

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 **Dunwoody Nature Center, Inc.**, P.O. Box 88070 Dunwoody, GA 30356, a private nonprofit organized under the laws of the State of Georgia, hereinafter designated "DNC" is effective as of _____, 2012.

WITNESSETH:

WHEREAS, CITY owns Dunwoody Park and DNC operates 22 acres of Dunwoody Park located at 5343 Roberts Drive, Dunwoody, Georgia, (hereinafter designated as "Facilities"), for the purpose of serving the residents of the City of Dunwoody and its surroundings and fulfilling DNC's mission to inspire the love of nature and cultivate environmental understanding and stewardship for the benefit of residents of the City of Dunwoody and its is surroundings; and

WHEREAS, DNC desires to operate a nature center and provide environmental programs primarily for the benefit of residents of the City of Dunwoody and agrees to utilize the primary education building, the "clubhouse," "playhouse," "treehouse" and other structures that are part of the Facilities in accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties hereto agree as follows:

1. CITY does hereby grant DNC use of three thousand one hundred and twenty six (3,126) square feet of space and the surrounding grounds delineated on the Floor Plan Layout, attached hereto as Attachment B and by reference made a part hereof (hereinafter referred to as "Space"); provided, however, that the CITY will use its best efforts to provide DNC with reasonable notice prior to allowing a third party to use the Space.
2. This Agreement, beginning upon execution of this document is for an initial term terminating absolutely and without further obligation on the part of the City on December 31, 2012 and on December 31st of each succeeding and renewed yearly unless terminated earlier in accordance with the termination provisions of the Agreement. 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 October 1st of each year in which the Agreement is in force; provided, however, the CITY will provide DNC with a minimum of 90 days notice prior to such termination.

4. This Agreement may be automatically renewed for an additional twelve-month term, subject to the following conditions:
 - (a) DNC shall provide written notice to CITY at least sixty (60) days prior to the expiration date of this lease exercising the option to engage in a process of amending and revising the agreement.
 - (b) DNC shall continue to perform its services and to coordinate its performance with that of other users and CITY.
 - (c) DNC shall comply with the conditions of this Agreement.
 - (d) DNC 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 the CITY of its intention to terminate at least ninety (90) days prior to the effective date of termination. CITY reserves the right to terminate and cancel this Agreement or any extension or renewal thereof at any time DNC materially breaches the terms and conditions set forth herein. After 90 days notice stated above and termination of this Agreement or any renewal thereof, or cancellation thereof by CITY, DNC shall vacate and deliver up the Space peaceably, quietly, and in good order and condition within a commercially reasonable period of time.
5. For the purpose of this Agreement, all notices to be given hereunder shall be in writing and shall be deemed given when hand delivered or 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) Dunwoody Nature Center, Inc.:
P.O. Box 88070, Dunwoody, Georgia 30356 or (if hand-delivered)
5343 Roberts Drive, Dunwoody, Georgia
Attention: Executive Director
6. 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 DNC. 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.
7. The CITY and DNC 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. DNC

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 DNC 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 DNC activities, up to, but not exceeding, the limits of DNC's insurance policies set forth below.
- 10 Except as otherwise consented to in writing by CITY, DNC 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, DNC 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, DNC 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 To the extent permitted by law, the City shall indemnify, defend, and hold the DNC and its officers, directors, members, employees, agents, successors and assigns, harmless from and against any and all claims, demands, liabilities, loss damage, injury, actions or causes of action of any name or nature (including attorneys' fees and court costs) which may be asserted, claimed, prosecuted, incurred or suffered by the DNC as a result of the physical condition of the Farm established pursuant to the terms of this AGREEMENT.
- 13 DNC shall comply with the provisions of the Code of the City of Dunwoody, Georgia and Official Code of Georgia annotated and all appropriate statues and regulations governing the services it furnishes and, when applicable, with the standards of its profession. DNC 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 applicable

persons in accordance with the statute and that failure to do so shall constitute a material breach of this Agreement.

- 14 The occupancy and use by DNC of the Space and rights herein conferred upon DNC shall be subject to rules and regulations as are now or may hereinafter be prescribed by CITY.
- 15 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, DNC is to be and shall remain as an independent contractor.
- 16 This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia.
- 17 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.
- 18 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.
- 19 DNC 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.
- 20 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.
- 21 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 both parties.
- 22 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.
- 23 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.

24 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.

25 Contractor (DNC) 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__.

DNC: Dunwoody Nature Center, 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

I. OBLIGATIONS OF THE CITY

The City agrees to:

- a. Allow the non-exclusive use of the Facilities to DNC under expressed terms and conditions set forth by the City for the purpose of conducting Nature Programs; the use of the Facilities shall be limited to classes, camps, special events, meetings, fund raisers and demonstrations for the promotion of environmental programs, community interest and welfare. DNC and City agree to terms for the use of the Facilities for such other events, such use or uses shall be governed by separate agreement or agreements. DNC shall be able to utilize the Facilities on Sundays-Saturdays from 7am-11pm.
- b. Clean restrooms not less than two (2) times weekly and remove trash and yard debris not less than once a week.
- c. Provide general, standard and customary maintenance of the Facilities. However, DNC may perform maintenance and repairs in emergency situations after first notifying the CITY and receiving consent.
- d. Provide for DNC's use of the Space on the Facilities property for use in conjunction with provision of its programs under this Agreement.
- e. The City shall have the right to conduct events in the park separate from DNC's events in the park, so long as said events do not interfere with existing scheduled events of the DNC nor materially disrupt the operation of the park by DNC. The City shall coordinate with DNC on said events to make sure there is no such interference. The City shall be responsible for all preparation prior to and clean-up after the event and for any repairs related thereto.
- e. Provide monies within the City budget for DNC to apply on an annual basis for funds to be used towards improvements to the Facilities. These funds can only be used for facility capital projects and not for any programming or operational costs. The City Council will determine on a yearly basis which projects it wishes to fund and at what amount. The City and DNC would jointly manage the projects and all funds will remain with the City.
- f. Ensure that the Facilities comply at all times with all federal, state, county, municipal laws, regulations, ordinances and other governmental mandates.

II. OBLIGATIONS OF DNC

DNC agrees to:

- a. Provide environmental programs in accordance with all guidelines set forth by the City. DNC agrees that all of its paid staff and contractors must undergo a criminal background check prior to being allowed to participate in any activities on City Property. DNC agrees that any paid staff member or contractor having any contact with minor children must comply with all state law provisions relating to child abuse notification and training therefore and that failure to do so shall constitute a material breach of this Agreement.
- b. Comply with all statutes, ordinances, rules, orders, regulations and requirements of federal, state, county and city governments where applicable.
- c. Maintain the Space to include a clean programming space and exhibits and any other minor Facility repairs to ensure a proper safe programming area.
- d. The payment of all utility bills for the Facility except for water expenses related to the irrigation of the landscaping.
- e. DNC shall maintain a schedule of all functions at the facility 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 participants.
- f. Rental rates and fees for the use of the Nature Center shall be determined and collected by the DNC.
- g. Adhere to all other provisions contained in this Agreement.

III. DNC'S MAINTENANCE RESPONSIBILITIES

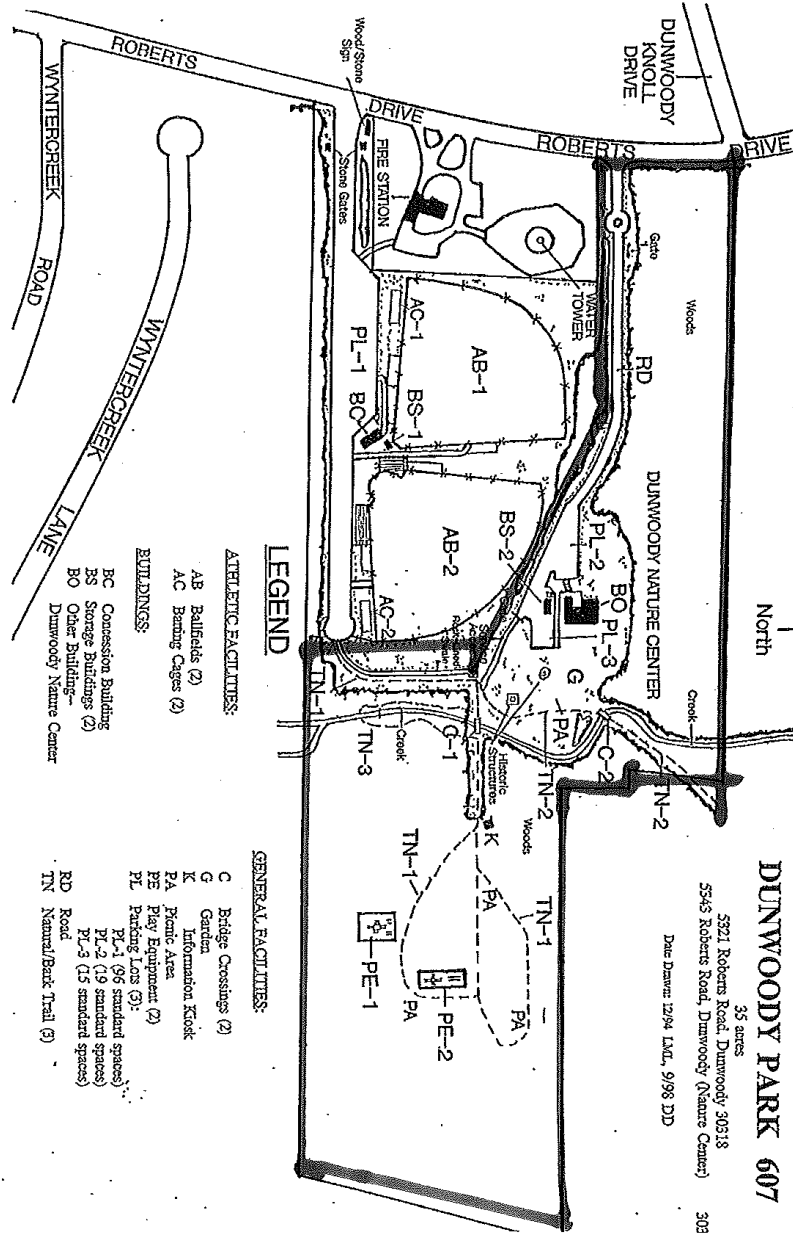
- a. DNC is responsible for daily clean-up, placing litter in proper containers prior to leaving the Facilities after each function
- b. DNC shall obtain the prior written approval and consent from the City before making any repairs, improvements, additions or alterations to said premises, and all improvements, additions or alterations which may be approved shall become the property of CITY, unless the parties otherwise agree, and remain upon said premises and be surrendered with the premises at the termination of this agreement. Failure to obtain prior written authorization from the City can constitute cause for the termination of this agreement as provided for above.
- c. DNC will maintain any and all improvements that, in the opinion of the City, are for the primary benefit of the user.
- d. DNC is responsible for reporting all acts of vandalism to the Space to the City and the local Police Department. A copy of the police report must be filed with the City Department of Parks and Recreation.

- e. DNC shall not use the said premises for any purpose other than that of classes, camps, special events, meetings, fund raisers and demonstrations for the promotion of environmental programs, community interest and welfare.
- f. DNC agrees to take any action necessary to prevent or correct any nuisance or other grievances upon, or in connection with, said premises during the terms of this Agreement.
- g. The City or any of its agents or employees shall have the right to enter upon the said premise at any time during the term of this Agreement to examine and inspect as deemed necessary. CITY may supervise any physical maintenance activities, as needed.

IV. DNC'S SAFETY PRECAUTIONS

- a. DNC agrees to administer its activities at the Facilities in a safe and professional manner, having a sufficient number of adults present to supervise all scheduled activities, from the time the first person arrives until the last person departs.
- b. Upon reasonable advance notice to DNC, the City has the right to cancel any scheduled activity when it is determined that such activity would damage the Facility. Persistent damage to the City facilities by DNC will result in DNC being prohibited from using the City facilities.

Attachment B



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