolled in the Program to the Owner for use in accordance with the terms of this MOU.
- D. Manage program activities, including but not limited to development of policies and procedures, fund development, and case management.
- E. Oversee all programming and scheduling activities related to the Program.
- F. Clean and maintain Center with the exception of resurfacing the courts.
- G. Provide first aid services and facilities.
- H. Provide professionally trained and screened staff for Program activities.

V. ADDITIONAL UNDERSTANDINGS OF THE PARTIES

- A. City shall charge scheduling and registration fees to participants in the Program consistent with City of Atlanta reservation fees as specified in the City of Atlanta Code of Ordinances. All Program fees shall be used for operation of the Program by the City.
- B. Owner reserves use of courts for the BB&T Atlanta Open and annual resurfacing of the courts prior to the tournament. Dates for tournament and resurfacing shall be provided no later than March 1 for the current year.
- C. All City activities and scheduling with respect to the Center shall be subject and subordinate to the rights of Owner and its tenants to use the Atlantic Station[®] project at all times.

VI. Term and Termination

- A. The term of this MOU shall commence on June, 1 2013, and shall continue for six (6) months (“Term”). At the end of the Term and upon mutual consent of the Parties, this MOU may be renewed for an additional six (6) month term, provided that ninety (90) days advance notice is given by a Party to the other Party of its desire to extend the Term.

- B. 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 thirty (30) days prior to the date such termination is to be effective, and such termination shall be at no cost to either of the Parties.
- C. Upon termination or expiration of this MOU, City shall remove all of its property at the Center.

VII. Miscellaneous

- A. This MOU sets forth the complete and exclusive understanding of the Parties with respect to the subject matter hereof and supersedes all prior proposals, understandings, and agreements, whether oral or written, between the Parties with respect to the subject matter hereof. With the exception of Exhibits attached hereto, this MOU may not be modified except by a written instrument duly executed by the Parties. Neither party has made any representatives or warranties not set forth in this MOU.
- B. This MOU and the Parties’ obligations hereunder shall be governed, construed, and enforced in accordance with the laws of the State of Georgia. Time is of the essence.
- C. If any provision of this MOU is held invalid, illegal, or unenforceable, the remaining provisions shall be enforced to the maximum extent permitted by applicable law.
- D. The waiver by either Party of any term or condition of this MOU shall not be deemed to constitute a continuing waiver thereof nor a waiver of any other right that such Party may hold under this MOU.
- E. All notices required to be given to Owner hereunder shall be in writing and given by certified mail, return receipt requested, postage prepaid (with a copy sent via regular mail) addressed as follows:

ATTN:
 SP5 Atlantic Land Developer, LLC
 271 17th Street, Suite 575
 Atlanta, GA 30075
 Attn: General Manager

With a copy to:
 Parker Hudson Rainer & Dobbs, LLP
 1500 Marquis Two Tower

285 Peachtree Center Avenue, NE
Atlanta, GA 30303
Attn: Kenneth Kraft, Esq.

or such other address as may be designated by Owner by written notice to the City. All notices required to be given to City hereunder shall be in writing and given by certified mail, return receipt requested, postage prepaid (with a copy sent via regular mail) addressed as follows:

ATTN:
Commissioner, Department of Parks, Recreation and Cultural Affairs
Peachtree Center, Harris Tower
233 Peachtree Street, 17th Floor
Atlanta, GA 30303

or such other address as may be designated by City by written notice to Owner.

No notice shall be effective if purported to be transmitted by telex, fax, or other electronic delivery. All notices shall be deemed received on the date noted on the return receipt; provided, however, as to any notice for which delivery is refused, that notice shall be deemed to have been received on the third (3rd) business day after the same was deposited, postpaid, with the United States Postal Service.

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

Owner :
SP5 Atlantic Land Developer, LLC
By:
Name:
Title:

By:
Name:
Title:

ATTEST:

CITY OF ATLANTA:

Municipal Clerk (Seal)

KASIM REED, MAYOR

RECOMMENDED:

Commissioner, Department of Parks,
Recreation, and Cultural Affairs

APPROVED:

Chief Procurement Officer

APPROVED AS TO FORM:

Senior Assistant City Attorney

Exhibit A
Center Location

Exhibit B
Hours of Operation

Center Hours: Dawn to Dusk

Exhibit C
Code of Conduct