

GOVERNMENT OF THE CITY OF SOUTH FULTON

Office of the City Clerk

KHALID KAMAU
MAYOR



COREY E. ADAMS, SR.
CITY CLERK

June 7, 2022

Y. Soo Jo, Esq.
Fulton County Attorney
141 Pryor St SW, Suite 4083
Atlanta, GA 30303

Dear Ms. Jo:

I have enclosed a copy of the following resolution and use lease agreement which was approved by the City of South Fulton City Council on May 25, 2022.

Resolution 2022-033: A RESOLUTION APPROVING A USE LEASE AGREEMENT BETWEEN THE CITY OF SOUTH FULTON, GEORGIA AND FULTON COUNTY, GEORGIA FOR USE OF THE WOLF CREEK AMPHITHEATER; AUTHORIZING THE MAYOR OR CITY MANAGER TO EXECUTE THE LEASE AND RELATED DOCUMENTS; AUTHORIZING THE CITY ATTORNEY TO APPROVE THE LEASE AND RELATED DOCUMENTS AS TO FORM PRIOR TO EXECUTION; AND FOR OTHER PURPOSES

If you should have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

Corey E. Adams, Sr.
City Clerk

Enclosure

cc: Tammi Saddler Jones, City Manager
Vincent D. Hyman, Esq., City Attorney

STATE OF GEORGIA
COUNTY OF FULTON
CITY OF SOUTH FULTON

RES2022-033

A RESOLUTION APPROVING A USE LEASE AGREEMENT BETWEEN THE CITY OF SOUTH FULTON, GEORGIA AND FULTON COUNTY, GEORGIA FOR USE OF THE WOLF CREEK AMPHITHEATER; AUTHORIZING THE MAYOR OR CITY MANAGER TO EXECUTE THE LEASE AND RELATED DOCUMENTS; AUTHORIZING THE CITY ATTORNEY TO APPROVE THE LEASE AND RELATED DOCUMENTS AS TO FORM PRIOR TO EXECUTION; AND FOR OTHER PURPOSES

WHEREAS, the City of South Fulton ("City") is a municipal corporation duly organized and existing under the laws of the State of Georgia; and

WHEREAS, the duly elected governing authority of the City, is the Mayor and Council thereof ("City Council"); and

WHEREAS, the Georgia Constitution, Article IX, Sec. II, Par. III (b)(2) and City Charter § 1.12 (b)(7) allows for the City to enter into contracts, leases and/or intergovernmental agreements with other counties or municipalities; and

WHEREAS, the City, pursuant to Section 3.10 (b) of its Charter, has the authority to adopt and provide for resolutions, rules, and regulations, not inconsistent with the Charter and with the Constitution and laws of the State of Georgia; and

WHEREAS, Fulton County ("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"); and

WHEREAS, the County currently owns property adjacent to the Wolf Creek Amphitheater ("Wolf Creek Amphitheater Site") that contain paved parking lot facilities utilized by both the WCA and PSTC; and

WHEREAS, the County currently owns property adjacent to the Wolf Creek Amphitheater Site, 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 the “IGA”), the County and City contemplate that the County will transfer the Wolf Creek Amphitheater Site as well as adjacent property to the City of South Fulton (“City”) upon the happening of certain conditions precedent in accordance with the terms of the IGA; and

WHEREAS, the City and County are actively working to resolve any remaining legal impediments that would prevent the full transfer of the WCA, and other identified parcels contemplated by the Transfer IGA to be effectuated and finalized; and

WHEREAS, the City and County have negotiated a use lease agreement (the “Lease”), attached hereto in substantial form as Exhibit A, attached hereto and incorporated by reference, for the Wolf Creek Amphitheater Site in order to allow the City to further use the Wolf Creek Amphitheater Site while the entities actively work to resolve any remaining legal impediments that would prevent the full transfer contemplated by the Transfer IGA to be effectuated and finalized; and

WHEREAS, this Resolution is in the best interests of the health and general welfare of the City, its residents and general public.

THE COUNCIL OF THE CITY OF SOUTH FULTON, GEORGIA, HEREBY RESOLVES as follows:

Section 1. The City Council hereby approves the Lease, attached hereto in substantial form as Exhibit A, between Fulton County, as Lessor, and the City of South Fulton, as Lessee.

Section 2. It is hereby declared to be the intention of the City Council that:

(a) All sections, paragraphs, sentences, clauses, and phrases of this Resolution are or were, upon their enactment, believed by the City Council to be fully valid, enforceable, and constitutional.

(b) To the greatest extent allowed by law, each and every section, paragraph, sentence, clause, or phrase of this Resolution is severable from every other section, paragraph, sentence, clause, or phrase of this Resolution. No section, paragraph, sentence, clause, or phrase of this Resolution is mutually dependent upon any other section, paragraph, sentence, clause, or phrase of this Resolution.

(c) In the event that any phrase, clause, sentence, paragraph or section of this Resolution shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the City Council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Resolution.

Section 3. the City Council hereby authorizes the City Attorney to approve the Lease as to form and to make changes thereto to protect the interests of the City prior to its execution. Additionally, the City Attorney and City Clerk are authorized to make any further editing and renumbering revisions to this Resolution for proofing, codification, and supplementation purposes. The final version of all resolutions shall be filed with the City Clerk.

Section 4. The Mayor or City Manager is authorized to execute the final Lease.

Section 5. All resolutions or parts thereof that are in conflict with this Resolution are, to the extent of such conflict, hereby repealed.

Section 6. The effective date of this Resolution shall be from the date of adoption, unless provided otherwise by the City Charter or state and/or federal law.

[signatures and voting tabulations appear on the following page]

	AYE	NAY
khalid kamau , Mayor		
Carmalitha Gumbs	X	
Catherine Foster Rowell	X	
Helen Zenobia Willis	X	
Jaceey Sebastian	X	
Corey Reeves, Mayor Pro Tem	X	
Natasha Williams	X	
VACANT		

CITY OF SOUTH FULTON, GEORGIA

VINCENT D. HYMAN, CITY ATTORNEY





MAYOR'S SIGNATURE PAGE

The mayor, within ten (10) business days following receipt of an ordinance, resolution, or other action adopted by the city council shall return it to the city clerk with or without the mayor's approval or with the mayor's veto. If an ordinance, resolution, or other action adopted by the city council has been approved by the mayor or if it is returned to the city clerk neither approved nor disapproved, it shall become law upon its return to the city clerk. However, if the mayor fails to return an ordinance, resolution, or other action adopted by the city council to the city clerk within ten (10) business days of receipt, it shall become law at 12:00 Midnight on the tenth business day after receipt. If the ordinance, resolution, or other action adopted by the city council is vetoed by the mayor, the mayor shall submit to city council, through the city clerk, the reasons for the mayor's veto. The city clerk shall record upon the ordinance the date of its delivery to and its receipt from the mayor.

The mayor acknowledges receipt of the noted Item listed below:

Date of Adoption: May 25, 2022 Item Number: RES2022-033

Subject: A RESOLUTION APPROVING A USE LEASE AGREEMENT BETWEEN THE CITY OF SOUTH FULTON, GEORGIA AND FULTON COUNTY, GEORGIA FOR USE OF THE WOLF CREEK AMPHITHEATER; AUTHORIZING THE MAYOR OR CITY MANAGER TO EXECUTE THE LEASE AND RELATED DOCUMENTS; AUTHORIZING THE CITY ATTORNEY TO APPROVE THE LEASE AND RELATED DOCUMENTS AS TO FORM PRIOR TO EXECUTION; AND FOR OTHER PURPOSES

Date Received by Mayor: May 26, 2022

☐

APPROVED

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DISAPPROVED

Mayor's Signature: _____
khalid kamau

Date to City Clerk' Office: _____

** Mayor did not sign. 6/6/22*

1 A RESOLUTION APPROVING A LEASE AGREEMENT BETWEEN FULTON COUNTY,
2 GEORGIA AND THE CITY OF SOUTH FULTON, GEORGIA FOR USE OF THE WOLF
3 CREEK AMPHITHEATER; AUTHORIZING THE CHAIRMAN OR COUNTY MANAGER
4 TO EXECUTE THE LEASE AND RELATED DOCUMENTS; AUTHORIZING THE
5 COUNTY ATTORNEY TO APPROVE THE LEASE AND RELATED DOCUMENTS AS
6 TO FORM PRIOR TO EXECUTION; AND FOR OTHER PURPOSES.

7 WHEREAS, Fulton County ("County") currently owns a 42.9 acre site located at 0
8 Vandiver Road, South Fulton, Fulton County, Georgia, on which is situated the Wolf
9 Creek Amphitheater (the "WCA") as well as a building known as the County's Public
10 Safety Training Center (the "PSTC"); and

11 WHEREAS, the County currently owns property adjacent to the Wolf Creek
12 Amphitheater ("Wolf Creek Amphitheater Site") that contain paved parking lot facilities
13 utilized by both the WCA and PSTC; and

14 WHEREAS, the County currently owns property adjacent to the Wolf Creek
15 Amphitheater Site, which are part of the closed Merk Mills Landfill, portions of which have
16 historically been used for parking during outdoor live music concerts, plays,
17 performances, festivals, and other events held at WCA; and

18 WHEREAS, pursuant to Article 10 of that certain *Intergovernmental Agreement for*
19 *the Transfer of Certain Assets and Provision of Certain Services between Fulton County,*
20 *Georgia and the City of South Fulton, Georgia*, dated February 25, 2020 (the "Transfer
21 IGA"), as amended by that certain *First Amendment to the Intergovernmental Agreement*
22 *for the Transfer of Certain Assets and Provision of Certain Services between Fulton*
23 *County, Georgia and the City of South Fulton, Georgia*, dated March 4, 2020 (the "First
24 Amendment") (collectively the Transfer IGA and the First Amendment are the "IGA"), the
25 County and City contemplate that the County will transfer the Wolf Creek Amphitheater
26 Site as well as adjacent property to the City of South Fulton ("City") upon the happening
27 of certain conditions precedent in accordance with the terms of the IGA; and

28 WHEREAS, the County and the City are actively working to satisfy the conditions
29 precedent so as to allow for the full transfer of the WCA and other identified parcels
30 contemplated by the Transfer IGA to be effectuated and finalized; and

31 WHEREAS, the County and City have negotiated a lease agreement (the "Lease"),
32 attached hereto in substantial form as Exhibit A, attached hereto and incorporated by

1 reference, for the Wolf Creek Amphitheater Site in order for to allow the City to further
2 use the Wolf Creek Amphitheater Site while they actively work to satisfy the conditions
3 precedent so as to allow for the full transfer contemplated by the Transfer IGA to be
4 effectuated and finalized; and

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

10 **NOW, THEREFORE, BE IT RESOLVED**, that the Board of Commissioners hereby
11 approves the Lease, attached hereto in substantial form as Exhibit A, between Fulton
12 County, as Lessor, and the City of South Fulton, as Lessee.

13 **BE IT FURTHER RESOLVED**, that the Board of Commissioners hereby
14 authorizes the Chairman, or in the Chairman's absence the Vice-Chair or County
15 Manager, to execute the Lease and other documents necessary to implement the
16 requirements of the Lease.

17 **BE IT FURTHER RESOLVED**, that the Board of Commissioners hereby
18 authorizes the County Attorney to approve the Lease as to form and to make changes
19 thereto to protect the interests of the County prior to its execution.

20 **BE IT FINALLY RESOLVED**, that this Resolution shall become effective upon its
21 adoption, and that all resolutions and parts of resolutions in conflict with this Resolution
22 are hereby repealed to the extent of the conflict.

23 **SO PASSED AND ADOPTED**, this 4th day of May, 2022.

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25 **FULTON COUNTY BOARD OF**
26 **COMMISSIONERS**

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28 **SPONSORED BY:**

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32 Robert L. Pitts, Chairman
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1 ATTEST:

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Tonya R. Grier, Clerk of Commission



APPROVED AS TO FORM:

Y. Soo Jo
County Attorney

P:\CALegislation\DREAM\5.4.22.Resolution Approving Lease Agreement with COSF re WCA.Pitts.docx

STATE OF GEORGIA

COUNTY OF FULTON

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease"), entered into as of the 25 day of May, 2022, between the FULTON COUNTY, GEORGIA ("County" or "Lessor") and the CITY OF SOUTH FULTON, GEORGIA ("City" or "Lessee") (Lessor and Lessee are each a "Party" and collectively the "Parties").

WITNESSETH

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 which is also depicted as Lot 17 on Exhibit B, attached hereto and incorporated herein by reference; and

WHEREAS, the County currently owns properties 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 (Tax Parcel ID. 14F0103LL0085) and Lot 16 (Tax Parcel ID. 14F0103LL0119) depicted on Exhibit B; and

WHEREAS, the County also currently owns properties adjacent to the Wolf Creek Amphitheater Site, depicted as 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 the "IGA"), the County and City contemplate that the County will transfer ownership of the Wolf Creek Amphitheater Site as well as Lots 15 and 16 to the City upon the happening of certain conditions precedent in accordance with the terms of the IGA; and

WHEREAS, the Parties understand and agree that a change in ownership could potentially expose the Parties to liability through fines, reporting or other Georgia Environmental Protection Division (EPD) corrective action; and

WHEREAS, the County is working with the EPD to request approval of a modification of ~~their~~ its existing post-closure landfill permit to increase and/or redefine the buffer zone; and

WHEREAS, the County cannot control or provide a definitive date that its request to modify its existing post-closure landfill permit will be considered and approved by the EPD; and

WHEREAS, the County and City desire to enter into this Lease Agreement for the WCA as well as the paved parking lot facilities located on Lots 15 and 16 (i.e., parking lot areas); and

WHEREAS, the Parties acknowledge that this use agreement, in the form of a long-term lease, is bestowed on the City at no cost, except as otherwise provided in this document, and that the properties are provide to the City "as is" – "where-is" until such time that they may be conveyed to the City fully as contemplated in the Transfer IGA; and

WHEREAS, the County and the City are continuing to actively work in good faith to satisfy any remaining conditions precedent so as to allow for the transfer contemplated by the Transfer IGA to be effectuated and finalized; and

WHEREAS, pursuant to Article 7 of the IGA, the County and City agree that the PSTC, which presently is owned and being operated and utilized by the County for public safety training purposes, is not an asset required to be transferred to the City pursuant to O.C.G.A. §36-31-11.1; and

WHEREAS, the WCA is a location for outdoor live music concerts, plays, performances, festivals and other events; and

WHEREAS, the County maintains testing wells, monitoring sites, and methane 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, and which are situated on Lots 1-7, 11-14, 17, and 19-23 on Exhibit B; and

WHEREAS, due to the COVID-19 pandemic, the County ceased booking live events at WCA on a regular basis, including performances during spring, summer, and fall; and

WHEREAS, now that restrictions related to addressing the spread of the COVID-19 virus are being lessened, the City has expressed its desires for live music concerts, plays, performances, and festivals to resume at the WCA, with such activities to be held and administered by the City; and

WHEREAS, the County, at times, may desire to hold events and provide public services at the WCA; and

WHEREAS, currently, the City requests permission from the County to use the Wolf Creek Amphitheater Site and the County through its legislative process grants to the City a right of access to the Wolf Creek Amphitheater Site on an as-needed basis; and

WHEREAS, the County and City desire to enter into a lease agreement for the City to have the ability to use the WCA as well as the parking areas in Lots 15 and 16 to support the entertainment uses of the WCA by the City for a term of months rather than only for specific events; and

WHEREAS, the County is agreeable to leasing to the City the Wolf Creek Amphitheater site and its supportive parking, but excluding the PSTC building structure and on-site parking sufficient for the daily operations of the PSTC; provided, however that the City may have the use of two (2) offices located in the PSTC that have been traditionally utilized for the operation of

the WCA, and provided that the City's use of all leased areas shall be 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, in consideration of the premises and the mutual promises between the Parties hereto, and including the payments of rent hereinafter stipulated and the terms and conditions herein set forth, it is understood and agreed as follows:

1. Description of Premises; Exclusions; Lessor Access; Authority.

1.1 Premises. The property hereby leased to Lessee consists of (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, and (iii) the two (2) offices located in the PSTC traditionally utilized by WCA operators, (such property being hereinafter referred to as the "**Leased Premises**"). Lessor makes no representations or warranties concerning the condition, suitability or any other matters relating to the Leased Premises, and Lessee hereby acknowledges that Lessee leases the Leased Premises from Lessor on an "as is" basis. Although not part of the Leased Premises, Lessee shall also have a limited right of access 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. This limited right of access shall include portions of Sanford J. Jones Boulevard and Merk Road as necessary to access the various parking lots. The right of access shall be limited to no more than during an event and two (2) hours before and two (2) after an event by Lessee at the Leased Premises.

1.2 Exclusions. Lessee understands and agrees that Lessor will continue to utilize the PSTC and that Lessee shall only have access to the two (2) offices located in the PSTC traditionally utilized by operators of WCA. Lessee further understands and agrees that it

shall not in any way access, utilize, or interfere with the testing wells, monitoring sites, and gas control and recovery systems on or near the Leased Premises, nor shall it do, cause, or permit any land disturbing activity of any kind or the removal of any trees on the property without prior written consent from the Lessor, which consent may be granted or withheld by Lessor in its sole and absolute discretion.

1.3 Lessor Access. Lessee understands, agrees and expressly consents to Lessor's right of access over, across and through the Wolf Creek Amphitheater site to access the PSTC and any testing wells, monitoring sites, and gas control and recovery systems near or adjacent to the Wolf Creek Amphitheater site. Lessee further understands, agrees, and expressly consents to Lessor's right to install additional wells and monitoring sites, and/or gas control and recovery systems, or to utilize portions of the Leased Premises for environmental compliance or public safety considerations that may become necessary or prudent in the future and the Parties expressly agree that the rights of the Lessor to do so take precedence over the rights of the Lessee to utilize any such areas.

1.4 During any term of this lease, the Lessor shall have the right to enter onto the pertinent areas of the Wolf Creek Amphitheater Site and/or adjacent/adjoining parcels for the inspection, maintenance, repair, replacement, or relocation of the monitoring stations, wells and/or related equipment thereof. In the event that inspection, maintenance, repair, replacement, and/or relocation of the monitoring stations, wells and/or related equipment are or must be on the leased parcels, the Lessor will notify Lessee in order to minimize, to the extent possible, any disruption of the Lessee's use of and access to the Wolf Creek Amphitheater Site and adjacent/adjoining parking lot parcels.

1.5 Authority. Lessee and Lessor each represent and warrant to the other that (i) the execution and delivery of this Lease has been duly authorized by all requisite authority, and (ii) the Lease is legally binding and enforceable against each party in accordance with its terms.

2. Use of Leased Premises. Lessee shall have the right to use and operate the Leased Premises for outdoor live music concerts, plays, performances, festivals and other public service-related events. In no event shall Lessee allow its use of the Leased Premises to create or

constitute a nuisance. Lessor, after reasonable notice and in consultation with Lessee, shall have the right to use the Leased Premises for public events.

3. Lease Term

3.1 Term. The initial term of this Lease shall be from the date this Lease is executed by the Chairman of the Fulton County Board of Commissioners and expiring on December 31, 2022 at eleven fifty-nine o'clock (11:59) p.m., unless sooner terminated or extended pursuant to the terms and conditions of this Lease (the "Term"). Either Party may extend the Term of this Lease for an additional twelve (12) months beginning January 1st and ending December 31st of the same year by providing thirty (30) day written notice to the other Party ("Extension Term").

4. Consideration; Utilities; Maintenance and Repair.

4.1 Consideration. Lessor and Lessee acknowledge and agree that due and sufficient consideration has been exchanged.

4.2 Utilities. The Lessee shall, throughout the term of this Lease, pay its portion of any and all utility bills which may accrue in the operation of the Lessee's business on the Leased Premises.

4.3 Maintenance and Repair. During the term of this Lease, Lessee agrees to maintain and keep clean and in good repair the WCA, the Wolf Creek Amphitheater Site and the adjacent paved parking lot facilities and other parking facilities historically utilized for outdoor live music concerts, plays, performances, festivals and other events held at WCA. Lessor agrees to maintain the PSTC.

5. Default and Termination.

5.1 Default by Lessee. Lessee will be considered in default (following notice of default by Lessor and failure by Lessee to cure within thirty (30) days of said notice) under this Lease in the event Lessee makes a general assignment for the benefit of creditors or files a voluntary petition in bankruptcy, or if a decree is entered involuntarily adjudicating Lessee bankrupt and such decree is not dissolved within ninety (90) days. In the event of such Lessee

default and failure to cure, this Lease shall terminate automatically with no further action required of Lessor.

5.2 Lease Termination by Lessee. The Lessee may terminate this Lease at any time during the Initial Term or any Extension Term by providing sixty (60) days' prior written notice to Lessor. Upon such termination, this Lease shall be null and void and of no further force or effect and neither Lessor nor Lessee shall have any further rights or liabilities under this Lease; provided, however, that Lessee shall be and remain responsible and liable to the Lessor for any damage to the property in excess of normal wear and tear.

6. Entry upon Premises. Lessor reserves the right to enter upon the Leased Premises at any reasonable time for the protection of its property. In exchange for access to and use of the parking lot facilities located on Lots 15 and 16 in Exhibit B for no cost, Lessee agrees to be responsible for the maintenance and repair of the paved parking lot facilities during the Term of the Lease.

7. Improvements/Structures; Personal Property.

7.1 Improvements/Structures. All improvements and structures on the Lease Premises are the property of Lessor.

7.2 Personal Property. All personal property placed or located by the Lessee on the Leased Premises may, at the Lessee's sole discretion, be removed by the Lessee at the end of the Term or earlier termination as the case may be.

8. Liability and Indemnification. Each Party agrees to be responsible for its own acts and omissions and the acts and omissions of its agents. To the fullest extent permitted by law, each Party agrees to indemnify and hold harmless the other Party, its Commissioners, Councilmembers, officers, agents and employees, from and against any claim or liability of any nature, including but not limited to injury to person or property on or about the Leased Premises, caused solely by the activity of a Party during the term of this Lease. However, nothing herein shall be construed as a waiver of the Parties' respective sovereign immunity or the governmental immunities available to its officers, officials, employees, or agents.

9. Assignment and Subletting. Lessee has no right to assign or sublet, in whole or in part, this Lease. Notwithstanding the foregoing,, if Lessee enters into an agreement with a third-party operator/promoter for its outdoor live music concerts, plays, performances, festivals and other events, such an agreement shall not be determined to be an assignment or subletting so long as said third-party operator/promoter complies with all provisions of this Lease and expressly agrees to indemnify and hold the County harmless for any and all claims and losses.

10. Insurance.

10.1 Lessee will maintain worker's compensation coverage in the amounts and form as required by applicable law.

10.2 Lessee agrees that Lessee 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 Lessee 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 Lessee the contractor, person, or organization, their employees, agents, or volunteers upon the Property or any property surrounding the Property. 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. Lessee 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, Lessee 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 Lessee to produce a copy of any required insurance document

immediately upon demand by Lessor, but no later than seven (7) business days before the happening of an Event, is hereby deemed to be material breach of the Lease resulting in the County having the right to immediately terminate the License Agreement without recourse by the City.

10.3 All required insurance coverage will be evidenced by one or more current certificates of insurance. Lessee may fulfill these insurance obligations by listing the other party as an additional insured on their respective policies. Notwithstanding anything in this Lease to the contrary, Lessee shall have the right to self-fund any insurance coverage under this Lease.

10.4 Lessor, its officers, employees, agents and volunteers must be covered as additional insureds with respect to liability arising out of the activities by or on behalf of the named insured in connection with this Lease.

10.5 All insurance coverage maintained by Lessee (or its contractor) must be endorsed to provide that the amount of coverage afforded to Lessor by the terms of this Lease will not be suspended, voided, or canceled except after thirty (30) days' prior written notice to Lessor, and Ground Lessee's (or its contractor's) failure to do so will constitute a Default in accordance with the terms herein.

10.6 Lessee will maintain Environmental Insurance covering damages, injuries, penalties and costs related to releases of pollutants and hazardous substances and costs of remediation and regulatory compliance for this location, in an amount not less than Ten Million Dollars per Pollution/Condition and Ten Million Annual Policy Aggregate.

10.7 The insurance company issuing the policy or policies required under this Agreement shall have no recourse against Lessor (including its agents and agencies) for payment of any premiums or for assessments under any form of policy.

10.8 Any and all deductibles under the above-described insurance policies shall be paid by Lessee.

10.9 Lessee shall provide Lessor with evidence of a certificate of insurance each year. If Lessee fails to maintain any of the insurance coverages required herein, then Lessor will have the option to declare Lessee in breach or Lessor may, without obligation to do so, purchase replacement insurance or pay the premiums that are due on existing policies in order that the required coverages may be maintained. In such event, Lessee shall immediately reimburse Lessor for the cost of same commencing from the date the amount is paid by Lessor.

10.10 Lessee, at its option, may satisfy its obligations hereunder to insure within the coverage of any so-called blanket policy or policies of insurance which it now or hereafter may carry, by appropriate amendment, rider, endorsement or otherwise; provided, however, that the interests of Lessor shall thereupon be as fully protected by such blanket policy or policies as they would be if this option to so insure by blanket policy were not permitted.

11. Estoppel Certificates. Lessor agrees, upon not less than thirty (30) days prior written notice by Lessee, to execute, acknowledge and deliver a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (ii) stating the dates to which rent and other charges hereunder have been paid by Lessee, (iii) stating whether or not, to the best knowledge of Lessor, Lessee is in default in the performance of any covenant, agreement or condition contained in this Lease, and if so, specifying each default of which Lessor may have knowledge, and (iv) stating the address to which notices to Lessor should be sent. Any such statement delivered pursuant hereto may be relied upon by Lessee, any lender, mortgagee or creditor of Lessee, any prospective purchaser or

sublessee (subtenant) of Lessee, or any prospective assignee of any such lender, mortgagee, creditor, purchaser or sublessee.

12. Hazardous Substance and Contaminants.

12.1 Lessee shall not use, store, treat, discard or dispose of any hazardous substances in or about the Leased Premises, in violation of any Applicable Environmental Law (as hereinafter defined). For purpose of this Lease, "**hazardous substances**" shall mean and include those elements or compounds which are contained in the list of hazardous substances adopted by the Environmental Protection Agency (EPA) and the list of toxic pollutants designated by Congress or the EPA under any applicable environmental law or legislation, as such lists may be supplemented, amended or newly enacted from time to time. To the extent that any of the applicable environmental laws of the State of Georgia establish a meaning for "hazardous substances" which is broader than that specified in any federal legislation or laws, such broader meaning shall apply. "**Applicable Environmental Law**" shall mean and include the collective aggregate of the following: any law, statute, ordinance, rule, regulation, order or determination of any governmental authority or any board of fire underwriters (or body exercising similar functions) or any restrictive covenant or deed restriction (recorded or otherwise) pertaining to the environmental and ecological condition of the Leased Premises. "Contaminants" shall mean and include any "Contaminant which is likely to pose a danger to human health" as defined in Ga. R. & Regs 391-3-4-.01(21).

12.2 The occupancy, operation and use of the Leased Premises by Lessee shall not violate any Applicable Environmental Laws.

12.3 Without limiting the generality of the above, the Parties acknowledge that each is aware of potential public safety issues and actual and potential Contaminants on and migrating to the Leased Premises related to landfills located near or adjacent to the Wolf Creek Amphitheater Site

12.4 Lessee shall not cause any violation of any Applicable Environmental Laws, nor permit any environmental liens to be placed on any portion of the buildings or the Leased Premises as a result of Lessee's actions.

12.5 Lessee shall not construct any onsite improvements or remove or alter any onsite structures or facilities without the prior written consent of the Lessor, which consent may be granted or denied in the sole and absolute discretion of Lessor.

12.6 Lessee shall give notice to Lessor immediately upon either (i) Lessee's receipt of any written notice from any governmental authority of a violation of any Applicable Environmental Laws with respect to the Leased Premises, or (ii) newly acquiring actual knowledge of the presence or release of any hazardous substances or Contaminants not previously disclosed or known on the Leased Premises in a condition that is resulting or could reasonably be expected to result in any adverse environmental, public safety, or human impact, with a full description thereof. To the extent a release of hazardous substances, Contaminants, or any other violation of Applicable Environmental Laws is caused by Lessee, Lessee shall promptly comply with all Applicable Environmental Laws requiring the notice, removal, treatment, or disposal of such hazardous substances or Contaminants, shall pay for all such response activities without seeking remuneration or contribution from Lessor, and shall provide Lessor with satisfactory evidence of such compliance.

12.7 Lessor shall have an unrestricted right to access, install, remove, repair, monitor and maintain testing wells, monitoring sites, and gas control and recovery systems for the purpose of meeting EPD requirements for the landfills located near or adjacent to the Wolf Creek Amphitheatre Site, including the right of the County to exclude public and Lessee access to such areas or any or all areas of the leased property if necessary or prudent, in the sole determination of Lessor, for the County's compliance with EPD requirements or for public safety.

13. **Quiet Enjoyment.** Lessor covenants and warrants that if Lessee shall pay the rent and shall perform the other covenants, and agreements and conditions required to be performed by Lessee pursuant to this Lease, Lessee shall, for the Term, and subject to the limitations set forth in this Lease, freely, peaceably and quietly occupy and enjoy the possession of the Leased Premises as described herein, together with the access thereto, without interruption or hindrance by Lessor, its agent or employees, or any persons or entities claiming by or through Lessor.

14. **Notices.** Any notice required or permitted to be given hereunder shall be deemed to be given when hand-delivered or one (1) business day after pickup by Federal Express, UPS, or similar overnight express delivery service addressed to the parties at their respective addresses referenced below:

LESSEE: City of South Fulton
c/o City Manager
5440 Fulton Industrial Blvd.
South Fulton, GA 30336

With copy to:
Office of City of South Fulton City Attorney
5440 Fulton Industrial Blvd.
South Fulton, GA 30336

LESSOR: Fulton County, Georgia
c/o County Manager
141 Pryor Road SW, Suite 10061
Atlanta, Georgia 30303

Fulton County, Georgia
c/o Fulton County Land Administrator
141 Pryor Road SW, Suite 8021
Atlanta, Georgia 30303

With a copy (which shall not constitute notice) to:

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

15. Entire Agreement. This Lease constitutes the entire arrangement between Lessor and Lessee and there are no further written or oral agreements with respect thereto. No variation or modification of this Lease, and no waiver of its provisions, shall be valid unless in writing signed by the County's and Lessee's duly authorized representatives.

16. MISCELLANEOUS PROVISIONS

16.1 Rights Cumulative. All rights, powers, and privileges conferred herein upon the parties hereto shall be cumulative but not restrictive of those given by law.

16.2 Captions. The captions used in this Lease are for convenience only and do not in any way limit or amplify the terms and provisions hereof.

16.3 Time of the Essence. Time is of the essence with this Lease.

16.4 Leasehold Estate. This Lease shall create a leasehold estate in Lessee, not a usufruct under Georgia law.

16.5 Severability. This Lease is intended to be performed in accordance with and only to the extent permitted by applicable law. If any clause or provision of this Lease or the application thereof to any person or circumstance is or becomes illegal, invalid or unenforceable because of present or future laws, rule or regulation of any governmental body, or becomes unenforceable for any reason, the intention of the parties hereto is that the remaining parts of this Lease and the application of such provision to other persons or circumstances shall not be thereby affected, but rather shall be enforced to the greatest extent permitted by law, unless the amount of Rent payable hereunder is thereby decreased, in which event County may terminate this Lease.

16.6 No Waiver of Rights. No failure or delay by Lessor to exercise any right or power given it or to insist upon strict compliance by Lessee with any obligation imposed on it, and no custom or practice of either party hereto at variance with any term hereof shall constitute a waiver or a modification of the terms hereof by Lessor or any right it has herein to demand strict compliance with the terms hereof by Lessee.

16.7 Governing Laws. This Lease shall be governed in all respects, as to validity, construction, capacity, and performance or otherwise, by the laws of the State of Georgia.

16.8 Force Majeure. The Parties shall be excused from the performance of any of their respective obligations for the period of any delay resulting from any cause beyond its control, including, without limitation, all labor disputes, governmental regulations or controls,

fires or other casualties, services, acts of God, or any inability to obtain supplies or other difficulties beyond the reasonable control of such party.

16.9 Right of Access Agreements. The Parties agree that upon the full execution of this Lease, this Lease will supersede any previously approved right of access license agreements entered into by the Parties.

[Continued on Following Page]

IN WITNESS WHEREOF, the parties have hereto affixed their hands and seals the day
and year first above written.

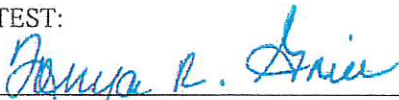
LESSOR:

FULTON COUNTY, GEORGIA



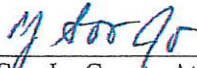
Robert L. Pitts, Chairman
Fulton County Board of Commissioners

ATTEST:



Tonya R. Grier, Clerk to the Commission

APPROVED AS TO FORM



Y. Soo Jo, County Attorney

(SEAL)



[Signatures Continued on Following Page]

ITEM # 22-0326
REGULAR MEETING

RM

5/4/22



LESSEE:

CITY OF SOUTH FULTON, GEORGIA

Tammi Sadler Jones

By: khalid kamau

Its: Mayor, City of South Fulton

(SEAL)

ATTEST:

Corey E. Adams, Sr. 6/6/22
By: Corey E. Adams, Sr.

Its: City Clerk

* Per Ordinance #2022-017, the City of South Fulton City Manager is authorized to sign agreements on the City's behalf

APPROVED AS TO FORM

Vincent D. Hyman 6/6/22
By: Vincent D. Hyman

Its: City Attorney

EXHIBIT "A"

Legal Description

SCHEDULE A

PARCEL ONE

All that tract or parcel of land lying and being in Land Lots 96 and 103 of the 14 FF District, Fulton County, Georgia, and being more particularly described as follows:

BEGINNING at the intersection of the northwesterly right of way of Merk Road (having a 60 foot right of way) and the centerline of Camp Creek; thence south 56 degrees 46 minutes 15 seconds west 329.00 feet along the northerly right of way of Merk Road to a point; thence 423.53 feet along the arc of a curve to the left having a radius of 984.93 feet and a chord of 425.16 feet bearing south 44 degrees 18 minutes 23 seconds west to a point on the south line of said Land Lot 96; thence south 88 degrees 45 minutes 00 seconds west along said Land Lot Line 126.10 feet, more or less, to a hollow pipe located at the common corner of Land Lots 96, 97, 102 and 103, said district; thence south 89 degrees 50 minutes 00 seconds west along the south line of said Land Lot 103 1,470.97 feet to a hollow pipe; thence north 01 degrees 15 minutes 00 seconds west 1,692.45 feet to a point at the centerline of Camp Creek; thence along the centerline of Camp Creek and following the meanderings thereof the following courses and distances: south 64 degrees 02 minutes 02 seconds east 57.22 feet; south 78 degrees 11 minutes 59 seconds east 252.07 feet; south 60 degrees 43 minutes 21 seconds east 132.93 feet; south 60 degrees 40 minutes 54 seconds east 161.11 feet; south 63 degrees 19 minutes 00 seconds east 102.33 feet; south 68 degrees 47 minutes 52 seconds east 75.37 feet; south 76 degrees 29 minutes 36 seconds east 157.23 feet; south 59 degrees 45 minutes 24 seconds east 34.70 feet; south 57 degrees 35 minutes 07 seconds east 491.00 feet; south 70 degrees 04 minutes 44 seconds east 194.84 feet; south 44 degrees 36 minutes 42 seconds east 116.24 feet; south 55 degrees 00 minutes 43 seconds east 178.65 feet; south 80 degrees 38 minutes 42 seconds east 184.62 feet; south 54 degrees 23 minutes 22 seconds east 113.85 feet; south 40 degrees 32 minutes 31 seconds east 317.78 feet to the POINT OF BEGINNING; said tract containing 55.5445 acres according to a plat of said property by Travis Pruitt & Associates, P.C. dated October 26, 1987, and recorded in Plat Book 155, page 6, Fulton County Records.

PARCEL TWO

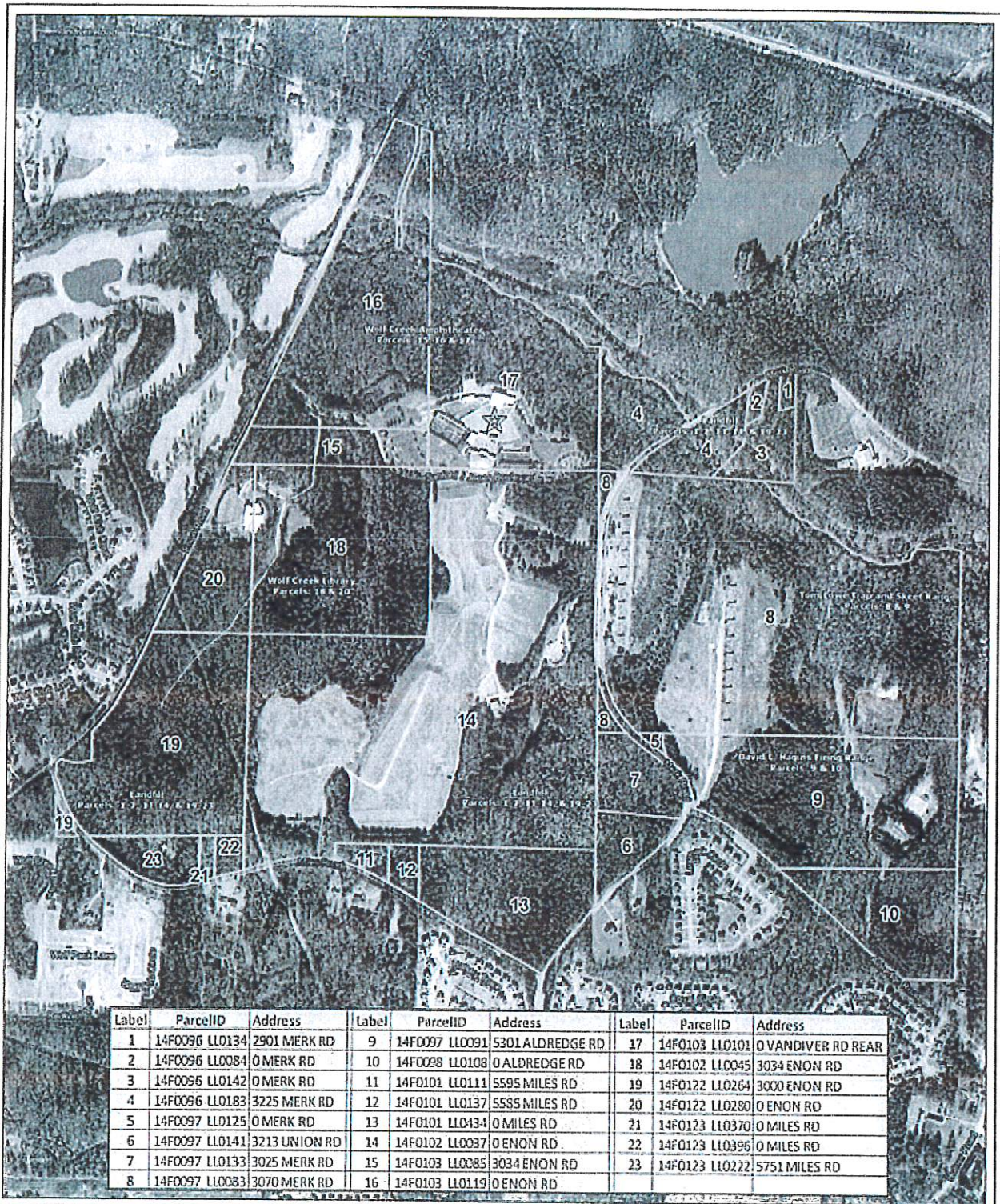
All that tract or parcel of land lying and being in Land Lot 96 of the 14 FF District, Fulton County, Georgia, and being more particularly described as follows:

BEGINNING at the intersection of the southeasterly right of way of Merk Road with the south line of said Land Lot 96; thence north 88 degrees 45 minutes 00 seconds east 621.27 feet to a point; thence north 43 degrees 19 minutes 00 seconds east 367.00 feet to a point; thence north 01 degrees 43 minutes 00 seconds east 330.00 feet to a point; thence north 15 degrees 30 minutes 00 seconds east 65.75 feet to a point on the southeasterly right of way of Merk Road; thence south 56 degrees 46 minutes 15 seconds west along the southeasterly right of way of Merk Road 768.82 feet to a point; thence 362.76 feet along the arc of a curve to the left having a radius of 924.93 feet and a chord of 360.44 feet bearing south 45 degrees 32 minutes 07 seconds west to the POINT OF BEGINNING; said tract containing 6.3743 acres according to a plat of said property by Travis Pruitt & Associates, P.C. dated October 26, 1987, and recorded in Plat Book 155, page 6, Fulton County Records.

11170-215

EXHIBIT "B"

Map Referencing Lots



Fulton County,
Georgia

Wolf Creek Area Map

★ Wolf Creek Amphitheater County Owned Properties



0 0.02 0.10 0.27 0.35
Miles