MEMORANDUM

TO: Mayor and City Council, City of Augusta

FROM: Stephen E.F. Langsdorf
       Corporation Counsel

DATE: November 18, 2019

RE: Matching Gift Agreement Between Robert G. Fuller, Jr. and City of Augusta

I am attaching a Matching Gift Agreement I negotiated with Mr. Fuller and his attorneys.

It has been executed by Mr. Fuller and is subject to approval by the Council at the November 21, 2019 meeting.

The Agreement provides as follows:

1.) Mr. Fuller has agreed to provide up to $500,000 in matching funds to be used for the restoration of the Cony High School Alumni field.

2.) The Agreement provides that Mr. Fuller will match cash contributions, as well as the fair market value of in kind contributions, including services such as engineering and construction services, and materials.

3.) Once the total value of all contributions received equals or exceeds $600,000 ($300,000 donated by Mr. Fuller and $300,000 contributed), the Council will acknowledge the gift by renaming “Alumni Field” at Cony High School to “Fuller Field” with appropriate signage.

4.) The Agreement is set up so that once the City receives $100,000, it will document that and request the first payment from Mr. Fuller. The process will be repeated for each $100,000 received in contributions through money, services or goods.

5.) The Agreement is valid for up to 5 years, but may be extended by written agreement with the donor. It is binding upon Mr. Fuller’s heirs and assigns.

I would be pleased to answer any further questions regarding the Agreement at the Council meeting on November 21, 2019.
MATCHING GIFT AGREEMENT

This Matching Gift Agreement ("Agreement"), effective as of ________, 2019 ("Effective Date"), is made and entered into by and between ROBERT G. FULLER, JR., whose address is 11215 Seven Locks Road, Apartment 300, Potomac, Maryland 20854-3260 ("Donor"), and the CITY OF AUGUSTA, MAINE (the "City"), as more particularly described below.

RECITALS

WHEREAS, the Fuller family name has long been associated with the City, beginning in the nineteenth century when Pauline Cony, daughter of the Hon. Daniel Cony, married Frederic Fuller; and

WHEREAS, the Fuller family counts among its members Henry Weld Fuller, Jr., the lawyer for the Plymouth Proprietors, who later served as Kennebec County Judge of Probate, Melville Weston Fuller, the eighth Chief Justice of the United States and Horace Williams Fuller, lawyer and editor, all born in the City; and

WHEREAS, the Fuller family, though long absent from the City, has retained considerable affection for it over the years and desires to maintain it in a manner befitting the capital of the State; and

WHEREAS, the Donor has heretofore been the only Fuller of his generation to have resided in the City; and

WHEREAS, during his tenure as a resident, the Donor contributed to numerous educational, cultural, eleemosynary and historical organizations within the City whose purposes were and are devoted to the betterment of the City; and

WHEREAS, the Donor, subject to the terms and conditions hereinafter set forth, desires to make a charitable gift (hereinafter defined as the "Gift") to the City, for the use and benefit of its inhabitants, which will not only enhance the City’s educational facilities for the beterment of its youth but also perpetuate the Fuller name and recognize in a tangible fashion its intertwinement, over the years, in the life of the City; and

WHEREAS, the Donor has determined that the Gift hereinafter described will, in his judgment, not only achieve his wishes but also will perpetuate the memory of the Hon. Daniel Cony, an outstanding citizen of the City during its formative years who took interest in educating the City’s youth; and

WHEREAS, Donor wishes to make the charitable Gift to the City for the use and benefit of the City subject to the terms and conditions set forth in this Agreement; and

WHEREAS, The City desires to accept such gift, subject to the terms and conditions set forth in this Agreement.

NOW THEREFORE, this Agreement sets forth the conditions of a prospective philanthropic Gift of up to Five Hundred Thousand and 00/100 Dollars ($500,000.00) from
Donor to the City in support of the City’s charitable and educational purposes. The Donor’s Gift will be a matching Gift requiring the City or a charitable nonprofit organization that is exempt from Federal income tax under Section 501(a) of the Internal Revenue Code as an organization described in Section 501(c)(3) of the Code (the “Nonprofit”) designated by it to raise additional funds in support of the Project, as the term “Project” is defined in Section 6 herein, all as set forth below.

AGREEMENT

The undersigned parties agree as follows:

1. **Gift.** Donor hereby pledges to the City the following gift, subject to the terms and conditions set forth in this Agreement below a sum not to exceed $500,000.00 (“Gift”) solely for completion of the Project as defined in Section 6 below.

2. **Conditions Precedent to Partial Payments of the Gift.** The Gift is an irrevocable pledge that will be paid to the City, provided that the conditions precedent to each partial payment as described in the table below have been met. Partial payments in support of the Gift will be made only upon provision by the City of proof of satisfaction of the conditions precedent in accordance with the provisions of Section 4 below.

<table>
<thead>
<tr>
<th>Condition Precedent to Donor Partial Payment</th>
<th>Amount of Donor Partial Payment</th>
<th>Total Value of All Contributions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Creation or designation of a Nonprofit organization to be operated and/or overseen by the City for the purpose of fund raising and soliciting contributions for the Facility (as defined in Section 8. herein) and proof of receipt of $100,000 in charitable contributions for the Project</td>
<td>$100,000</td>
<td>$200,000</td>
</tr>
<tr>
<td>Proof of receipt of another $100,000 in charitable contributions for the Project, for a total of $200,000 raised by the Nonprofit.</td>
<td>$100,000</td>
<td>$400,000</td>
</tr>
<tr>
<td>Proof of receipt of another $100,000 in charitable contributions for the Project, for a total of $300,000 raised by the Nonprofit.</td>
<td>$100,000</td>
<td>$600,000</td>
</tr>
<tr>
<td>Proof of receipt of another $100,000 in charitable contributions for the Project, for a total of $300,000 raised by the Nonprofit.</td>
<td>$100,000</td>
<td>$800,000</td>
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<tr>
<td>Proof of receipt of any additional charitable contributions, for the project received no later than five (5) years from the date of this Agreement, unless extended by mutual written agreement of the undersigned parties.</td>
<td>$100,000</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

3. **Method of Payment.** Payments shall be paid by Donor to the City or the Nonprofit via check, electronic funds transfer, marketable securities or other methods acceptable to the City. Upon receipt of any Donor payment, the City will provide the Donor with a receipt stating that no goods or services were provided to the Donor in exchange for the gift payment. Donor is not obligated to make partial payments in support of the Gift until the applicable condition precedent to such partial payment has been met; provided, however, if the initial condition precedent is not met within three years from the Effective Date of this Agreement, Donor may decline to make the Gift at his option. Once the conditions precedent to a partial payment have been met or partial payments in support of the Gift have been made, the obligation is unconditional and irrevocable and Donor is obligated under this Agreement to pay in full such partial payment of the Gift.

4. **In-Kind and Noncash Contributions.** In addition to cash donations, the City may solicit and collect in-kind and other noncash contributions of services, tangible property (such as building materials that may be used to construct the Facility or vehicles, artwork, jewelry, etc. that may be sold for cash), and intangible property (such as stocks, bonds and the like) in order to satisfy the conditions precedent set forth above. In-kind contributions will be valued at the fair market value of goods and services committed, based on the price that the property or services would sell for on the open market between a willing buyer and seller, with neither being required to act, and both having reasonable knowledge of the relevant facts. The parties will document the fair market value of goods and services committed consistent with Internal Revenue Service Publications 526 (Charitable Contributions), 561 (Determining the Value of Donated Property) and Form 8283 (Noncash Charitable Contributions).

5. **Requests for Payment.** When a condition precedent has been satisfied, the City will be required to request in writing the Donor’s matching payments by submitting a letter to the Donor at the address set forth on the signature page of this Agreement. Each such request shall include a statement from an authorized representative of the City and/or the Nonprofit affirming that a condition precedent donation has been received to justify the partial payment requested. Satisfactory evidence of such payment received toward the
matching challenge will include a summary spreadsheet listing individual grant and
donation amounts, the fair market value of all in-kind and noncash contributions, and
other revenue sources. In his sole discretion, the Donor will reserve the right to request
additional documentation, including, but not limited to, copies of bank statements, donor
checks, gift receipts acknowledging payment of funds by donors, copies of batch deposit
slips evidencing deposit of donor funds received, and supporting documentation relating
to in-kind and noncash contributions. Any such information may be "de-identified" to
preserve the confidentiality of other donors to the Project. The Donor will make
matching gift contributions within ten (10) business days of the request for payment by
the City, in conformance with the provisions described herein.

6. **Use of the Gift.** The Gift shall only be used for the Coney High School Alumni Field
restoration project (the "Project"). The Donor's gift will be used by the City for
educational, charitable, and tax-exempt purposes, it being the intent of the parties that the
Donor’s gift hereunder be tax-deductible under the Internal Revenue Code, as amended,
subject to generally-applicable restrictions (such as those based on the Donor’s adjusted
gross income). The Donor and the City agree that any use or disposition of the matching
funds hereunder will be in compliance with any applicable rules or regulations under the
Internal Revenue Code, as amended.

7. **Reporting Conditions.** The City will provide, no less than quarterly, an update on the
fundraising and other solicitation efforts of the Nonprofit's and the City's progress
towards meeting the conditions precedent described in Paragraph 2 above. The Donor
reserves the right to request other reasonable, relevant information and the City and the
Nonprofit will agree to provide such information to the extent available.

8. **Acknowledgement.** Once the total value of all contributions equals or exceeds $600,000
(meaning $300,000 has been contributed by Donor and $300,000 has been contributed by
the City or Nonprofit), and not before, the City will acknowledge the Gift by renaming
“Alumni Field” at Coney High School, in Augusta, Maine (the “Facility”) to “Fuller
Field” and will erect signage in the form consented to by the Donor, which consent shall
not be unreasonably withheld, conditioned, or delayed, acknowledging the new name (the
“Naming”). Subject to the terms of this Agreement, the Naming will last for the useful
life of the Facility.

9. **Termination of Naming.** In addition to any rights and remedies available at law, the
City may terminate this Agreement and all rights and benefits of the Donor hereunder,
including terminating the Naming:

a. In the event of any default in payment of the Gift as provided in this Agreement; or
b. In the unlikely event the City determines in its reasonable and good faith opinion that
circumstances have changed such that the Naming chosen by the Donor would
adversely impact the reputation, image, mission or integrity of the the City or Coney
High School.

Upon any such termination of this Agreement and/or the Naming hereunder, the City
shall have no further obligation or liability to Donor and shall not be required to return
any portion of the Gift already paid. The City, however, may in its sole and absolute
discretion determine an alternative recognition for the portion of the Gift already received.

10. Modification of Naming. If during the useful life of the Facility, the Facility is transferred or conveyed from the City, closed, deconstructed, destroyed or severely damaged, significantly renovated, upgraded, or modified, relocated, or replaced, then the Naming will cease. In such event, however, the Donor, if available, and in consultation with and as mutually agreed by the City, will have the right, for no additional payment, to have another available and equivalent City facility named after the Donor.

11. Publicity. Subject to and with the consent of the Donor, which may not be unreasonably withheld, conditioned or delayed, of the Donor, or, if the Donor is deceased, of the personal representative named in his Will, for purposes of publicizing the Gift and the Naming, the City will have the right, without charge, to photograph the Donor and use the names, likenesses, and images of the Donor in photographic, audiovisual, digital or any other form of medium (the “Media Materials”) and to use, reproduce, distribute, exhibit, and publish the Media Materials in any manner and in whole or in part, including in brochures, website postings, informational and marketing materials, and reports and publications describing the City’s development and business activities.

12. Successors, Heirs and Assigns. This Agreement shall be binding upon the City and its successors and the undersigned Donor and his heirs, executors, administrators, successors, personal representatives, transferees, assigns, agents and attorneys. Donor will establish and maintain a will and shall instruct Donor’s personal representative and heirs to pay all charitable pledges made by Donor in writing prior to his death, including those made in this Agreement. This paragraph is intended to and shall constitute an agreement to make a will or devise. This Agreement and the benefits and obligations hereunder may not be assigned by either party without the prior written consent of the other party, which consent shall be in the sole and absolute discretion of the non-assigning party. If the Donor, during his lifetime, should be adjudged incompetent or is unable to carry out his obligations hereunder, the City and the Donor mutually agree that the following named individual, or such other individual or entity which such individual shall appoint in writing and given to the City, shall act as the Donor's attorney-in-fact for the purposes of doing so.

Peter P. Brown, Principal
Welch & Forbes
45 School Street
Boston, Massachusetts 02108
pbrown@welchforbes.com
617-523-1635

Moreover, following the death of the Donor, the Donor's duly qualified, appointed and acting personal representative shall assume the burden of carrying out in full such obligations on behalf of the Donor's estate.
13. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with regard to the matters referred to herein, and supersedes all prior oral and written agreement, if any, of the parties in respect hereto.

14. **Modification.** This Agreement may not be modified or amended except by written agreement executed by all of parties hereto.

Any modification request or proposed amendment to this Agreement shall be sent by the Donor to the City at the following address:

**Attention:** William Bridgeo, City Manager  
City Manager's Office  
City of Augusta  
16 Cony Street  
Augusta, ME 04330  
william.bridgeo@augustamaine.gov

A courtesy copy of any request by the Donor for modification or a proposed amendment shall be sent to:

Stephen E. F. Langsdorf, Esq.  
PretiFlaherty  
45 Memorial Circle  
P.O. Box 1058  
Augusta, ME 04332-1058  
SLangsdorf@preti.com

Any modification request or proposed amendment to this Agreement shall be sent by the City to the Donor at the following address:

Robert G. Fuller, Jr.  
11215 Seven Locks Road  
Apartment 300  
Potomac, Maryland 20854-3260  
Tigerbob61@aol.com

A courtesy copy of any request by the City for modification or a proposed amendment shall be sent to:

Christine M. Sorge, Esquire  
Selzer Gurvitch Rabin Wertheimer & Polott, P.C.  
4416 East West Highway, Fourth Floor  
Bethesda, Maryland 20814  
(301) 634-3129  
csorge@sgrwlaw.com
15. **Captions.** The captions inserted in this Agreement are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

16. **Governing Law and Venue.** This Agreement will be governed by and construed in accordance with the laws of the State of Maine without regard to any conflict of laws rule or principle that might refer the governance or construction of this Agreement to the laws of another jurisdiction. Any legal proceeding brought in connection with disputes relating to or arising out of this Agreement will be filed and heard in Kennebec County, Maine, and each party waives any objection that it might raise to such venue and any right it may have to claim that such venue is inconvenient.

17. **City Council Approval.** This Agreement and the recognition and Naming provided for herein are subject to the approval by the Augusta City Council on or before December 31, 2019 and this Agreement will not be effective unless and until approved in writing by the City Council. Evidence of such approval shall be attached hereto as Exhibit “A” and shall be incorporated herein by this reference as a material part of this Agreement.

*Remainder of this page intentionally left blank. Signature page follows.*
IN WITNESS WHEREOF, the Donor has set his hand and the City has caused this Agreement to be executed in its corporate name and behalf and its corporate seal to be hereunto affixed by William Bridgeo, its City Manager thereunto duly authorized by vote of its City Council at which a quorum was present throughout and during the vote, have executed this Agreement, intending to be legally bound thereby, in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument as of the Effective Date hereof.

DONOR

Witness
Name: Robert G. Fuller, Jr.

CITY OF AUGUSTA

Witness
Name: William Bridgeo
Title: City Manager

Approved as to Form

Stephen E.F. Langsdorf
Corporation Counsel

[Remainder of this page intentionally left blank. Donor's contact information follows.]