

STATE OF GEORGIA
CITY OF DUNWOODY

FACILITY USAGE AGREEMENT

THIS AGREEMENT by and between the **City of Dunwoody, Georgia**, a municipal body politic and corporate, hereinafter designated "CITY" and **Spruill Center for the Arts, Inc.**, 5339 Chamblee Dunwoody Road, Dunwoody GA 30338, a private nonprofit organized under the laws of the State of Georgia, hereinafter designated "SPRUILL"

WITNESSETH:

WHEREAS, CITY owns and operates the North DeKalb Cultural Center located at 5339 Chamblee Dunwoody Road, Atlanta, Georgia, (hereinafter designated as "Center"), for the purpose of serving the residents of the City of Dunwoody by locating and housing therein various public and private companies, corporations, and organizations capable of and willing to provide their services with the residents of the City of Dunwoody; and

WHEREAS, the undersigned SPRUILL desires to operate a cultural arts program for the benefit of residents of the City of Dunwoody and agrees to utilize space in the Center in accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties hereto agree as follows:

1. (a) CITY does hereby grant usage to SPRUILL ten thousand eight hundred forty four (10,844) square feet of space delineated on the Floor Plan Layout attached hereto as Attachment B and by reference made a part hereof (hereinafter referred to as "Space") at a Service Charge Cost of Three Thousand Twenty Nine and No/100ths Dollars (\$3,029.00) per month to be paid to CITY on the first day of each month of occupancy, with payment for partial months of occupancy to be prorated accordingly.
 - (b) Payments are to be made to "City of Dunwoody, Georgia" 41 Perimeter Center E, Suite 250, Dunwoody, Georgia 30046.
 - (c) SPRUILL shall pay an additional charge of five percent (5%) of the Service Charge Cost as a late payment charge if the regular monthly Service Charge Cost is not received when due and payable. A late payment charge will be incurred by the SPRUILL if the monthly Service Charge Cost has not been received by the CITY by the fifth day of each month.
2. This Agreement, beginning on _____ is for an initial term expiring on December 31, 2012. This Agreement shall terminate absolutely and without further obligation on the part of the City on December 31, 2012 and on December 31st of each succeeding and renewed year, as required by O.C.G.A. § 36-60-13, as amended, unless terminated by either Party no later than thirty (30) days prior to the conclusion of the initial or any renewal term. This Agreement may be automatically renewed on an annual basis for an additional twelve-month

term upon the same terms and conditions, as provided for in this Agreement, unless previously terminated.

3. The City's governing authority may unilaterally terminate this Agreement on or before November 1st of each year in which the Agreement is in force. If this Agreement is terminated pursuant to this paragraph, SPRUILL shall pay to the CITY the Service Charge Cost through the date SPRUILL vacates the Space.
4. This Agreement may be automatically renewed for an additional twelve-month term, subject to the following conditions:
 - (a) SPRUILL shall provide written notice to CITY at least sixty (60) days prior to the expiration date of this lease (i) exercising the option to extend or renew, and (ii) stating its agreement to pay its pro rata share of the Service Charges as set by the CITY for the extended or renewed period.
 - (b) SPRUILL shall continue to perform its services and to coordinate its performance with that of other users and CITY.
 - (c) SPRUILL shall comply with the conditions of this Agreement.
5. Either party shall have the right to terminate this Agreement for any reason at any time during the original term of this lease or any extension or renewal thereof by giving written notice to SPRUILL of its intention to terminate at least sixty (60) days prior to the effective date of termination. Should this lease be terminated by the CITY prior to the expiration date set forth hereinabove or prior to the expiration date of any extension or renewal of this lease, SPRUILL shall pay to the CITY Service Charge Cost through the date SPRUILL vacates the Space. CITY reserves the right to terminate and cancel this Agreement or any extension or renewal thereof at any time SPRUILL fails or refuses to fulfill the terms and conditions set forth herein. SPRUILL, upon termination of this Agreement or any renewal thereof, or cancellation thereof by CITY, shall vacate and deliver up the Space peaceably, quietly, and in good order and condition.
6. For the purpose of this Agreement, all notices to be given hereunder shall be in writing and shall be deemed given when deposited in the United States Mail, postage prepaid, certified, and addressed as follows:
 - (a) CITY: City of Dunwoody
41 Perimeter Center E
Suite 250
Dunwoody, Georgia 30346
Attention: Parks & Recreation
 - (b) SPRUILL: Spruill Center for the Arts, Inc..
5339 Chamblee Dunwoody Road

Dunwoody, Georgia 30338

7. CITY does hereby designate the Parks & Recreation Department as its representative in all matters pertaining to this lease. All requests and issues arising from use of the Space described herein should be addressed to the Parks & Recreation Department through its Parks Manager assigned to the Center. The Public Works Director is authorized to establish such administrative procedures he or she deems appropriate to carry out and enforce the terms of this Agreement.
8. The CITY and SPRUILL shall provide services in accordance with Attachment A, which is attached hereto and by reference made a part hereof, during the term of the lease. SPRUILL agrees to provide CITY with appropriate information about its program activities, including program operating hours, in order to facilitate operation of the Center and coordination by the CITY.
9. SPRUILL shall at all times exonerate, indemnify, and save harmless the CITY from and against all claims or actions, and all expenses incidental to the defense of any such claims, litigation, and actions, based upon or arising out of damage or injury (including death) to persons or property (i) caused by, or (ii) sustained on the Space in connection with the performance of this Agreement or any extension or renewal thereof or conditions created thereby and shall assume and pay for, without cost to the CITY, the defense of any and all claims, litigation and actions, suffered through any act or omission of the SPRUILL, or anyone directly or indirectly employed by or under the supervision of any of them, or in any way arising out of the use and occupancy of the space.
10. Except as otherwise consented to in writing by CITY, SPRUILL shall maintain in force during the life of this Agreement or any extension or renewal thereof comprehensive general public liability and property damage insurance, in the minimum amount of \$100,000.00 with respect to each person, and in the sum of \$300,000.00 with respect to each accident or occurrence, and in the sum of \$100,000.00 for injury or damage to property, and CITY shall be named as an additional insured under such policy or policies of insurance.
11. Except as otherwise consented to in writing by CITY, SPRUILL shall furnish to the CITY within thirty (30) days after execution of this lease, a certificate or certificates evidencing such insurance coverage in companies doing business in Georgia and acceptable to CITY covering:
 - (a) The location and the operations to which the insurance applies
 - (b) The expiration date of policies
 - (c) An agreement that the policies certified will not be changed or canceled without thirty (30) days prior notices to CITY, as evidenced by return receipts of registered or certified letters. Prior to ten (10) days before the expiration of any such certificate, SPRUILL shall deliver to the CITY a certificate renewing or extending the terms for a period of at least one (1) year, or a certificate acceptable to CITY evidencing the required insurance coverage.

- 12 SPRUILL shall comply with the provisions of the Code of the City of Dunwoody, Georgia and Official Code of Georgia annotated and all appropriate statutes and regulations governing the services it furnishes and, when applicable, with the standards of its profession. SPRUILL acknowledges their responsibility to report child abuse under O.C.G.A 19-7-5 as may be amended in the future and they accept responsibility to adhere to it, including all paid employees, and volunteers and that failure to do so shall constitute a material breach of this Agreement.
- 13 The occupancy and use by SPRUILL of the Space and rights herein conferred upon SPRUILL shall be subject to rules and regulations as are now or may hereinafter be prescribed by CITY.
- 14 Both parties agree that the provisions of this Agreement or any extension or renewal thereof, are not intended to be nor should they be construed as in any way creating or establishing a relationship between the parties hereto other than that of Owner and User, and at all times during the term of this Agreement or any extension or renewal thereof, SPRUILL is to be and shall remain as an independent contractor.
- 15 This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia.
- 16 This Agreement shall be deemed to have been made and performed in the City of Dunwoody, Georgia. For the purpose of the venue, all suits or causes of actions arising out of this Agreement shall be brought in the appropriate courts within DeKalb County, Georgia.
- 17 Any amendment or modification of this Agreement shall be set forth in writing as an Amendment to this Agreement, duly executed by the parties, but shall not become effective until thirty (30) days after the execution and delivery of such writing.
- 18 SPRUILL shall at the termination of this Agreement or any extension or renewal thereof surrender up the Space in good order and condition, reasonable use and ordinary wear and thereof excepted. CITY shall be entitled to all rights and remedies provided by law including, without limitation, the dispossessory rights and remedies provided in O.C.G.A. § 44-7-49, *et seq.* as may be amended in the future.
- 19 Should any provision or term of this Agreement be determined by a court of competent jurisdiction to be unenforceable, all other provisions and terms shall remain in full force and effect.
- 20 This Agreement constitutes the sole agreement between the parties. No representations oral or written not incorporated herein shall be binding on the parties. No amendment or modification of this Agreement shall be enforceable unless approved in writing by the City of Dunwoody.
- 21 In the event of a conflict between this agreement and any exhibit contained herein or any previous agreements, the provisions of this agreement shall govern.

- 22 Without regard to any designation made by the person or entity entering this Agreement, the City of Dunwoody considers all information submitted in relation to the Agreement to be a public record that will be disclosed upon request pursuant to the Georgia Open Records Act O.C.G.A. § 50-18-70 *et seq.* as may be amended in the future, unless a court order is obtained to the contrary.
- 23 The headings of sections and paragraphs, if any, to the extent used herein are for convenience and reference only, and in no way define, limit or describe the scope or intent of any provision hereof, and therefore will not be used in construing or interpreting the provisions hereof.
- 24 Contractor (SPRUILL) and Subcontractor Evidence of Compliance

Pursuant to O.C.G.A. § 50-36-1(e), City contracts within the state of Georgia shall include the following provisions on the attached Affidavit Verifying Status:

1. Provide at least one secure and verifiable document, as defined in Code Section 50-36-2;
2. Execute a signed and sworn affidavit verifying the applicant's lawful presence in the United States, which affidavit shall state:
 - i. The applicant is a United States citizen or legal permanent resident 18 years of age or older; or
 - ii. The applicant is a qualified alien or nonimmigrant under the federal Immigration and Nationality Act, Title [8 U.S.C., 18](#) years of age or older lawfully present in the United States and provide the applicant's alien number issued by the Department of Homeland Security or other federal immigration agency.

[SIGNATURES CONTINUE ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in three counterparts, each to be considered as an original by their authorized representative, on this _____ day of _____, 20__.

SPRUILL: Spruill Center for the Arts, Inc.

CITY: City of Dunwoody, Georgia

By: _____
Signature

City Manager
City of Dunwoody, Georgia

Name (Typed or Printed)

Title

Federal Tax I.D. Number

ATTEST:

ATTEST:

Signature

City Clerk

Name (Typed or Printed)

Title

APPROVED AS TO FORM:

City Attorney Signature

**Affidavit Verifying Status
for City Public Benefit Application**

By executing this affidavit under oath, as an applicant for a City of Dunwoody, Georgia Business License or Occupation Tax Certificate, Alcohol License, Taxi Permit or other public benefit as referenced in O.C.G.A. Section 50-36-1, I am stating the following with respect to my application for a City of Dunwoody license/permit for:

1) _____ I am a United States citizen **(Must include copy of either Georgia Driver’s License, Passport, or Military ID)**

OR

2) _____ I am a legal permanent resident 18 years of age or older or I am an otherwise qualified alien or non-immigrant under the Federal Immigration and Nationality Act 18 years of age or older and lawfully present in the United States.* **(Must include either a copy of your Permanent Resident Card or Employment Authorization Card as well as another form of government issued identification such as Georgia Driver’s License, Military ID, or Passport)**

In making the above representation under oath, I understand that any person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in an affidavit shall be guilty of a violation of Code Section 16-10-20 of the Official Code of Georgia.

Signature of Applicant: _____ **Date:** _____

Printed Name: _____

***Alien Registration number for non-citizens:** _____

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE _____ DAY OF _____,
20____

Notary Public: _____ My Commission Expires: _____

*Note: O.C.G.A. § 50-36-1(e)(2) requires that aliens under the federal Immigration and Nationality Act, Title 8 U.S.C., as amended, provide their alien registration number. Because legal permanent residents are included in the federal definition of “alien”, legal permanent residents must also provide their alien registration number. Qualified aliens that do not have an alien registration number may supply another identifying number below:

Attachment A

- 1 SPRUILL agrees to provide CITY with appropriate information about its program activities, including program operating hours, in order to facilitate operation of the Center and coordination by the CITY.
- 2 SPRUILL agrees to provide for its own telephone service.
- 3 SPRUILL agrees to provide for its own program-related custodial services, such as, but not limited to, the general cleaning of space occupied by SPRUILL including restrooms, hallways, etc.
- 4 SPRUILL shall not make any structural improvements or changes to the Space. All changing and re-keying of locks or additional locking mechanisms will be accomplished by the CITY.
- 5 SPRUILL shall repair at its own expense any damage caused by neglect on its part.
- 6 SPRUILL shall pay for all labor and materials ordered by SPRUILL and shall keep the Space and SPRUILL's possessory interest therein free and clear of liens and encumbrances of any kind whatsoever.
- 7 SPRUILL shall be accountable to the CITY for all equipment and furniture purchased by the CITY for the Center. All such equipment and furniture shall remain the property of the CITY, and the SPRUILL shall maintain same in good condition.
- 8 SPRUILL shall reimburse the CITY for repair and replacement of equipment, furnishings, and damages to the Center caused by the SPRUILL's use and occupancy.
- 9 SPRUILL shall not place or operate any coin-operated vending machines in the Space or elsewhere. All such coin-operated vending machines shall be placed and operated in the Center by the CITY, who in its sole discretion may determine locations and necessity.
- 10 SPRUILL shall not park any motor vehicles at the Center except as provided in rules and regulations promulgated by CITY.
- 11 SPRUILL shall not keep or store in the Space or the Center any goods, merchandise, or materials which are explosive or hazardous and will not engage in any illegal activity, any offensive or dangerous trade, business or occupation and will not do anything which will increase the property insurance rate or cause suspension or cancellation of property insurance.
- 12 CITY or its duly authorized representative may enter the Space at any and all reasonable times during SPRUILL's occupancy thereof for the purpose of (i) maintenance and repair, or (ii) determining whether SPRUILL is complying with the terms and conditions

of this Agreement or any extension or renewal thereof, or for any other purposes incidental to the rights of the CITY.

- 13 SPRUILL shall not assign this Agreement nor sublet the Space or any part thereof, without the written consent of CITY.
- 14 SPRUILL shall not leave the Space unoccupied. If SPRUILL shall abandon, vacate, or surrender the Space or be dispossessed by operation of law or otherwise, any personal property belonging to SPRUILL and left upon the Space and any and all of SPRUILL's improvements and facilities thereon shall, at the option of the CITY, be deemed to be abandoned by SPRUILL and shall, at the option of the CITY, become the property of CITY.
- 15 SPRUILL agrees that its services will be provided in a way, which is accessible to community residents, respectful of their individual dignity, and related to the particular needs of the community being served during hours, which are appropriate.
- 16 SPRUILL acknowledges that its services will be coordinated with those of other tenants in the Center and that it will cooperate with them and with the administrative staff of the Center. SPRUILL further agrees that it will appoint one of its staff as the liaison for its participation in the coordination of activities at the Center and to be its representative at any meetings or planning sessions relative to policies, procedures, and the coordination of activities to the Center.
- 17 SPRUILL agrees to fully cooperate and participate in regular evaluation of the Center's operations.
- 18 SPRUILL agrees that in its operation and use of the Space, it will not discriminate against any person or group of persons on the basis of their disability, race, color, sex, religion, national origin, or any other class protected by law.
- 19 SPRUILL agrees that it shall not change or expand the services it provides in the Space, described elsewhere in this agreement, without the prior written consent of CITY.
- 20 SPRUILL shall maintain a schedule of all functions at the Center and shall submit a report of all recorded functions of the previous year to the City each January to include date, use and number of people present.
- 21 CITY and SPRUILL acknowledge and confirm that the Service Charge Cost stated in paragraph 1(a) of this Agreement has been determined by allocating to SPRUILL its pro rata share of the cost for the following items to be provided by CITY:
 - (a) Center Management
 - (b) Utilities – natural gas, electricity, water and sewer
 - (c) Maintenance and minor repairs
 - (d) Sanitation Service

- (e) Insurance on building and CITY-purchased furniture and equipment
- (f) Provision of janitorial services during non-program operating hours to include offices, hallways and restrooms.
- (g) Security Service

If this agreement or any extension or any renewal thereof is terminated by the CITY hereto prior to the expiration date set for therein, SPRUILL shall be billed for these costs for the period of time it actually occupied the Center. CITY shall be obligated to provide on the specific services stated in this Lease Agreement as being the obligation of CITY, and all other services need or desired by SPRUILL shall be the sole responsibility of SPRUILL at its own expense.

Attachment B

NORTH DEKALB CULTURAL CENTER
North Arts Center

Emergency evacuation chart with
exits and fire extinguisher
locations.

EXITS---(Green)
EXTINGUISHERS---Red

