

**AUGUSTA, GEORGIA
AND
SUSAN CALHOUN PUND PARK TRUST**

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU" or "Agreement") is made and entered into this _____ day of _____, 2024, (the "Effective Date") between Augusta, Georgia ("Augusta"), a political subdivision of the State of Georgia, and Susan Calhoun Pund Park Trust ("Trust"), known collectively as the "Parties," to accept and utilize the bequest and assist the completion of the operation and termination of the Trust.

WHEREAS, Augusta, Georgia is a beneficiary of the SUSAN CALHOUN PUND PARK TRUST, established by instrument dated August 27, 2015, by and between Susan Calhoun Pund Park, as Donor (the "Donor"), and Susan Calhoun Pund Park, as original Trustee, and of which Oliver F. Ames, Jr. and Antonia M. Pollak are the current Trustees (such current trustees referred to hereafter as the "Trustees");

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES DESCRIBED IN THIS MOU, THE ADEQUACY AND SUFFICIENCY OF WHICH EACH PARTY ACKNOWLEDGES, EACH OF THE PARTIES AGREE AS FOLLOWS:

1. *Acknowledgement of Interest.* Augusta acknowledges that it is a beneficiary under Paragraph (A)(11) of Article 5 of said Trust entitled to a distribution of the trust property in the amount of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00), plus, in accordance with MGL c. 190B, sec. 3-904, interest at Four Percent (4.0%) per annum, for the number of days elapsed between the one-year anniversary of the Donor's death (i.e., February 25, 2023) and the date on which the distribution is mailed to the undersigned.
2. *Acknowledgement and Acceptance of Accounts.* Augusta waives any right to an accounting by the Trustees relative to all activities performed by the Trustees with respect to the administration of the Trust from the establishment of the Trust until its said termination. Augusta affirms that it has had the opportunity to review the Trustees' records of the administration of the Trust to the extent that it wishes to do so.
3. *Waiver of Court Proceeding.* The Trustees agree to waive a court proceeding for the allowance of the accounts relative to the Trust (unless it should at any time be advisable in their opinion to account formally or to any party other than the undersigned), thereby eliminating the expense and delay of a formal court proceeding.

4. *Consent to Actions.* Augusta consents to and approves all of the Trustee's actions relating to the Trust, including without limitation actions (or non-actions) regarding the investment, administration, and distribution of the trust property, whether or not reflected in any account statements, from the inception of the Trust through the date of this Agreement.
5. *Release of Claims.* Augusta, on behalf of itself and its successors, assigns, and legal representatives (and anyone claiming by or through it), hereby releases the Trustees, individually and in their capacity as Trustees of the Trust, and their agents, legal and other representatives, attorneys, successors and assigns, from any and all claims and demands that the undersigned has or may have against the Trustees as aforesaid, arising from or relating in any way to actions or inactions of the Trustees with respect to the Trust, whether or not reflected in the account statement referenced above or in any other account statements, from the inception of the Trust and through the date of this Agreement.
6. *Acknowledgement of Effect of Release.* Augusta understands and acknowledges that, as a result of signing this Agreement, Augusta and its successors, assigns, and legal representatives (and anyone claiming by or through it) will have no right to bring any claim of any kind against the Trustees in connection with the administration of the Trust and during the period from the creation of the Trust through the date of this Agreement. Augusta further acknowledges that it was given the opportunity to have this Agreement reviewed by independent legal counsel on its behalf and was aware of and had knowledge of all material facts relative to this Agreement.
7. *Refunding.* To the extent of any distribution received, Augusta agrees to refund to the Trustees any portion of the distribution from the Trust to which is not properly entitled, even if distributed through negligence.
8. *Indemnification.* To the extent of any distribution received, Augusta agrees that it will exonerate and reimburse the Trustees as Trustees of the Trust for and in respect of any and all claims and liabilities (including, but not limited to, reasonable attorney fees) which may be asserted against the Trustees arising on account of, or in any manner connected with, the administration of the Trust, the distribution to Augusta and any other matters covered by this Agreement, brought by or on behalf of itself, anyone claiming by or through it, or any other person or entity; provided, however, that: (1) Augusta's liability under this paragraph shall only apply to the extent that such claims and liabilities against the Trustees cannot be paid from the residue of the Trust, (2) that the Beneficiary's share of such claims and liabilities shall not exceed two and seven-tenths percent (2.7%) of the total amount of the claims and liabilities or the value of the distribution, whichever is lesser, and (3) Augusta shall not be required to exonerate and reimburse the Trustees for any claims and liabilities, and related

attorneys' fees, arising from or in any way connected with acts of negligence or breaches of fiduciary duty committed by the Trustees in the administration of the Trust.

9. *Governing Law and Intent to Bind.* The Parties hereby declare it to be their intent that this Agreement shall be governed by the laws of the Commonwealth of Massachusetts which laws govern the Trust, and shall be legally binding on the undersigned, its successors, assigns, and legal representatives (and anyone claiming by or through it). If any provision of this Agreement is held to be invalid or unenforceable, it shall not affect the validity or enforceability of any other provision.
10. *No Assignment.* The Parties represent that, to the date of this instrument, it has not assigned, alienated, transferred or in any way encumbered its right, title, and interest in and to the distribution described in this Agreement.
11. The Trust and Trustees 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, the Trust and Trustees are deemed to possess knowledge concerning Augusta, Georgia's ability to assume contractual obligations and the consequences of the Trust and Trustees provision of goods or services to Augusta, Georgia under an unauthorized contract, amendment, modification, change order, or other similar document, including the possibility that the Trust and Trustees may be precluded from recovering payment for such unauthorized goods or services. Accordingly, the Trust and Trustees agree that if it provides goods or services to Augusta, Georgia under a contract that has not received proper legislative authorization or if the Trust and Trustees provide goods or services to Augusta, Georgia in excess of the any contractually authorized goods or services, as required by Augusta, Georgia's Charter and Code, Augusta, Georgia may withhold payment for any unauthorized goods or services provided by the Trust and Trustees. The Trust and Trustees assume all risk of non-payment for the provision of any unauthorized goods or services to Augusta, Georgia, and waive all claims to payment or to other remedies for the provision of any unauthorized goods or services to Augusta, Georgia, however characterized, including, without limitation, all remedies at law or equity.

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.

SUSAN CALHOUN PUND PARK TRUST

Augusta, Georgia

By: 

By: _____

Name: OLIVER F AMES, JR.

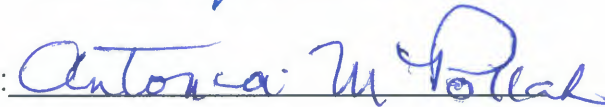
Name: Garnett L. Johnson

Title: Trustee

Title: Mayor

Date: 4/25/24

Date: _____

By: 

Name: ANTONIA M. POLLAK

Title: Trustee

Date: 4/24/24

Attest: _____
Lena J. Bonner, Clerk of Commission

Address for Notices:

SUSAN CALHOUN PUND PARK TRUST
c/o Casner & Edwards, LLP
303 Congress Street, 2nd Floor
Boston, MA 02210

Address for Notices:

Augusta, Georgia
535 Telfair Street, Suite 200
Augusta, GA 30901
Attention: Mayor Garnett Johnson

With copies to:

Augusta PRD
2027 Lumpkin Rd
Augusta GA 30906

General Counsel

Augusta Law Department
535 Telfair Street, Bldg 3000
Augusta, GA 30901