

**STATE OF GEORGIA
COUNTY OF FULTON**

RIGHT OF ACCESS LICENSE AGREEMENT

This Right of Access License Agreement ("License Agreement"), made and entered into this ____ day of _____, 2022, by and between the **CITY OF SOUTH FULTON**, a Georgia municipal corporation (the "City" or "Licensee"), and **FULTON COUNTY, GEORGIA**, a political subdivision of the State of Georgia (the "County" or "Licensor").

WHEREAS, the County currently owns a 42.9 acre site located at 0 Vandiver Road, South Fulton, Fulton County, Georgia, on which is situated the Wolf Creek Amphitheater (the "WCA") as well as a building known as the County's Public Safety Training Center (the "PSTC"), said property being more particularly described on Exhibit A, attached hereto and incorporated herein by reference with a Tax Parcel ID. #14F0103LL0101 (the "Wolf Creek Amphitheater Site") and as Lot 17 on Exhibit B, attached hereto and incorporated herein by reference; and

WHEREAS, the County currently owns property adjacent to the Wolf Creek Amphitheater Site that contain paved parking lot facilities utilized by both the WCA and PSTC, said paved parking lot facilities being located on portions of Lot 15 as shown on Exhibit B (Tax Parcel ID. 14F-0103-LL-008-5) and Lot 16 as shown on Exhibit B (Tax Parcel ID. 14F-103-LL-011-9); and

WHEREAS, the County currently owns property adjacent to the Wolf Creek Amphitheater Site, Lots 5, 8 and 9 on Exhibit B, which are part of the closed Merk Mills Landfill, portions of which have historically been used for parking during outdoor live music concerts, plays, performances, festivals, and other events held at WCA; and

WHEREAS, pursuant to Article 10 of that certain *Intergovernmental Agreement for the Transfer of Certain Assets and Provision of Certain Services between Fulton County, Georgia and the City of South Fulton, Georgia*, dated February 25, 2020 (the "Transfer IGA"), as amended by that certain *First Amendment to the Intergovernmental Agreement for the Transfer of Certain Assets and Provision of Certain Services between Fulton County, Georgia and the City of South Fulton, Georgia*, dated March 4, 2020 (the "First Amendment") (collectively, the Transfer IGA and the First Amendment are designated as the "IGA" in this License Agreement), the County and City contemplate that the County will transfer the Wolf Creek Amphitheater Site as well as Tax Parcels: 14F-0103-LL-008-5 and 14F-103-LL-011-9 to the City upon the happening of certain conditions precedent in accordance with the terms of the IGA; and

WHEREAS, the County and the City are actively working to satisfy the conditions precedent so as to allow for the transfer contemplated by the IGA to be effectuated and finalized; and

WHEREAS, the County and City are actively working on a lease agreement (the "Lease") for the Wolf Creek Amphitheater Site in order to allow the City further use of the Wolf Creek Amphitheater Site while they actively work to satisfy the conditions precedent so as to allow for the transfer contemplated by the IGA; and

WHEREAS, the County maintains testing wells, monitoring sites, and gas control and recovery systems on, near and adjacent to the Wolf Creek Amphitheater Site which are necessary as part of the County's monitoring and environmental compliance obligations for the now closed Merk Mills Landfill, which is situated on parcels adjacent the Wolf Creek Amphitheater Site on Lots 1-7, 11-14, and 19-23 on Exhibit B; and

WHEREAS, the County currently owns property located at 915 New Hope Road, SW, South Fulton, Fulton County, Georgia with a Tax Parcel ID #_14F-0061-LL-011-9 on which is situated the Southwest Arts Center (the "SW Arts Center"), said property being more particularly described in Exhibit C, attached hereto and incorporated by reference; and

WHEREAS, the County intends to transfer the SW Arts Center to the City; and

WHEREAS, the City has requested permission to hold the following events (the "Events") on specified dates:

- (1) *South Fulton: City on the Rise* at the SW Arts Center on Thursday, April 28, 2022;
- (2) *Celebrate South Fulton Community Festival* on Saturday, April 30, 2022 at WCA;
- (3) High School graduation ceremonies at WCA as requested by various high schools located in and around the City; and
- (4) *Juneteenth Celebration* on Sunday, June 19, 2022 at WCA

WHEREAS, the County is agreeable to granting access and license (hereinafter, the "License") to the City to use the SW Arts Center and Wolf Creek Amphitheater site for the Events stated above, excluding the PSTC building structure--with the exception of two (2) offices located in the PSTC that have been traditionally utilized for the operation of the WCA, and subject to certain restrictions designed to maintain environmental compliance and public safety; and

WHEREAS, Article 9, § 2, Par. 1(a) of the Georgia Constitution states in part "[t]he governing authority of each county shall have legislative power to adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government for which no provision has been made by general law and which is not inconsistent with this Constitution or any local law applicable thereto"; and

NOW THEREFORE, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, paid in hand, and as set forth in this License Agreement, the receipt and sufficiency of which are hereby acknowledged, and the mutual covenants and agreements contained in this License Agreement, the parties do hereby agree as follows:

1.

GRANT OF LICENSE

Licensor hereby grants to Licensee and its employees, agents, contractors and subcontractors, and Licensee hereby accepts from Licensor, the License to use and access the (i) the Wolf Creek Amphitheater Site, Lot 17, as more particularly identified in Exhibits A and B, (ii) the paved parking lot facilities located adjacent to the Wolf Creek Amphitheater Site located on Lots 15 and 16, as more particularly identified in Exhibit B, (iii) the two (2) offices located in the PSTC traditionally utilized by WCA operators, and (iv) the SW Arts Center (all such properties referenced herein being hereinafter referred to collectively as the "Property") for the purposes hereinafter set forth in Paragraph 2. Licensee shall also have a limited right of access, limited to no more than two (2) hours before and two (2) hours after an Event, to those portions of Lots 5, 8 and 9 set forth on Exhibit B that have historically been used for parking during outdoor live music concerts, plays, performances, festivals and other events held at WCA solely for the parking of vehicles. This limited right of access shall include portions of Sanford J. Jones Boulevard and Merk Road as necessary to access the various parking lots. Licensor makes no representations or warranties concerning the condition, suitability or any other matters relating to the Property, and Licensee hereby acknowledges that Licensee's access to the Property is on an "as is" basis.

2.

USE OF LICENSE

At its sole cost, expense, risk and responsibility, Licensee shall use the Property only for purposes related to the following events:

- (1) *South Fulton: City on the Rise* at the SW Arts Center on Thursday, April 28, 2022;
- (2) *Celebrate South Fulton Community Festival* on Saturday, April 30, 2022 at WCA;
- (3) High School graduation ceremonies at WCA as requested by various high schools located in and around the City; and

(4) *Juneteenth Celebration* on Sunday, June 19, 2022 at WCA

3.

DURATION

It is understood and agreed between the parties hereto that this License is being granted for a temporary period for the above-stated purposes, and that said License shall expire upon the earlier to occur of (a) the execution of the Lease, or (b) the completion of the Juneteenth Celebration, whichever comes first.

4.

INTEREST

Licensee hereby acknowledges that by making, executing, and delivering this License Agreement, Licensor does not confer upon Licensee any right, title, interest, or estate in the Property, nor confer upon Licensee a license coupled with an interest or an easement, and Licensee is estopped from claiming any such right, title, interest, estate, license coupled with an interest, or easement in the Property. However, nothing in this paragraph shall be construed as to prevent Licensee and Licensor from proceeding with the expected transfer of ownership of the Wolf Creek Amphitheater Site and surrounding properties to Licensee at some point in the future after as contemplated and set forth in that certain *Intergovernmental Agreement for the Transfer of Certain Assets and Provision of Certain Services between Fulton County, Georgia and the City of South Fulton, Georgia*, dated February 25, 2020, as amended.

5.

MAINTENANCE AND RESTORATION OF DAMAGE TO THE PROPERTIES

Before and after each Event, Licensee shall be solely responsible for setting up for the Event and cleaning the Property to the condition in which it existed before the Event. Should Licensee's use results in any damage to the Property, Licensee hereby agrees that within a reasonable time (not to exceed sixty (60) days, unless such task is not capable of completion within such period) of said damage, Licensee will, at its sole cost and expense, take reasonable steps to restore the Property to substantially the same condition in which it existed prior to the damage. Licensee shall require that any contractor retained by Licensee, to perform any installations required to conduct the Event, or any one under Licensee's control, shall have in place applicable bonds (i.e., payment and performance bonds) to prevent liens from being placed against the Property.

6.

ASSIGNMENT OR TRANSFER

This License Agreement and the license granted herein may not be assigned or transferred by Licensee unless approved in writing by Licensor.

7.

LIABILITY

Licensee, as the requestor of said license, further agrees that, as per this License Agreement between the County and the City, Licensee shall, to the extent allowable by laws, be responsible for all costs and damages stemming from all claims, actions, damages, liability and expense, and shall, along with contractor, person, or organization allowed by Licensee to have access to the Property, hold harmless, to the extent permitted by law, Fulton County from all claims, actions, damages, liability and expense, including without limitation reasonable attorneys' fees and costs, in connection with personal injury or property damage arising out of the acts or omissions of Licensee the contractor, person, or organization, their employees, agents, or volunteers upon the Property or any property surrounding the Property in conducting the Event. Notwithstanding the foregoing, nothing herein shall be construed as a waiver of the County's sovereign immunity and the immunities available to County officials, officers, employees and agents. Licensee shall have the right to self-fund for its workers' compensation, automobile liability and general and excess liability coverages for its activities on the Property or any property surrounding the Property in conducting the activities authorized by this License Agreement. Notwithstanding the foregoing, Licensee shall ensure that any contractor, person, school or organization performing work on the Property provides insurance sufficient to cover any losses and includes Fulton County as an additional insured. A failure by Licensee to produce a copy of any required insurance document immediately upon demand by Licensor, but no later than seven (7) business days before the happening of an Event, is hereby deemed to be material breach of the License Agreement, resulting in the County having the right to immediately terminate the License Agreement without recourse by the City.

8.

NOTICES

All notices required herein shall be in writing and delivered to either party at the address contained herein by: (a) hand delivery at the aforementioned address; (b) United States Certified Mail - Return Receipt Requested, postage prepaid; or (c) Facsimile immediately followed by a confirmation call. The day upon which such notice is hand delivered, mailed, e-mailed or faxed shall be deemed the date of service of such notice.

To the Licensor:

Fulton County, Georgia
Department of Real Estate and Asset Management
141 Pryor Street, Suite G1119
Atlanta, Georgia 30303
Attention: Director
Telephone: _____

With a copy to:

Office of the County Attorney
141 Pryor Road SW, Suite 4038
Atlanta, Georgia 30303
Attention: County Attorney
Phone: 404.612.0246

To the Licensee:

City of South Fulton

Attn: _____
Telephone: _____
Fax: _____

9.

GENERAL PROVISIONS OF THIS AGREEMENT

9.1 The brief capitalized and underlined headings or titles preceding each paragraph are for purposes of identification, convenience and ease of reference, and shall be disregarded in the construction of this Agreement.

9.2 No failure of either party hereto to exercise any right or power granted under this License Agreement, or to insist upon strict compliance by the other party with this License Agreement, and terms and conditions of this License Agreement, shall constitute a waiver of either party's right to demand exact and strict compliance by the other party hereto with the terms and conditions of this License Agreement.

9.3 This License Agreement shall be governed by, construed under, performed, and enforced in accordance with the laws of the State of Georgia.

9.4 Should any provision of this License Agreement require judicial interpretation, it is agreed and stipulated by and between the parties that the court interpreting or construing the same shall not apply a presumption that the terms, conditions, and provisions hereof shall be more strictly construed against one party by reason of the rule of construction that an instrument is to be construed more strictly against the party who prepared the same.

9.5 This License Agreement may be executed in two (2) counterparts, each of which is deemed an original of equal dignity with the other and which is deemed one and the same instrument as the other.

9.6 The termination of this License Agreement shall not operate to cut off any claims or causes of action in favor of Licensor or Licensee which occurred or arose prior to the effective date of such termination.

9.7 Licensee hereby acknowledges that it has not been induced by any representation, statements, or warranties by Licensor including, but not limited to, representations or warranties with respect to title to the Properties or the condition or suitability thereof for Licensee's purpose.

9.8 Licensee shall not place or store, nor permit to be placed or stored, any Hazardous Substances (as defined in 42 U.S.C. Sections 9601, et seq.), petroleum products or other pollutants, toxic substances, or environmental hazards on or under the Properties.

9.9 This License Agreement supersedes all prior negotiations, discussions, statements and agreements between Licensor and Licensee and constitutes the full, complete and entire agreement between the parties with respect to the Property and Licensee's use thereof, except that nothing in this paragraph shall be construed as to prevent Licensee and Licensor from proceeding with the expected transfer of ownership of the Property to Licensee at some point in the future as contemplated and set forth in that certain *Intergovernmental Agreement for the Transfer of Certain Assets and Provision of Certain Services between Fulton County, Georgia and the City of South Fulton, Georgia, dated February 25, 2020*, as amended. No member, officer, employee, representative or agent of Licensor or Licensee has authority to make, or has made, any statement, agreement, representation or contemporaneous agreement, oral or written, in connection herewith, amending, supplementing, modifying, adding to, deleting from, or changing the terms and conditions of this License Agreement. No modification of or amendment to this License Agreement shall be binding on either party hereto unless such modification or amendment shall be properly authorized, in writing, properly signed by both Licensor and Licensee and incorporated in and by reference made a part hereof.

9.10. **No Third-Party Beneficiary Rights.** No person not a party to this License Agreement is an intended beneficiary of this License Agreement, and no person not a party to this Agreement shall have any right to enforce any term of this Agreement.

IN WITNESS WHEREOF, Licensor and Licensee, acting by and through their duly authorized representatives, have caused these presents to be executed all as of the date hereinabove set forth.

EXECUTED BY LICENSOR, this _____ day of _____, 2022.

FULTON COUNTY, GEORGIA

Robert L. Pitts, Chairman
Fulton County Board of Commissioners

ATTEST:

Tonya R. Grier, Clerk to the Commission

APPROVED AS TO FORM

Y. Soo Jo, County Attorney

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

EXECUTED BY LICENSEE, this _____ day of _____, 2022.

CITY OF SOUTH FULTON a Georgia
municipal corporation

By: _____
Name: _____
Title: _____

EXHIBIT A
WOLF CREEK AMPHITHEATER SITE LEGAL DESCRIPTION

EXHIBIT B
MAP OF LOTS

EXHIBIT C
LEGAL DESCRIPTION OF SOUTHWEST ARTS CENTER