

NON-EXCLUSIVE EASEMENT AGREEMENT

THIS NON-EXCLUSIVE EASEMENT AGREEMENT (“Easement”) is made as of this _____ day of _____, 2020, by and between the MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH (“**GRANTOR**”) a municipal corporation organized and existing under the laws of the State of Georgia, and the **UNITED STATES OF AMERICA**, acting by and through the ADMINISTRATOR OF THE GENERAL SERVICES ADMINISTRATION (“**GRANTEE**”). GRANTOR and GRANTEE are collectively referred to herein as the “Parties” and each individually as a “Party.”

RECITALS

WHEREAS, GRANTOR is the fee simple owner of the right-of-way abutting the planned Annex to the Tomochichi Federal Building and U.S. Courthouse as shown on Exhibit “A”, attached hereto and incorporated herein (the “Grantor Property”); and

WHEREAS, GRANTEE is the fee simple owner of the property located at 124 Barnard Street, Savannah, Georgia upon which the new Federal Courthouse Annex is being constructed to serve the Tomochichi Federal Building and U.S. Courthouse; and

WHEREAS, pursuant to the authority of Title 40, United States Code, Sections 581 and 3304, the GRANTEE seeks to acquire a perpetual surface easement on, the Grantor’s Property located in Savannah, Georgia, being the right-of-way abutting the planned Annex to the Tomochichi Federal Building and U.S. Courthouse, as more particularly depicted on **Exhibit “A”** (“**Easement Area**”), which is attached hereto and made a part hereof; and

WHEREAS, the parties expressly acknowledge and agree that this easement shall not be construed in such a manner as to afford GRANTEE any subterranean rights, including but not limited to any subterranean easement rights, notwithstanding the fact that certain of GRANTEE’s proposed surface installations may penetrate the ground to ensure they are properly and safely affixed to the surface; and

WHEREAS, GRANTOR is willing to grant the requested easement and is authorized to do so.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by this reference, and the terms and conditions set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. **Easement**: Subject to the terms and conditions set forth in this Easement, GRANTOR does hereby grant to and establish in favor of GRANTEE, its employees, and agents, a perpetual and non-exclusive surface easement on, the “Easement Area” as depicted in Exhibit A, free and clear from all liens, defects, and restrictions for the purpose of construction, installation, use, repair/maintenance, and replacement of improvements

including, but not limited to, at the option of the GRANTEE, stairs, building footings, ramps and railings, a granite veneer low wall, bollards, flag poles, bicycle racks, trees, tree grates, planting beds, irrigation, and planting bed subdrains on the Easement Area. The improvements will encroach various distances into the West Barnard Street, York Street and Whitaker Street rights-of-way, as depicted on Exhibit A. Upon completion of construction of the improvements referenced in this Easement, the GRANTOR and GRANTEE agree to amend this Easement to incorporate the survey and legal description of the Easement Area. The GRANTEE is responsible for the cost of and will provide the survey and legal description.

Maintenance of Easement Area: GRANTEE shall maintain the Easement Area, at GRANTEE'S sole cost and expense, in a state of good repair and in a safe condition, and in compliance with all applicable laws, consistent with its use and enjoyment by the GRANTEE.

2. Taxes. GRANTOR shall remain solely responsible for the payment of all real estate taxes and assessments on the Easement Area, subject only to the right to defer payment in a manner provided by law and/or in connection with a bona fide contest of such tax or assessment, so long as the rights of the other parties shall not be jeopardized by the deferring of payment.
3. Liability. GRANTEE is an agency of the Federal Government of the United States of America and is, in effect, self-insured. Accordingly, the GRANTEE's limitation of liability is subject to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-2680.
4. Environmental Conditions: If GRANTEE encounters any environmental conditions during the use of the Easement Area that warrant analysis, GRANTEE will notify GRANTOR of such discovery and GRANTOR and GRANTEE shall thereupon work cooperatively to resolve the environmental condition so encountered; provided, however, that nothing shall require GRANTEE to expend any money to correct any environmental condition, and if the parties cannot agree on a method to resolve, GRANTEE'S sole remedy shall be termination of this Easement pursuant to the terms hereof.
5. Counterparts: This Easement may be executed in multiple counterparts, each of which so executed and delivered shall be deemed an original, but all of which together shall constitute but one and the same instrument.
6. Effective Date: This Easement shall become effective as of the latest of the dates of execution by all signatories set forth below, and the effective date of this Easement shall be inserted on Page 1 hereof.
7. Severability of Provisions: If any term, covenant, or condition of this Easement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, then the remainder of this Easement or the application of such term, covenant or condition to any other person or circumstance shall not be affected thereby,

and each such term, covenant, and condition shall be valid and enforceable to the fullest extent permitted by law.

8. Recorded Instrument: The Parties agree that this Easement shall be recorded in the Land Records of Chatham County, Georgia.
9. Entire Easement: This Easement contains and embodies the entire agreement among the Parties with respect to the matters contained herein. The execution, delivery, and performance of this Easement have been duly authorized by all necessary actions of the Parties hereto. No modification of this Easement or any provision hereof will be effective unless reduced to writing and such document is signed by duly authorized representatives of the Parties and delivered to the others in accordance with the notice provisions of this Easement and recorded in the Land Records of Chatham County, Georgia. No waiver of any right or obligation hereunder will be effective unless reduced to writing and signed by a duly authorized representative of the Parties subject to such right or obligation.
10. Governing Law: This Easement will be governed by the Federal laws of the United States of America.
11. Benefits and Burdens: This Easement will be binding upon, and inure to the benefit of, the Parties. Any real property interest benefited or burdened by the terms of this Easement will be conveyed, sold, encumbered, leased, occupied, or otherwise used, improved or transferred, in whole or in part, subject to the terms of this Easement, and all of the rights and covenants contained in this Easement will run with the title to property of the GRANTEE and GRANTOR.
12. Notices: All notices and other communications relating to the Easement shall be in writing sent by certified or registered, return receipt requested, postage prepaid, United States mail, personal delivery, or by recognized, private, overnight courier which maintains evidence of delivery and addressed as follows:

If to the GRANTEE: General Services Administration
Attn: _____
Realty Services Division
77 Forsyth Street
Atlanta, Georgia 30303
Phone No. _____

If to the GRANTOR:
The Mayor and Aldermen of the City of Savannah
Attn: _____
Real Estate Services
P. O. Box 1027
Savannah, Georgia 31402

13. Waiver. No waiver of any breach of this Easement shall be implied from any omission to take any action in respect of such breach, whether or not such breach continues or is repeated. No express waiver of any breach shall affect any breach or cover any period of time other than the breach and period of time specified in such express waiver. One or more waivers of any breach in the performance of any term, provision, covenant, or agreement contained in this Easement shall not be deemed to be a waiver of any subsequent breach in the performance of the same term, provision, covenant, or agreement, or any other term, provision, covenant, or agreement contained in this Easement.
14. No Dedication. Nothing contained in this Easement shall be deemed to be a gift or dedication of any portion of real estate to the general public or for any public purpose whatsoever; it being the intention of the parties that the Easement shall be strictly limited to and for the purposes set forth in this Easement.
15. Relationship of Parties. The parties hereto from time to time shall have the relationship of grantor and grantee only, and shall not be deemed to be partners, co-venturers, principals, or agents of each other or otherwise in any manner associated.
16. Subordination. Any mortgage, deed of trust, or other lease hereafter granted or entered into with respect to the Grantor Property shall be subordinate and inferior to the easements, rights, benefits, and obligations created hereby, and the foreclosure under any such mortgage or deed of trust shall not extinguish or impair the easements, rights, benefits, and obligations created by this Easement.
17. Termination: This perpetual Easement shall remain in effect for so long as the improvements constructed upon remain in U.S. Government ownership. Should the Government transfer and/or convey the Federal Annex property to a private individual and/or entity, the Parties agree that this Easement shall be terminated. Upon termination, at its option, the GRANTEE may abandon its improvements and said improvements shall become the property of the GRANTOR. This Easement may be released only by and upon a signed agreement of the GRANTOR and GRANTEE.

[no further text—signatures follow]

IN WITNESS WHEREOF, the GRANTOR has caused this instrument to be executed
this ____ day of _____, 2020.

MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH

By: _____
Michael Brown, City Manager

Attest:

Mark Massey, Clerk of Council

IN WITNESS WHEREOF, the GRANTEE has caused this instrument to be executed
this ____ day of _____, 2020.

UNITED STATES OF AMERICA,
Acting by and through the General Services Administration

By: _____

Attest:

STATE OF GEORGIA)
) ss.
COUNTY OF Chatham)

On this ____ day of _____, 2020, before me, a Notary Public in and for said
County and State, personally appeared _____ to me personally known, who
states s/he is the _____ of the General Services Administration and s/he is duly
authorized in his/her capacity as _____ to execute the foregoing instrument for and
in the name and behalf of the corporation and further stated that he so signed, executed and
delivered said foregoing instrument for the consideration, uses and purposes therein mentioned
and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year
last above written.

NOTARY PUBLIC
My commission expires: _____

EXHIBIT A