Telfair Draft: 10.24.2023

Development and Limited Use Agreement

This agreement (“Agreement”) is entered into effective as of \_\_\_\_\_\_\_\_\_\_\_\_\_, 2023 (the “Effective Date”) by and between the Mayor and Aldermen of the City of Savannah, Georgia (the "City") and The Telfair Museum of Art, Inc. ("Telfair"), each a “Party” and collectively the “Parties.”

RECITALS

1. The City of Savannah is a municipal corporation of the State of Georgia.
2. Telfair is a non-profit corporation with tax exempt status from the Internal Revenue Service under Section 501(c)(3) of the United States Internal Revenue Code and was organized for the purpose of operating the Telfair Academy of Arts and Sciences, Owens-Thomas House, and Jepson Center for the Arts.
3. Telfair Square (the "Square") is an asset of the City located adjacent to the Telfair Academy of Arts and Sciences and the Jepson Center for the Arts.
4. Telfair desires to fund and execute a Master Plan for improving the Square to better serve the community as a public space and accommodate use by Telfair and the public for year-round programming.
5. The City and Telfair wish to formalize their mutual understanding concerning improvements to, use of and stewardship of the Square.

NOW THEREFORE, in consideration of the mutual covenants, promises and commitments herein, the Parties agree as follows:

1. Master Plan Development.
	1. Telfair will select and engage at its expense an urban design firm (the “Design Firm”) to develop a proposed master plan for the Square (the “Master Plan”).
	2. The Master Plan key features will include capital additions such as, but not limited to, the creation of pedestals for the placement of a select number of iconic and signature works of sculpture, a performance space, a visitor kiosk, upgrades to seating and signage in the Square, and improvements to the Square’s streetscape and sidewalks.
	3. While developing the Master Plan, Telfair and the Design Firm will collaborate with City staff and utilize an inclusive process for obtaining input from the City Council and residents throughout the City in each Aldermanic District.
	4. After obtaining input from stakeholders as described above, Telfair will present a Master Plan to the City for approval by the City Council (which approval shall not be unreasonably withheld, conditioned or delayed). Promptly following the City’s approval of the Master Plan, the project will move into the construction phase.
2. Master Plan Construction.
	1. Telfair, with City input (through its Park and Tree Director), will draft Requests for Proposal for construction of fixed improvements called for in the Master Plan. Telfair will distribute its Request for Proposals to potential bidders selected at its sole discretion.
	2. Telfair will seek the City's input (through its Park and Tree Director) during the bid review process; however, final selection of contractor(s) to construct the fixed improvements called for in the Master Plan is the sole right and responsibility of Telfair.
	3. Acquisition by Telfair of movable assets called for in the Master Plan (*e.g.,* sculptures, seating, signage) shall be at Telfair’s sole discretion and shall not require a bidding process.
	4. Telfair shall be the contracting party for all agreements concerning implementation of the Master Plan, including both construction of fixed improvements and acquisition of movable assets to be placed in the Square (collectively, the “Improvements”), and shall be responsible for the associated construction and acquisition costs.
	5. Title to all Improvements will vest in the City upon installation in the Square; provided, however, title to all art and related art exhibitions shall remain with Telfair.
	6. City responsibilities:
		1. The City will support issuance of all necessary City permits and other City approvals concerning the Improvements.
		2. The City agrees to consider in good faith and, if deemed appropriate, adopt the proposed Master Plan. If adopted, future projects for or improvements to the Square will be considered by the City in the context of the Master Plan.
		3. The City acknowledges that it does not have the authority to obligate the choice of vendor for development of the Master Plan, the scope of the Master Plan or vendors for the Improvements, as Telfair is an independent entity.
		4. The City will work closely with Telfair throughout the Master Planning process.
		5. The City will provide in a timely manner all information, maps, and documents requested by Telfair and/or its vendors supporting development and implementation of the Master Plan.
		6. The Parties agree that the City has no financial obligation to Telfair to fund the cost of development or implementation of the Master Plan, but nevertheless may contribute materials (*e.g.,* sidewalk bricks) as it has done on previous projects.
3. Post-Construction Maintenance and Modifications.
	1. Upon completion of construction pursuant to the Master Plan, the City shall assume responsibility at its expense for the maintenance and repair of the Square, including all Improvements, except for works of art designated by Telfair. Art so designated shall be maintained and repaired by Telfair. Except for routine maintenance (*e.g.,* mowing of grass, litter collection), the City (through its Park and Tree Director) will consult with Telfair in advance concerning proposed maintenance and repair of the Square, including Improvements.
	2. Telfair shall have the right at its expense, but not any obligation, to augment the City's maintenance of the Square, including Improvements, from time to time as Telfair deems necessary or desirable, subject to approval by the City (which approval shall not be unreasonably withheld conditioned or delayed).
	3. After completion of Master Plan construction, Telfair may, at its option and expense, make further modifications and improvements to the Square subject to any required approval by the City (which approval shall not be unreasonably withheld, conditioned or delayed), including but not limited to the planting of vegetation.
	4. In recognition of Telfair’s considerable investment in the Square’s Improvements and the extent to which the Square is integrated into Telfair’s streetscape and visitor experience, the City agrees to consult with the Telfair regarding any modifications to the Square during the Term of this Agreement which may necessary.
4. Use of Square.
	1. Telfair shall work closely with the City (through the offices of Park and Tree and Special Events, Film and Tourism) to coordinate the annual programming of the Square for events and other organized activities. The target for programming allocation is one-third for programs hosted by the City or booked by third parties through the City per 4(c) below, one-third for programs booked by Telfair and its partners and one-third unprogrammed.
	2. Telfair shall be entitled to reserve exclusive rights to use the Square at any time up to 24-months in advance for public or private activities at the Square (“Telfair Programing”), provided that Telfair Programing shall not exceed one-third of the days in any calendar month.
	3. The City will waive permitting and usage fees for all Telfair Programing, which may include, without limitation, public programming events.
	4. Third parties shall be entitled to reserve exclusive rights to use the Square at any time up to 12 months in advance on a first come, first served basis by booking these uses with the City (through the office of Special Events, Film and Tourism).
5. City Manager Approval. City and Telfair acknowledge and agree that they may need to execute one or more amendments to this Agreement in furtherance of its Purpose. The City hereby authorizes the City Manager to execute amendments to this Agreement that are in furtherance of the terms and conditions contained herein.
6. Term of Agreement. The term of this Agreement shall be for five (5) years following the Effective Date and the Telfair shall have nine (9) options to extend the term for an additional five (5) years (such that the initial term plus all option periods is fifty (50) years). Options shall renew automatically without any action be either Party unless, as determined in its sole discretion, Telfair provides written notice to the City at least ten (10) calendar days before expiration of the then-current term f Telfair’s intent not to renew.
7. Termination. The City acknowledges and agrees that Telfair’s ability to develop and implement the Master Plan is contingent on Telfair’s ability to obtain third-party contributions sufficient to fund such work. Accordingly, Telfair shall have the right to terminate this Agreement at any time by giving written notice thereof to the City and following such termination neither Party shall have any further obligation to the other hereunder.
8. Entire Agreement. There are no other agreements or understandings, either oral or written, between the parties affecting this Amendment or the subject matter covered by this Amendment, except as otherwise specifically provided for or referred to herein. No change or addition to, or deletion of, any portion of this Amendment shall be valid or binding upon the Parties hereto unless the same is approved in writing by the Parties.
9. Notices. Any notice to either party hereunder must be in writing signed by the party giving it, and shall be deemed given when mailed postage prepaid by the U.S. Postal Service first class, certified or express mail or other overnight mail service, or hand delivered, when addressed as follows:

To City:

City of Savannah

Attention: City Manager

City Hall

2 East Bay Street

Savannah, GA 31401

with a copy to:

City Attorney

Office of the City Attorney

2 East Bay Street, 3rd Floor

Savannah, GA 31401

To Telfair:

Other addressee(s) may also be hereafter designated by written notice. All such notices shall be effective only when received by the addressee.

1. Governing Law. This Agreement shall in all respects be governed by, and construed in accordance with, the laws of the State of Georgia without reference to rules regarding choice of law.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment under seal as of the day and year first above written.

THE TELFAIR MUSEUMS, INC. THE MAYOR AND ALDERMAN OF THE

 CITY OF SAVANNAH, a Georgia municipal

 Corporation

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Name: Joseph A. Melder

Title: Title: City Manager

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date :\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_