



41 Perimeter Center East, Suite 250
 Dunwoody, Georgia 30346
 dunwoodyga.gov | 678.382.6700

MEMORANDUM

To: Mayor and City Council

From: Brent Walker, Director of Parks and Recreation

Date: August 26, 2019

Subject: Facility Usage Agreement with Spruill Center for the Arts

Background

The Dunwoody Public Facilities Authority was created on July 24, 2017 when the City Council Approved the Resolution formally establishing the members of City Council as the Board of the Facilities Authority. A driving force for establishing the Authority is the ability to enter into long-term agreements with partners for public land and facilities rather than one-year renewable leases.

The Spruill Center for the Arts is undertaking a capital campaign to add facilities to expand programming and to meet the growing needs of residents and visitors who use the facility. They are requesting a 40-year Usage Agreement to provide assurances to corporations and foundations that funds donated for capital improvements will be used for the stated purposes and remain under the control of the Spruill Center for the Arts.

Staff Recommendation

Staff recommends that the Authority review and adopt the attached updated 40 Year Facility Usage Agreement with the Spruill Center for the Arts. Prior to signatures approving the Facility Usage Agreement, staff will prepare documents transferring the North DeKalb Cultural Arts Center Property to the Public Facilities Authority.

Denis Shortal Mayor
Eric Linton, ICMA-CM City Manager
Sharon Lowery, CMC City Clerk

Pam Tallmadge City Council Post 1
Jim Riticher City Council Post 2
Doug R. Thompson City Council Post 3

Terry Nall City Council Post 4
Lynn Deutsch City Council Post 5
John Heneghan City Council Post 6

Packet page: 5



Presentation to City of Dunwoody Government

February 8, 2019

Expansion of the Spruill Center



Education Center
Exterior Front



Education Center
Central Courtyard



Education Center
Rear Classroom Wing



"EVERYTHING WILL BE OK"
Mural at the Spruill Gallery



The Spruill Gallery, Historic Homeplace & Gift Shop



Presentation to City of Dunwoody Government

February 8, 2019 – Page 2

The Spruill Center for the Arts was founded in 1975 and is now celebrating its 44th year of artistic excellence and service to the Dunwoody Community.

Vision Statement

Spruill Arts will be recognized as a welcoming ambassador of the arts in Dunwoody, Metro Atlanta, and beyond, serving and improving the ever-changing community with a wide range of engaging art opportunities.

Mission Statement

Spruill Arts promotes the arts with high-quality education, programming, and exhibits for the purpose of cultivating a sense of community and connection in Dunwoody and Metro Atlanta.

The Spruill Education Center

The Spruill Education Center occupies 11,000 S.F. of leased classroom and office space in the City of Dunwoody's North DeKalb Cultural Center.



Ceramics



Photography



Painting Class



Metal Sculpture Class



Glass Art



Jewelry-making



Children's Art



Presentation to City of Dunwoody Government

February 8, 2019 – Page 3

Operational Overview:

Education Center

The Education Center operates on a quarter system. It offers more than 1,000 visual arts courses and workshops every year. About two-thirds of those offerings receive large enough enrollment to be conducted. Class fees run from less than \$100 per student for several-hour, one-day workshops, to more than \$1,000 per student for intensive, 9am to 4pm, Monday-Friday master workshops. Most full-quarter courses meet once a week for 6 to 10 weeks and cost \$150 – \$200 per student. Approximately 6,000 students take courses and workshops at Spruill Arts annually.

The Center utilizes approximately 100 outstanding independent-contractor artist-instructors. Some teach multiple courses every quarter; other may teach only one or two courses most quarters. Some take the summer off to conduct workshops in Europe or elsewhere. Master workshops are often conducted by well-known artist-instructors brought in from across the U.S. and from other countries.

Class fees are split roughly 50% to the artist-instructor and 50% to the Spruill Center. The Center provides the facilities and equipment needed; works with the instructors to develop course offerings, days, and times; markets the courses and workshops via its printed quarterly catalog, its website, and through outside advertising; processes all registrations and payments, either online, via mail or fax, or in person; handles customer service; performs all accounting needs and instructor payroll services.

Spruill Arts also conducts week-long Summer Day Camps from late May until early August. Typically, around 1,000 children experience Summer Camp each year at the Center. Traditional visual and performing camps are offered for ages 5–10. Higher-level camps are offered for ages 11–14 (e.g. – videography, robotics, fashion design, mixed-media sculpture, jewelry design, intensive ceramics).

The Education Center Hallway Gallery showcases outstanding instructor and student art in quarterly exhibitions. During the Summer, campers' work is displayed.



Presentation to City of Dunwoody Government

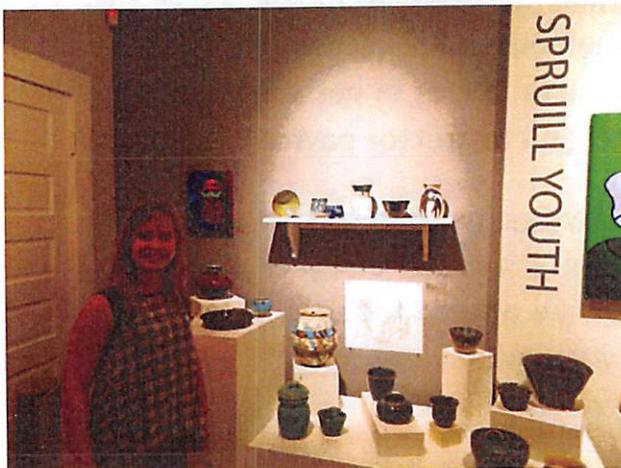
February 8, 2019 – Page 4

Spruill Gallery

The gallery, located in the Historic Spruill Homeplace on Ashford Dunwoody Road, mounts four to six professional artist exhibitions each year, as well as the popular Holiday Artists Market, which runs from mid-November through Christmas Eve.

Spruill Gallery exhibitions most often feature local and regional talent, from one-person shows to thematic exhibits displaying works from many artists. Some shows feature artists from across the United States; some have featured artists from other countries. Each summer the gallery produces a juried show, with cash awards, displaying the very best works of instructors and students from the Spruill Center.

The gallery also operates a year-round gift shop. It features artist-made gifts at very attractive price-points. During the Holiday Artists Market, the entire gallery becomes a gift shop containing works by about 100 artists and craftspeople.



Celebrating Youth Art at the Gallery



An opening reception at the Spruill Gallery



Presentation to City of Dunwoody Government

February 8, 2019 – Page 5

Spruill Center Expansion Needs

The Current Situation

- The Spruill Education Center has effectively maxed-out its available space and its eleven (11) indoor classrooms.
- The most popular courses and workshops sell-out immediately when registration opens. Each quarter the Center turns away approximately 100 people who want to take art offerings.
 - That hurts people who want to participate in the arts;
 - It hurts earned revenue and depresses growth opportunities for Spruill;
 - It does not reflect well on the City of Dunwoody and its commitment to arts and culture opportunities for its citizens;
 - It limits the amount of cultural tourism drawn to Dunwoody: people who would be shopping, dining, and staying in hotels in Dunwoody.
- The Center also has no room to add any new disciplines that are often requested but which require specially-equipped studios (e.g. - wood-turning or printmaking).
- The Spruill Center is now in a position to partner with the city to expand the impact of the arts in Dunwoody. Cities all around Dunwoody are investing in the arts, realizing what a draw the arts are for corporations and their employees, and for people who want access to the arts.
- Spruill Arts wants to work closely with the city to implement the recommendations in the Arts and Culture Master Plan. The Center is ready, right now, to commit its resources, both human and financial, to benefit and elevate the arts in Dunwoody.



Presentation to City of Dunwoody Government

February 8, 2019 – Page 6

The Spruill Center's Expansion Plan and The Elephant in the Room

AUSTIN ELEMENTARY: THE ELEPHANT IN THE ROOM



- The fate of the existing Austin Elementary School building is still to be determined. The Spruill Center is here to once again clarify some thinking about that facility.
- We have been informed that rumors, or even recommendations, are continuing to swirl, that maybe, possibly, the Spruill Center for the Arts should move into the admittedly-larger existing Austin Elementary facility that now should be available in 2020. Leaders of the Spruill Center have repeatedly presented why that would be an unacceptable option for the center, and a bad choice for the City of Dunwoody. Following are those reasons again:
- The Austin building is very unsuitable for an arts center. It is built like a fortress, with only tiny windows tucked into corners. A visual arts center requires large amounts of natural light. Creating large walls of windows would cost a fortune (if even possible).
- Austin was built with an interior open-pod system that's just a mess. A visual arts center requires conventional classrooms. Renovations would be extremely expensive.
- Parking at Austin is even more limited than at the North DeKalb Cultural Center. More parking could be created, but that would be quite expensive.



Presentation to City of Dunwoody Government

February 8, 2019 – Page 7

AUSTIN ELEMENTARY: THE ELEPHANT IN THE ROOM (continued)

- Students and instructors come to Spruill Arts from all across Metro Atlanta. Moving this arts center further north, albeit not that far, would force people to get across Mt. Vernon Road, past Dunwoody Village and Publix, and past the confusing-to-visitors Chamblee Dunwoody Road into Roberts Road intersection. And then they would be in the middle of a residential neighborhood, rather than in a commercial location with a convenience store, gas station, and several restaurants within easy walking distance.
- The City of Dunwoody and the Spruill Center have invested a huge amount of money into infrastructure improvements, equipment, expansions to electrical service, etc. All of those improvements would have to be re-created at the Austin location at a really huge expense. How does that make sense?
- Who knows what other lurking infrastructure issues and expenses lie in store after the elementary school moves out?
- Moving to the Austin building – or any other place – would be a tremendous hardship to the Spruill Center for the Arts, and a huge expense for the city! Even more than the direct costs, the loss of earned revenue while classes are suspended during a move could run to hundreds of thousands of dollars.
- The Spruill Center is very willing to invest significant funds to improve arts and culture in Dunwoody, and to improve the North DeKalb Cultural Center. However, the Board of Directors is not inclined to invest money into moving to the Austin facility.
- The configuration of the Spruill Education Center at its present location is excellent for a visual arts center and incomparably better than the Austin building and location.



Presentation to City of Dunwoody Government

February 8, 2019 – Page 8

The Spruill Center's Expansion Plan

PHASE I: COMMUNITY ROOMS

- The Spruill Education Center needs additional space ASAP. The ideal new space is immediately adjacent to existing classrooms. New Community Rooms are being completed now in the city's North Shallowford building. Spruill Arts understands that "clean" community groups will be moved to that location, while "messy" groups, such as art societies that might have oil paintings or equipment that might be in meetings, will have to continue to be housed at the North DeKalb Cultural Center in Rooms 2 or 4.
- The Spruill Center wants to take over Rooms 2 and 4 as soon as possible in 2019, with rent for those rooms being added to the Spruill lease at the same per square foot rate as the Center currently pays for the rest of its space.

PHASE II: CHATTAHOOCHEE HANDWEAVERS GUILD and "MESSY" COMMUNITY GROUPS

- The Chattahoochee Handweavers Guild (CHG) is in desperate need of more space. Spruill Arts had hoped to find a suitable temporary home for CHG in Dunwoody that would give them more space. Spruill was willing to put funding, partial or even complete, toward renovating space, moving CHG, and subsidizing their rent for a period of time. Spruill Arts urgently wants to take over Room 1, the current CHG space.
- To date, no suitable temporary home has been found for CHG in Dunwoody. We want to solve this problem, for CHG and Spruill Arts, ASAP. We understand that CHG has expressed enthusiasm for moving to larger quarters in the Austin building, assuming a portion of that facility survives and becomes a community center of sorts. Failing that, perhaps another city-owned facility can soon be adapted for CHG use.
- A more permanent solution needs to be found for the "messy" community groups so that Spruill Arts can have full-time use of Rooms 2 & 4, fully schedule its own courses, and equip those rooms as specialized studios for particular disciplines. That is an urgent need. We look forward to partnering with the City of Dunwoody to accomplish that goal ASAP.

HAVING FULL USE OF ROOMS 1, 2, & 4 WILL PROVIDE ADEQUATE EXPANSION SPACE FOR THE SPRUILL EDUCATION CENTER FOR THE NEXT TWO TO THREE YEARS.



Presentation to City of Dunwoody Government

February 8, 2019 – Page 8

The Spruill Center's Expansion Plan

PHASE III: 2020 – 2025

- By 2021, the Spruill Center projects significant additional space will be needed to carry the Education Center's needs through 2025 or so.
- Accordingly, the Spruill Center has begun working with architects, at the Center's own expense, to provide concepts for adding approximately 5,000 SF of new space in the central courtyard of the city-owned North DeKalb Cultural Center. The courtyard is vast and barely used. A good-sized courtyard would still remain after a building expansion is completed.



The 85' wide x 150' deep courtyard.



Presentation to City of Dunwoody Government

February 8, 2019 – Page 9

The Spruill Center's Expansion Plan

PHASE III: 2020 – 2025 (continued)

- Some architectural information is already available, along with cost estimates. Much more information, pricing, and artists' renderings will be available in coming weeks and months. A rough guesstimate of the cost of a 5,000 SF addition is \$1,000,000. Spruill Arts wants to be ready, and have the city's approvals, when the time comes for the Phase III expansion. That way, the expanded space will be ready when needed.
- The Spruill Center is ready to partner with the City of Dunwoody to expand and improve the existing facility. As a starting point, the Spruill Center Board envisions the financial participation in the future expansion as 33% Spruill Arts funding, 33% Capital Campaign fundraising (including grants from foundations), and 33% City of Dunwoody funding (after all, it IS the city's building). However, the Spruill Center is very open to discussions on the funding.
- In order for the Spruill Center to invest money in improving the city's facility, and for Spruill Arts to be able to conduct a successful Capital Campaign, it is necessary for Spruill to have a long-term lease on its space in the North DeKalb Cultural Center. The request for such a lease has already been submitted to the Dunwoody Facilities Authority.

Building a Bigger and Better Dunwoody Arts and Culture Center

The current North DeKalb Cultural Center is a Dunwoody treasure. Spruill Arts is proud to be a large tenant there. The building and grounds have great promise in an outstanding location. The Spruill Center and the City of Dunwoody could expand and enhance the arts & culture complex at a fraction of the price of creating a whole new facility. Let's make it happen!

THANK YOU

STATE OF GEORGIA CITY OF
DUNWOODY

FACILITY USAGE AGREEMENT

THIS AGREEMENT by and between the Dunwoody Facility Authority, Georgia, a municipal body politic and corporate, hereinafter designated "AUTHORITY," and SPRUILL Center for the Arts, Inc., 5339 Chamblee Dunwoody Road, Dunwoody, Ga. 30338, a private nonprofit organized under the laws of the State of Georgia, hereinafter designated "SPRUILL" is effective as of ___ 2019.

WITNESSETH:

WHEREAS, AUTHORITY owns the North DeKalb Cultural Arts Center, 5339 Chamblee Dunwoody Road, Dunwoody, Georgia, including structures located thereon, now or in the future (hereinafter designated as the "NDCAC"), for the purpose of serving the residents and guests of the City of Dunwoody and its surroundings; and

WHEREAS, SPRUILL is a charitable non-profit organization established in 1975 and dedicated to promoting the arts with high quality education, programming, and exhibits for the purpose of cultivating a sense of community and connection in Dunwoody and Metro Atlanta.

WHEREAS, the City of Dunwoody and SPRUILL have a longstanding working relationship established for the purpose of operating, developing, enhancing, and maintaining the "NDCAC". The terms of the relationship have been set forth in prior written agreements. Pursuant to that relationship, SPRUILL provides year-round mission-based programming, and raises private funds to support not only its programming but also its work to enhance and preserve the NDCAC along with those activities set forth as Obligations of Spruill on Attachment "A".

WHEREAS, SPRUILL does now and desires to continue to operate the Facilities, including the primary education building and any other structures located thereon (hereinafter designated as "Facilities") in a manner consistent with its mission and primarily for the benefit of residents and guests of the City of Dunwoody, SPRUILL agrees to operate and utilize the Facilities located thereon in accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the covenants and promises to set forth herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. AUTHORITY does hereby grant SPRUILL use of ten thousand eight hundred forty four (10,844) square feet of space delineated on the Floor Plan Layout attached hereto as Attachment B and by reference made a part hereof (hereinafter referred to as "Spruill Facilities") as designated and attached hereto as Attachment B and by reference made a part hereof, provided however that areas not designated as land or Facilities on Attachment B may not be used or programmed by SPRUILL to the exclusion of the public. Such portions of the complex must always remain accessible to the public.
2. SPRUILL shall pay rent of Three Thousand Twenty-Nine and No/100ths Dollars (\$3,029.00) per month to be paid to AUTHORITY on the first day of each month of occupancy (hereinafter "Initial Rent"), with payment for partial months of occupancy to be prorated accordingly. Payments are to be made to "City of Dunwoody, Georgia" 4800 Ashford Dunwoody Road, Dunwoody, Georgia 300338. SPRUILL shall pay an additional charge of five percent (5%) of the Service Charge Cost as a late payment charge if the regular monthly Service Charge Cost is not received when due and payable. A late payment charge will be incurred by the SPRUILL if the monthly Service Charge Cost has not been received by the AUTHORITY by

the fifth day of each month.

3. The Initial Rent shall be based upon the square footage of the Spruill Facilities as of the date of the execution of this Agreement. Should the AUTHORITY grant SPRUILL additional square footage to be subject to this Agreement, the rental amount shall be adjusted consistent with the per square foot rate; provided, however, should the parties agree that SPRUILL construct a capital improvement upon any additional square footage being granted to SPRUILL subject to paragraph 6(d) below, the rent for the additional square footage shall be in a nominal amount until such time as the twenty (20) year amortization period for SPRUILL's capital expenditure has passed. Upon the completion of the twenty (20) year amortization period, rent for the additional square footage shall be paid consistent with the per square footage rent for the remainder of the Spruill Facilities.

4. Each year commencing on January 1, 2020, and each January 1 thereafter, the rental payment due and payable to the AUTHORITY (as amended pursuant to the terms of this Agreement) shall be adjusted upward by the amount of two percent (2%) for the current year period from January 1 through December 31,

5. This Agreement, beginning upon execution of this document is for an initial term terminating absolutely and without further obligation on the part of the AUTHORITY on, December 31, 2059 unless terminated earlier in accordance with the termination provisions of the Agreement.

6. This Agreement may be terminated pursuant to the following:

(a) Either party shall have the right to terminate this Agreement for any reason at any time during the original term or any extension or renewal thereof by giving written notice to the other party of its intention to terminate at least one hundred and eighty (180) days prior to the effective date of termination.

(b) AUTHORITY reserves the right to terminate and cancel this Agreement or any extension or renewal thereof at any time SPRUILL materially breaches or defaults the terms and conditions set forth herein. AUTHORITY shall provide written notice to SPRUILL of its intention to terminate pursuant to this provision at least ninety (90) days prior to the effective date of termination. After (90) days notice stated above and termination of this Agreement or any renewal thereof, or cancellation thereof by AUTHORITY, SPRUILL shall vacate and deliver up the Facilities peaceably, quietly, and in good order and condition within a commercially reasonable period of time. However, no default or breach as to this Agreement shall be claimed by the AUTHORITY without first providing written notice of such default and allowing sixty (60) days from the date of written notice, or other mutually agreed upon time period, to cure. If the AUTHORITY terminates and/or cancels this agreement pursuant to an uncured material breach or default as stated above, the provisions of 6(d) will not apply to the termination or cancellation.

(c) SPRUILL reserves the right to terminate and cancel this Agreement or any extension or renewal thereof at any time AUTHORITY materially breaches the term and conditions set forth herein. SPRUILL shall provide written notice to AUTHORITY of its intention to terminate pursuant to this provision at least ninety (90) days prior to the effective date of termination. However, no default or breach as to this Agreement shall be claimed by SPRUILL without first providing written notice of such default and allowing sixty (60) days from the date of written notice, or other mutually agreed upon time period, to cure.

(d) If, except for reasons set forth above in 6(b) above, the AUTHORITY terminates the Agreement prior to the expiration of the initial term set forth above, and within twenty (20) years of completion of construction of fixed and permanent Facility improvements which: (1) have been expressly approved in advance by the Authority, and (2) accepted by the AUTHORITY upon completion, the AUTHORITY will pay SPRUILL a 5% annual amortization rate per each remaining year of a twenty (20) year period for the value of the construction cost, that were paid through SPRUILL funds for the Facility improvements, payable upon termination of the Agreement. Either party may remove portable improvements made by such party. A listing of all portable improvements shall be prepared by such party and approved by the other party prior to the removal of said improvements. Except in connection with repairs or replacements, each party covenants not to destroy or remove any improvements constructed (other than portable improvements) or equipment placed upon the Facilities, pursuant to this Agreement or otherwise, without the written consent of the other party, which written consent may not be

unreasonably withheld, conditioned, or delayed.

(e) If the AUTHORITY terminates the Agreement prior to the expiration of the initial term set forth above, but more than twenty (20) years after completion of fixed and permanent improvements upon the Facilities, all such fixed and permanent improvements upon the Facilities shall remain the property of the AUTHORITY, free and clear of all liens and encumbrances.

7. 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 mail and addressed as follows:

Dunwoody Facilities Authority
4800 Ashford Dunwoody Road
Dunwoody, GA 30338
Attn: Chairman

Spruill Center for the Arts
5339 Chamblee Dunwoody Road Dunwoody, GA
30338
Attn: CEO or Executive Director

8. AUTHORITY does hereby designate the City of Dunwoody as its representative in all matters pertaining to this Agreement. All requests and issues arising from use of the Facilities described herein should be addressed to the City of Dunwoody through its Parks Director. The Parks Director is authorized to establish such administrative procedures he or she deems appropriate to carry out and enforce the terms of this Agreement.

9. The AUTHORITY and SPRUILL shall provide services in accordance with Attachment A, which is attached hereto and by reference made a part hereof, during the term of the Agreement. SPRUILL agrees to provide AUTHORITY with appropriate information about its program activities, including program operating hours, in order to facilitate operation of the Facilities and coordination by the AUTHORITY.

10. SPRUILL shall at all times exonerate, indemnify, and save harmless the AUTHORITY and CITY of DUNWOODY 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 Facilities in connection with intentional or negligent acts or errors or omissions by SPRUILL, its officers, agents, or employees, up to, but not exceeding, the limits of SPRUILL's insurance policies set forth below. Neither this Agreement, nor this provision specifically, shall waive or limit SPRUILL's right or ability to be indemnified, defended and/or held harmless by other entities not party to this Agreement including but not limited to consultants, contractors, their subconsultants and/or subcontractors, their officers, agents or employees, or anyone else performing work at or related to the Facilities located thereon.

11. Except as otherwise consented to in writing by AUTHORITY, SPRUILL shall maintain in force during the life of this Agreement or any extension or renewal thereof comprehensive general liability insurance, in the minimum amount of \$2,000,000 general aggregate, and \$1,000,000 per occurrence, and AUTHORITY and CITY of DUNWOODY shall be named as additional insureds under such policy or policies of insurance. Further, the AUTHORITY shall have the right to require the adjustment of the coverage limits hereunder based upon reasonable operational and market changes as may occur in the future.

12. Except as otherwise consented to in writing by AUTHORITY, SPRUILL shall furnish to the AUTHORITY within thirty (30) days after execution of this Agreement, a certificate or certificates evidencing such insurance coverage in companies doing business in Georgia and acceptable to AUTHORITY covering: (a) The location and

the operations to which the insurance applies; (b) The expiration date of policies; and (c) An agreement that the policies certified will not be changed or canceled without thirty (30) days prior notices to AUTHORITY, as evidenced by return receipts of registered or certified letters. Prior to ten (10) days before the expiration of any such certificate, SPRUILL shall deliver to the AUTHORITY a certificate renewing or extending the term for a period of at least one (1) year, or a certificate acceptable to the AUTHORITY evidencing the required insurance coverage.

13. To the extent permitted by law, the AUTHORITY and CITY of DUNWOODY shall indemnify, defend, and hold the SPRUILL 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 SPRUILL as a result of or in connection with the physical condition of the Facilities located thereon, negligence or willful misconduct of the AUTHORITY or CITY, its employees, partners, agents, contractors, or subcontractors, or their employees, partners, or agents. Neither this Agreement, nor this provision specifically, shall waive or limit the AUTHORITY'S or CITY'S right or ability to be indemnified, defended and/or held harmless by other entities not party to this Agreement including but not limited to consultants, contractors, their subconsultants and/or subcontractors, their officers, agents or employees, or anyone else performing work at or related to the Facilities.

14. SPRUILL shall comply with the provisions of the Code of the City of Dunwoody, Georgia and Official Code of Georgia annotated and all appropriate statutes and regulations governing the services it furnishes and, when applicable, with the standards of its profession. SPRUILL acknowledges its responsibility to report child abuse under O.C.G.A. 19-7-5 as may be amended in the future and accepts responsibility for compliance therewith, including all applicable persons in accordance with the statute. SPRUILL acknowledges that failure to do so may constitute a material breach of this Agreement.

15. All revenues received by SPRUILL for its programming, rental or usage fees, or other revenues generated in the operation of SPRUILL shall be and remain the sole property of SPRUILL.

16. SPRUILL is a primary fundraising agent for the Facilities located thereon and may conduct its operations, including fundraising activities and/or capital campaign(s), independently of the AUTHORITY in furtherance of its support of the Facilities. SPRUILL exercises control over its own fundraising and funds received shall remain with SPRUILL upon termination or expiration of the Agreement. However, if SPRUILL has begun construction on a capital project for which SPRUILL has raised money to complete at the time of termination or expiration of this Agreement, SPRUILL will complete such construction

17. SPRUILL may commence physical construction of capital projects at the Facilities located thereon once the total amount raised in cash, pledges, and in-kind support equals or exceeds the project budget, and once approval is otherwise obtained from the AUTHORITY. SPRUILL may also request approval from the AUTHORITY to commence physical construction of capital projects at the Facilities prior to the total funds being raised for the project, if substantial documentation is provided to the AUTHORITY that funds will be realized to complete the project.

18. Upon approval of the AUTHORITY, SPRUILL shall have the sole right to select the specific vendors (i.e. architects, engineers, construction, etc.) required during any design, building or construction processes related to capital projects for which SPRUILL has raised money to complete. The parties shall recognize SPRUILL as the Facility operator and in such capacity shall have primary discretion regarding selection and management of vendors; provided that SPRUILL shall comply with all Federal, State and local law regarding said project.

19. SPRUILL shall be allowed to recommend that portions of the Facilities be named in honor or in memory of those making capital campaign contributions. All naming recommendations shall be subject to the approval of the AUTHORITY per the AUTHORITY'S Facility Naming Policy.

20. The AUTHORITY or its designee shall have the right to conduct events in the Facilities separate from SPRUILL's operations, so long as said events do not interfere with existing scheduled events or programming of the SPRUILL nor materially disrupt the operation of the Facilities by SPRUILL. By December 1, of the calendar year, SPRUILL shall provide the AUTHORITY an annual calendar of events and programming of the upcoming year and notify the AUTHORITY if any modifications of the schedule occur. The AUTHORITY shall coordinate with SPRUILL on said events to make sure there is no such interference and shall use its best efforts to provide SPRUILL with reasonable notice. The AUTHORITY shall be responsible for all preparation prior to and clean-up after the event and for any repairs related thereto.

21. The occupancy and use by SPRUILL of the Facilities, and rights herein conferred upon SPRUILL shall be subject to rules and regulations as are now or may hereinafter be prescribed by the AUTHORITY.

22. Both parties agree that the provisions of this Agreement or any extension or renewal thereof, are not intended to be nor should they be construed as in any way creating or establishing a relationship between the parties hereto other than that of Owner and User, and at all times during the term of this Agreement or any extension or renewal thereof, SPRUILL is to be and shall remain as an independent contractor.

23. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia.

24. 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.

25. 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.

26. SPRUILL shall at the termination of this Agreement, or any extension or renewal thereof surrender up the Facilities in good order and condition, reasonable use and ordinary wear and tear thereof excepted. AUTHORITY 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. When applicable, the Contractor will provide Evidence of Compliance as follows: Contractor (SPRUILL) and Subcontractor Evidence of Compliance. Pursuant to O.C.G.A. § 50-36-1(e), AUTHORITY contracts within the state of Georgia shall include the following provisions on the attached Affidavit Verifying Status:

(a) Provide at least one secure and verifiable document, as defined in Code Section 50-36-2;

(b) 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 _____

Spruill: Spruill Center for the Arts, Inc.

AUTHORITY: FACILITY AUTHORITY of Dunwoody, Georgia

By: _____

Signature

AUTHORITY Chair

AUTHORITY of Dunwoody, Georgia

Name (Typed or Printed)

Title

Federal Tax I.D. Number

ATTEST:

ATTEST:

Signature

AUTHORITY Clerk

Name (Typed or Printed)

Title

APPROVED AS TO FORM:

AUTHORITY Attorney Signature

Affidavit Verifying Status
for AUTHORITY Public Benefit Application

By executing this affidavit under oath, as an applicant for an AUTHORITY 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 AUTHORITY 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

*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 AUTHORITY

The AUTHORITY agrees to:

- a. Allow the non-exclusive use of the Facilities located thereon to SPRUILL under expressed terms and conditions set forth by the AUTHORITY herein for the purpose of conducting arts programming and related operations, including but not limited to classes, camps, special events, meetings, fundraisers, exhibits, rentals by third parties, and demonstrations for the promotion of art programs, community interest and welfare. If SPRUILL and AUTHORITY agree to terms for the use of the Facilities for other events, such use or uses shall be governed by separate agreement or agreements. SPRUILL shall be able to utilize the Facilities located thereon on Sundays-Saturdays from 7am-11pm. SPRUILL shall have authority to establish hours of operation for the Facilities, which may at times operate outside of normal hours.
- b. Upon request by SPRUILL or potential donors, AUTHORITY will provide written letters to potential donors confirming that the SPRUILL has the authority to manage and perform capital construction projects and other fundraising for the benefit of the Facilities and the public on behalf of the AUTHORITY.
- c. Provide:
 - i. general, standard, and customary maintenance of the Facilities located thereon, now or in the future, including but not limited to the Education Center buildings, pavilions, parking areas, public restrooms, and other associated structures and areas the responsibility for maintenance of which is not specifically assigned to the SPRUILL Center in this Agreement;
 - ii. maintenance of Facilities that have achieved LEED status that is consistent with any additional substantive LEED maintenance requirements;
 - iii. daily trash collection;
 - iv. daily cleaning of the Center's public restrooms, classrooms and offices as designated in Attachment B;
 - v. maintenance of the grounds, landscaping, parking areas, and other walkways, including tree removal as needed and weekly mowing and removal of yard debris; and
 - vi. payment of water, electric and gas utility bills associated with the Facility.
- d. Ensure that the Facilities located thereon comply at all times with all federal, state, county, municipal laws, regulations, ordinances and other governmental mandates.

II. OBLIGATIONS OF SPRUILL

SPRUILL agrees to:

- a. Provide programs in accordance with all guidelines set forth by the AUTHORITY, SPRUILL 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 AUTHORITY Property. SPRUILL agrees that any paid or unpaid 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 may constitute a material breach of this Agreement.

- b. Comply with all statutes, ordinances, rules, orders, regulations and requirements federal, state, county and city governments where applicable.
- c. Maintain the Facilities to include a clean programming space and exhibits and make minor Facility repairs needed to ensure a proper safe programming area.
- d. Maintain a schedule of all functions at the Facilities and submit a report if requested of all recorded functions of the previous year to the AUTHORITY each January to include date, use and number of participants.
- e. Adhere to all other provisions contained in this Agreement.

III. SPRUILL'S MAINTENANCE RESPONSIBILITIES

- a. SPRUILL is responsible for daily clean-up, placing litter in proper containers prior to leaving the Facilities after each function.
- b. SPRUILL shall obtain the prior written approval and consent from the AUTHORITY before making any repairs, improvements, additions or alterations to the Facilities; however, such approval shall not be unduly delayed or unreasonably withheld. All improvements, additions or alterations which may be approved shall become the property of AUTHORITY, 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 AUTHORITY can constitute cause for the termination of this Agreement as provided for above. Responsibility for the cost of repairs must be agreed upon prior to any action being taken. This paragraph shall be construed together with the termination provisions of this Agreement.
- c. SPRUILL is responsible for reporting all acts of vandalism to the Facilities to the AUTHORITY and the local Police Department within a reasonable time from discovery. A copy of the police report must be filed with the AUTHORITY.
- d. SPRUILL 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.
- e. The AUTHORITY or any 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. AUTHORITY may supervise any physical maintenance activities, as needed.

IV. SPRUILL'S SAFETY PRECAUTIONS

- a. SPRUILL 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 SPRUILL, the AUTHORITY has the right to cancel any scheduled activity when it is determined that such activity would damage the Facility. Persistent damage to the Facilities by SPRUILL will result in SPRUILL being prohibited from using the Facilities.

Attachment B

NORTH DEKALB CULTURAL CENTER
North Arts Center

Emergency evacuation chart with
exits and fire extinguisher
locations.

EXITS---Green
EXTINGUISHERS---Red

