

STATE OF GEORGIA

COUNTY OF FULTON

RIGHT OF ACCESS LICENSE AND MAINTENANCE AGREEMENT

This Right of Access License and Maintenance Agreement ("License and Maintenance Agreement") is made and entered into as of the last date of execution by a signatory to this License and Maintenance Agreement (the "Effective Date"), by and between **FULTON COUNTY, GEORGIA** ("Licensor") and the **CITY OF ATLANTA** ("Licensee"), individually a "Party" and jointly the "Parties".

WHEREAS, Licensor owns certain real property located at 0 Fort Extension Street, with Tax Parcel ID 14 004600102506, and as depicted in Exhibit A, attached hereto (the "Property"); and

WHEREAS, the Property sits at the corner of Auburn Avenue, NE and Fort Street, NE, Atlanta, Georgia and includes paved and landscaped areas accessible to the public, as well as a sculpture in honor of John Wesley Dobbs (collectively, the "Plaza"); and

WHEREAS, Licensee has requested access to the Property from Licensor in order to allow Licensee to maintain the Plaza and use it as an event programming space (the "Purpose"); and

WHEREAS, Licensee has requested such access be permitted for the shorter of 10 years, or until either Party desires to terminate it; and

WHEREAS, Licensor and Licensee have determined that a right of access license and maintenance agreement is needed to allow Licensee, its agents, employees, and contractors to access the Property for the Purpose stated herein for the period requested; and

WHEREAS, Licensor is agreeable to granting Licensee access to the Property for the Purpose identified herein; and

WHEREAS, the Georgia Constitution provides, in Article IX, Sec. III, Ph. I, subparagraph I, subparagraph (a), that any county or municipality of the State may contract for any period less than 50 years, with each other for the provision of services, or for the joint or separate use of facilities or equipment when such contracts deal with activities, services, or facilities which the contracting parties are authorized by law to undertake or provide; and

WHEREAS, Licensor desires to grant Licensee a non-exclusive temporary license and maintenance rights (hereinafter, the "License") as is detailed below in this License and Maintenance Agreement for such Purpose.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements contained in this License and Maintenance Agreement, the Parties do hereby

agree as follows:

1.

GRANT OF LICENSE

Licensor hereby grants to Licensee and its employees, agents, and contractors, and Licensee hereby accepts from Licensor, a License to access the Property solely for the Purpose hereinafter outlined in Paragraph 2. 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. Licensor shall not be responsible or liable for any injury, death, damage, or loss incurred by any Licensee, or claims of any third parties in connection therewith, arising out of or in connection with the access or the Purpose under this License and Maintenance Agreement. This Paragraph shall survive the expiration or earlier termination of this License and Maintenance Agreement.

2.

USE OF LICENSE

At its sole cost, expense, risk, and responsibility, Licensee shall be permitted access onto the Property for purposes of maintenance activities and as an event programming space for Licensee's programs, which use shall be limited to the scope set forth in the definition of "Purpose" as described herein and which use shall be non-exclusive. Purpose is defined herein as the granting of this License to the Licensee to access to the Property for (1) maintenance of the Property, including the cutting of grass, maintenance of landscaping, clearing debris and garbage, maintaining and restoring the sculpture and improvements located therein, and (2) use as an event programming space for Licensee events. Unless properly permitted by all applicable authorities, Licensee agrees that no alcohol shall be served, distributed, or consumed during any Licensee events or use of the Property.

Licensor retains the right to temporarily use or occupy all or a portion of the Property, and shall give 15 days' prior written notice to Licensee of any use or occupation. If Licensor's planned use of the Property or any adjacent property conflicts with a planned Licensee event or program, Parties agree to work together in good faith to reschedule or relocate either planned event or use to avoid such conflict. If the Parties are unable to reschedule or relocate an event, the first scheduled event shall be the event permitted to use or occupy the Property.

Licensee shall not make any change to the Property, and this License shall not be construed to permit Licensee to engage in any projects or work on the Property, except as allowed for the Purpose. The Purpose, as set forth in this License and Maintenance Agreement can only be modified by mutual written consent of the Parties.

3.

DURATION

This License shall remain in effect until the earlier of: (i) either Party providing the other Party with 30 days' written notice of its election to terminate this License and Maintenance Agreement, or (ii) ten (10) years from the Effective Date of this License and Maintenance Agreement, with one ten (10) year renewal option exercisable upon at least 60 days' notice from Licensee and approval by the governing body of Licensor.

4.

INTEREST

Licensee hereby acknowledges that by making, executing, and delivering this License and Maintenance 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.

5.

SUSPENSION

Licensor may, by written notice to Licensee, suspend some or all of the access provided by this License and Maintenance Agreement as required for necessary emergency access to the Property. Upon receipt of a suspension notice, Licensee must immediately vacate the Property. Only upon receipt of a notice that the suspension has been lifted may Licensee re-enter the Property in accordance with this License and Maintenance Agreement. During the period of any suspension, Licensor shall be solely responsible for all maintenance of the Property.

6.

MAINTENANCE AND RESTORATION OF DAMAGE TO THE PROPERTY

During the permitted usage period, Licensee shall be responsible for cleaning, maintaining, repairing, and removing any hazards from the Property. Licensee will promptly repair or remove any hazard upon the Property, or erect tape and cones to prevent the public's access of the hazard, within 24 hours of its knowledge of such damage or hazard, unless a written extension is granted by Licensor. In the event that the Licensee's use results in any physical damage to the Property, Licensee hereby agrees that within a reasonable time (not to exceed 30 days, unless such task is not capable of being completed within such period of said damage and said damage is not a hazard, or unless Licensor provides an extension in writing, which shall not be unreasonably withheld), Licensee will, at its sole cost and expense, take reasonable steps to restore the Property to substantially the same condition in which it existed before the damage. Licensee shall require that any contractor retained by Licensee to perform any repair or restoration work shall have adequate insurance and also name Fulton County as insured. Licensee shall promptly satisfy or bond off any liens placed upon the Property as a result of any work performed as part of the Purpose.

7.

ASSIGNMENT OR TRANSFER

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

8.

LIABILITY

It is hereby stipulated and agreed between the Parties that, with respect to any claim or action brought by a third party and arising out of the activities described in this License and Maintenance Agreement or that stems from any matter arising out of any actual or alleged infringement of any patent, trademark, copyright, or service mark, or other actual or alleged unfair competition disparagement of product or service, or other tort or any type whatsoever, or any actual or alleged violation of trade regulations, each Party shall only be liable for payment of that portion of any and all liability, costs, expenses, demands, settlements, or judgments resulting from the negligence actions or omissions of its own agents, officers, and employees. However, nothing herein shall be construed as a waiver of any Party's sovereign immunity or the immunities available to its officials, officers and employees. The Licensee shall ensure that any contractor or vendor retained or selected to provide services related to the Purpose contemplated in this License and Maintenance Agreement shall agree to indemnify and hold harmless Licensor as well as Licensor's commissioners, officers, officials, employees, and agents, from and against any and all loss and/or expense which they may suffer or pay as a result of claims or suits due to, because of, or arising out of any and all such injuries, deaths and/or damage, irrespective of the Licensor's negligence (except that no Party shall be indemnified for their own sole or gross negligence). Further, the Licensee shall ensure that any contractor or vendor retained by Licensee whose work is alleged to have caused injury to an indemnified party, if requested, shall assume and defend at the contractor's or vendor's own expense, any suit, action or other legal proceedings arising therefrom in which Licensor, and/or Licensor's commissioners, officers, officials, employees, and agents, are named as a party. Licensee shall ensure that the provisions of this Paragraph 8 are included in all contracts and subcontracts.

9.

INSURANCE

Licensee shall provide and maintain liability insurance, or self-insure or self-fund where applicable, in accordance with the amounts set forth in Exhibit "B", attached hereto and incorporated by reference, covering its employees, agents or contractors for the duration of the License. In the alternative, Licensee as a municipality may 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 and Maintenance Agreement. Licensee shall provide and maintain a certificate of liability insurance or certification of self-insurance covering its employees, agents or contractors for the duration of the License. In addition, Licensee shall ensure that any contractor obtains and maintains sufficient insurance to cover the Project in accordance with Exhibit "B", includes Licensors as an additional insured, and presents a certificate of insurance demonstrating the required coverage to Licensors upon request.

10.

NOTICES

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

To the Licensee:

City of Atlanta
Department of Parks & Recreation
160 Trinity Avenue
Atlanta, Georgia 30303
Attn: Commissioner

With a copies to:

City of Atlanta
Department of Law
55 Trinity Avenue, Suite 5000
Atlanta, Georgia 30303
Attn: City Attorney

City of Atlanta
Department of Enterprise Asset Management, Real Estate Portfolio
55 Trinity Avenue, Suite G-139
Atlanta, Georgia 30303
Attn: Director of Real Estate

To the Licensors:

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

With a copy to:

Fulton County, Georgia
Office of the County Attorney
141 Pryor Road SW, Suite 4038

Atlanta, Georgia 30303
Attention: County Attorney

Fulton County, Georgia
Department of Real Estate and Asset Management
141 Pryor Street Suite 8021
Atlanta, Georgia 30303
Attention: Land Administrator

11.

NO THIRD-PARTY BENEFICIARIES

This License and Maintenance Agreement is made between and limited to the Licensors and the Licensee, and is not intended, and shall in no event be construed to be, for the benefit of any person or entity other than the Licensors and the Licensee, and no other person or entity shall be considered a third-party beneficiary by virtue of this License and Maintenance Agreement or otherwise entitled to enforce the terms of this License and Maintenance Agreement for any reason whatsoever.

12.

GENERAL PROVISIONS

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

12.2 No failure of either Party hereto to exercise any right or power granted under this License and Maintenance Agreement, or to insist upon strict compliance by the other Party with this License and Maintenance Agreement and terms and conditions of this License and Maintenance 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 and Maintenance Agreement.

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

12.4 Should any provision of this License and Maintenance 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.

12.5 This License and Maintenance 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. Electronic, facsimile or .pdf signatures shall have the same force and effect as original signatures. The Parties hereto intend to be bound by the signatures on the electronic, facsimile, or .pdf document and hereby waive any defenses to the enforcement of the terms of this Agreement based on the use of an electronic, facsimile, or .pdf signature.

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

12.7 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 Property.

12.8 This License and Maintenance Agreement supersedes all prior negotiations, discussions, statements, and agreements between Licensors and Licensee and constitutes the full, complete, and entire agreement between the Parties with respect to the Property and Licensee's use thereof. No member, officer, employee, representative or agent of Licensors 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 and Maintenance Agreement. No modification of or amendment to this License and Maintenance Agreement shall be binding on either Party hereto unless such modification or amendment shall be properly authorized, in writing, properly signed by both Licensors and Licensee, and incorporated in and by reference made a part hereof.

[Continued on Following Page]

IN WITNESS WHEREOF, Licensors, 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.

LICENSOR:

FULTON COUNTY, GEORGIA

By: _____
Robert L. Pitts, Chairman
Fulton County Board of Commissioners

Date: _____

ATTEST:

Tonya R. Grier
Clerk to the Commission

APPROVED AS TO FORM:

Y. Soo Jo, County Attorney

[Signatures Continued on Following Page]

LICENSEE:

CITY OF ATLANTA, GEORGIA

Date: _____

APPROVED AS TO FORM:

Patrick O'Connor
Division Chief, Land Use & Real Estate
Department of Law

EXHIBIT A
THE PROPERTY



EXHIBIT B

INSURANCE REQUIREMENTS

The following are the minimum insurance coverages and limits that Licensee must maintain. If Licensee maintains broader coverages and/or higher limits than the minimum shown below, Fulton County requires and shall be entitled to coverage for the higher limits maintained by Licensee.

It is Fulton County's practice to obtain Certificates of Insurance from our Licensees. Insurance must be written by a licensed agent in a company licensed to write insurance in the State of Georgia, with an A.M. Best rating of at least A-, subject to final approval by Fulton County. Respondents shall submit to Fulton County a Certificate of Insurance complying with the Insurance and Risk Management Provisions outlined below.

Proof of insurance must be provided to Fulton County prior to the start of access to the Premises as described in License and Maintenance Agreement. Any and all insurance coverage(s) required under the terms and conditions of the License and Maintenance Agreement shall be maintained during the entire term of the Agreement.

Accordingly, the Licensee shall provide a certificate evidencing the following:

1. WORKERS COMPENSATION/EMPLOYER'S LIABILITY INSURANCE – STATUTORY (In compliance with the Georgia Workers Compensation Acts and any other State or Federal Acts or Provisions in which jurisdiction may be granted)

Employer's Liability Insurance	BY ACCIDENT	EACH ACCIDENT	\$500,000
Employer's Liability Insurance	BY DISEASE	POLICY LIMIT	\$500,000
Employer's Liability Insurance	BY DISEASE	EACH EMPLOYEE	\$500,000

2. COMMERCIAL GENERAL LIABILITY INSURANCE (Including contractual Liability Insurance)

Bodily Injury and Property Damage Liability	Each Occurrence	\$1,000,000
(Other than Products/Completed Operations)	General Aggregate	\$2,000,000
Products\Completed Operation	Aggregate Limit	\$2,000,000
Personal and Advertising Injury	Limits	\$1,000,000
Damage to Rented Premises	Limits	\$ 100,000

3. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Bodily Injury & Property Damage (Including operation of non-owned, owned, and hired automobiles)	Each Occurrence	\$1,000,000
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4. UMBRELLA LIABILITY (In excess of above noted coverages)	Each Occurrence	\$1,000,000
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Certificates of Insurance

Licensee shall provide written notice to Fulton County immediately if it becomes aware of or receives notice from any insurance company that coverage afforded under such policy or policies shall expire, be cancelled or altered. Certificates of Insurance are to list Fulton County, its officials, officers and employees as an Additional Insured (except for Workers' Compensation and Professional Liability), using ISO Additional Insured Endorsement form CG 20 10 (11/85) version, its equivalent or on a blanket basis.

This insurance shall apply as primary insurance before any other insurance or self-insurance, including any deductible, non-contributory, and waiver of subrogation provided in favor of Fulton County.

If Fulton County shall so request, the Licensee will furnish the County for its inspection and approval such policies of insurance with all endorsements, or confirmed specimens thereof certified by the insurance company to be true and correct copies.

Such certificates and notices must identify the "Certificate Holder" as follows:

Fulton County Government
141 Pryor Street
Atlanta, Georgia 30303