

Augusta Concrete Block Co.

P.O. Box 514 • Augusta, Georgia 30903 • Hamburg at 5th Street Bridge
Phone 803/279-7620 • Toll Free 1-800-46BLOCK • Fax 803/441-6467

25 September 2023

To: Augusta – Richmond County Commissioners

From: Jim Farmer – Augusta Concrete Block Co.

Re: Magnolia Cemetery wall repair

Commissioners,

My name is Jim Farmer and I am with Augusta Concrete Block Co. We have been in business since 1946 and have supplied numerous projects in and around Augusta. The CSRA has been very good to us for many years.

On a recent visit to Magnolia Cemetery, I noticed a section of the east wall had been literally pushed over, allowing anyone to walk right into the property. I thought it was a shame for the wall to be in that condition, so I decided to take on the project to repair it.

I contacted a masonry contractor, Willie Mims, who is also a good customer. He looked at the wall with me and we agreed on the scope of the work and other details.

The wall will be rebuilt as closely as possible to the original design. The brick will be cleaned and used again. A custom color mortar will be used to replicate the original color. All of the work will be done at no cost to the City.

Magnolia Cemetery is a special and historic place. The east wall is probably 160 years old. It deserves to be rebuilt and kept in good condition.

Thank you,

A handwritten signature in blue ink, appearing to read 'Jim Farmer', with a stylized flourish at the end.

Jim Farmer

President

Augusta Concrete Block Co.

**MEMORANDUM OF UNDERSTANDING BETWEEN
Jim Farmer – Augusta Concrete Block Co.
AND
THE PARKS AND RECREATION DEPARTMENT OF AUGUSTA, GEORGIA**

Memorandum of Understanding

between

The Augusta-Richmond County Commission
535 Telfair Street
Augusta, GA 30901
(Hereinafter “the Commission”)

and

Jim Farmer, Augusta Concrete Block Co.

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into on this 25th day of September, 2023, by and between AUGUSTA, GEORGIA (“Augusta”), a political subdivision of the State of Georgia and Jim Farmer, Augusta Concrete Block Co., (“Third Party”), known collectively as the “Parties,” and clarifies the roles and responsibility of the Parties for the purpose of accepting in-kind donations (the “Work”).

NOW, THEREFORE, for and in consideration of the mutual promises and the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

I. PURPOSE

The purpose of this Memorandum is to provide the framework for the understanding and cooperation between Augusta, Georgia, by and through the Parks and Recreation Department and J. Farmer, for the donation of in-kind labor and materials to repair wall at Magnolia Cemetery.

II. THE WORK

Augusta authorizes the Parks and Recreation Department to accept the labor and materials donation described herein.

III. OBLIGATIONS OF THE PARTIES

The Parties acknowledge that the Work is a joint project and both agree to work closely together to successful completion of the work.

- a. Obligations of Augusta:
 - i. **Permitting and Supervision** – Augusta, Georgia shall supply and provide such permissions and permits to conduct the Work. Augusta, Georgia shall supervise the Work as to their discretion. Augusta, Georgia shall not unreasonably withhold any permissions in order to accept the labor and materials and complete the work.
 - ii. **Donation Letters** – Augusta, Georgia shall supply, through its Finance Department, such letters demonstrating the acceptance of the labor and materials for federal, state, and local tax purposes upon request of J. Farmer.

- b. Obligations of Third Party:
 - i. **Donations of in-kind labor and materials** - The Third Party shall provide to the Work the labor and materials as described in Exhibit A, attached herein.
 - ii. **Subsidiary and Unexpected Expenses** – THIRD PARTY shall be solely responsible for paying or providing any expenses, labor, or materials sufficient to cover the Work contemplated under this paragraph, regardless of whether those expenses or provisions were described in Exhibit “A”.
 - iii. **Work Site Maintenance** – THIRD PARTY shall solely be responsible for maintaining and securing the physical locations where the Work is being conducted. Upon completion of the Work, or the termination of this MOU, THIRD PARTY must to its best ability return the location of the Work to a safe and usable environment by the general public. Augusta, Georgia shall be permitted to demand specific performance under this subclause, and this subclause shall survive the termination of the MOU.

IV. FUNDING

Unless specifically mentioned otherwise, nothing in this Memorandum of Understanding shall be interpreted as a commitment of funds by either Party. Augusta, Georgia shall not be obligated to provide any funding, materials, or labor except as explicitly and specifically provided in this Agreement.

V. TERM, TERMINATION, NOTICES.

The term of this MOU commences on the execution of this MOU by both parties and terminates absolutely and without further obligation on the part of Augusta, Georgia each and every December 31st, unless terminated earlier in accordance with the termination provisions of the Agreement. The term of this agreement automatically renews on each January 1st, unless terminated in accordance with the termination provisions of the MOU. This MOU may be

terminated upon thirty (30) days' written notice by either Party. This MOU shall terminate automatically, with no further extensions, four (4) years' after the execution of the MOU by both Parties. .

All notices, demands and requests which may be required to be given from one party to the other shall be in writing and shall be deemed to have been properly given when postage sent prepaid by registered and certified mail (with return receipt requested) addressed as follows:

If intended for Jim Farmer – Augusta Concrete Block Co:

Jim Farmer
Augusta Concrete Block Co
P.O. Box 514
Augusta, GA 30903

If intended for Augusta, Georgia:

Office of Mayor
Attn: Garnett L. Johnson
535 Telfair St. Suite 200
Augusta, GA 30901

Copy:

Augusta Parks & Recreation Department
Attn: Director Maurice McDowell
2027 Lumpkin Road
Augusta, GA 30906

VI. INDEMNIFICATION, INSURANCE, INSPECTION

THIRD PARTY agrees to indemnify and hold harmless Augusta, Georgia, its officers, agents, and employees from any and all claims in any way related to or arising out of any damage or injury to property or persons, occurring or allegedly occurring during or having any relation to the Work, including reasonable attorney's fees and expenses of litigation incurred by Augusta, Georgia in connection therewith. Without limiting the foregoing, THIRD PARTY further agrees to maintain at all times during said period, at THIRD PARTY's expense, comprehensive and general public liability insurance coverage against claims for personal injury, death and/or property damage occurring in connection with the Work sufficient to cover claims subject under this paragraph. THIRD PARTY shall permit, upon reasonable demand, Augusta, Georgia to inspect the Work, any physical locations in connection with the Work, and such papers, documents, and/or data held by THIRD PARTY in connection to the Work.

V. GENERAL TERMS

1. The law of the State of Georgia shall govern the MOU between Augusta and THIRD PARTY with regard to its interpretation and performance, and any other claims related to this MOU. All claims, disputes and other matters in question between Augusta and THIRD PARTY arising out

of or relating to the MOU, or the breach thereof, shall be decided in the Superior Court of Richmond County, Georgia. THIRD PARTY, by executing this MOU, specifically consents to jurisdiction and venue in Richmond County and waives any right to contest the jurisdiction and venue in the Superior Court of Richmond County, Georgia.

2. THIRD PARTY acknowledges that this contract and any changes to it by amendment, modification, change order or other similar document may have required or may require the legislative authorization of the Board of Commissioners and approval of the Mayor. Under Georgia law, THIRD PARTY is deemed to possess knowledge concerning Augusta's ability to assume contractual obligations and the consequences of THIRD PARTY's provision of goods or services to Augusta under an unauthorized contract, amendment, modification, change order or other similar document, including the possibility that THIRD PARTY may be precluded from recovering payment for such unauthorized goods or services. Accordingly, THIRD PARTY agrees that if it provides goods or services to Augusta under a contract that has not received proper legislative authorization or if THIRD PARTY provides goods or services to Augusta in excess of any contractually authorized goods or services, as required by Augusta's Charter and Code, Augusta may withhold payment for any unauthorized goods or services provided by THIRD PARTY. THIRD PARTY assumes all risk of non-payment for the provision of any unauthorized goods or services to Augusta, and it waives all claims to payment or to other remedies for the provision of any unauthorized goods or services to Augusta, however characterized, including, without limitation, all remedies at law or equity.

3. The terms of this MOU supersede any and all provisions of the Georgia Prompt Pay Act.

5. This MOU shall supersede any and all previously executed agreements between the parties.

6. This MOU constitutes the final agreement between the parties. It is the complete and exclusive expression of the parties' agreement on the matters contained in this MOU. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this MOU are expressly merged into and superseded by this MOU. The provisions of this MOU cannot be explained, supplemented or qualified through evidence of trade usage or a prior course of dealings. In entering into this MOU, neither party has relied upon any statement, representation, warranty or agreement of any other party except for those expressly contained in this MOU. There are no conditions precedent to the effectiveness of this MOU, other than any that are expressly stated in this MOU.

7. In the event that the terms and conditions of this MOU are not strictly enforced by either party, such non-enforcement will not act as or be deemed to act as a waiver or modification of this MOU, nor will such non-enforcement prevent such party from enforcing each and every term of this MOU thereafter.

8. If any term or provision of this MOU is held invalid or unenforceable, the remainder of this MOU will be considered valid and enforceable to the fullest extent permitted by law.

9. This relationship is intended solely for the mutual benefit of the parties hereto, and there is no intention, express or otherwise, to create any rights or interests for any party or person other than THIRD PARTY and Augusta; without limiting the generality of the foregoing, no rights are intended to be created for any student, parent or guardian of any student, spouse, next of kin, employer, prospective employer, or any other third party.

10. Neither party, or its agents or employees, is an agent, employee, or servant of the other party.

11. Except as otherwise provided in this MOU, THIRD PARTY may not transfer, sell, or otherwise contract with any other person or organization its obligations or responsibilities in this MOU without prior approval of Augusta, Georgia.

12. "Force Majeure Event" means any act or event that (a) prevents a party (the "Nonperforming Party") from performing its obligations or satisfying a condition to the other party's (the "Performing Party") obligations under this MOU, (b) is beyond the reasonable control of and not the fault of the Nonperforming Party, and (c) the Nonperforming Party has not, through commercially reasonable efforts, been able to avoid or overcome. If a Force Majeure Event occurs, the Nonperforming Party is excused from the performance thereby prevented and from satisfying any conditions precedent to the other party's performance that cannot be satisfied, in each case to the extent limited or prevented by the Force Majeure Event. When the Nonperforming Party is able to resume its performance or satisfy the conditions precedent to the other party's obligations, the Nonperforming Party shall immediately resume performance under this MOU. The relief offered by this paragraph is the exclusive remedy available to the Performing Party with respect to a Force Majeure Event. A Force Majeure Event includes, but is not limited to: epidemics, pandemics, declared national, state, local states of emergency, hurricanes, tornadoes, floods, severe and unexpected acts of nature, or the availability of funds in the budget of Augusta.

13. THIRD PARTY affirms and states that it is receiving no benefit whatsoever from the Work as described in this Agreement.

IN WITNESS WHEREOF, the Parties state and affirm that they are duly authorized to bind the respected entities designated below as of the day and year indicated.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, a duly authorized representative of each party has executed this MOU as of the date(s) set forth below.

Jim Farmer

Augusta, Georgia

By:  _____

By: _____

Name: Jim Farmer

Name: Garnett L. Johnson

Title: President, Augusta Concrete Block Co

Title: Mayor

Date: 25 September 2023

Date: _____