

ESCROW AGREEMENT

THIS ESCROW AGREEMENT is made by and between the Falmouth Land Trust, (“FLT”) and the Town of Falmouth, Maine (the “Town”).

WHEREAS, the parties hereto are parties to a Memorandum of Understanding, of near or even date herewith (the “MOU”); and

WHEREAS, in Section 1 of the MOU, the Town has agreed to deposit the sum of fifty thousand dollars (\$50,000) into escrow (the “Escrowed Funds”) to reimburse FLT for demolition of unsound structures on the Property (as defined below) (the “Demolition Work”) and for FLT’s further stewardship and maintenance of the Property; and

WHEREAS, in Section 1 of the MOU, FLT and Town have agreed to the terms of release of said funds;

Now, therefore, in consideration of the mutual covenants and agreements set forth herein, the parties agree as follows:

1. Escrowee. The Treasurer of the Town of Falmouth is appointed Escrowee. Escrowee shall hold and safeguard the funds deposited in the escrow account until this Agreement shall terminate and shall treat such funds as a trust fund in accordance with the terms hereof.

2. Establishment of Escrow Account. The Town herewith agrees to deliver to Escrowee the Escrow Funds, receipt of which is hereby acknowledged by the Escrowee. Escrowee shall hold the Escrow Funds in an interest bearing market rate account. The Escrow Funds are provided by the Town for the use of FLT for the management of the conservation easement for the protected property at Tidewater Farms and on the portion of Tidewater Farms

known as TF2 and TF3 (“the Property”), and more specifically for the Demolition Work, as outlined in Section 1 of the MOU. The parties agree that by entering into this Agreement the Town is not obligating itself to pay for or contribute to the cost of any future management of the conservation easement, other than with the Escrow Funds and the wetlands mitigation funds sharing pursuant to Section 2 of the MOU.

3. Payment of Escrow Funds Upon Termination of Agreement. This Agreement shall expire 1 year after the execution of this Agreement, and the balance of the Escrow Funds and interest shall be paid to the Town upon expiration unless earlier paid to the FLT under Paragraph 4 below.

4. Disbursements. The Escrowee is instructed to make disbursements of the Escrowed Funds as follows:

(a) as directed by a written request signed by FLT and the Town Manager, within five (5) business days of receipt, jointly directing the disbursement of the Escrowed Funds to FLT as reimbursement for the Demolition Work, in which case the entirety of the Escrowed Funds will be released and disbursed to FLT, regardless of whether the actual amount expended by FLT to complete the Demolition Work is equal to or greater than the Escrowed Funds;

(b) to the Town as directed in Section 3, in the event that no written request for reimbursement is delivered to Escrowee within the period described in Section 3;

(c) as otherwise directed by joint written instructions signed by FLT and Town; or

(d) as directed by a court having determined the rights of the parties to the Escrow Funds.

Following the disbursement of the Escrow Funds pursuant to this Section, this Agreement shall thereafter terminate and all rights and obligations of the Escrowee will be deemed to have been satisfied.

5. Escrowee Liability. The sole duty of the Escrowee is to receive the Funds from the Town and to hold the Escrow Funds for payment or disbursement according to Sections 3 and 4 above. Escrowee shall not incur any liability for any act taken or omitted hereunder whether in his or her individual or personal capacity, except for gross negligence or willful misconduct. Escrowee may rely fully upon the written certifications of the Town Manager made in accordance with this Agreement.

6. Notices. All notices, certifications, requests and other communications hereunder shall be made in writing, addressed as follows:

To Falmouth Land Trust

Falmouth Land Trust
Attn: Executive Director
P.O. Box 6172
Falmouth, Maine 04105

To the Town:

Town Manager
Town of Falmouth
271 Falmouth Road
Falmouth, Maine 04105

To the Escrowee:

Town Treasurer
Town of Falmouth
271 Falmouth Road
Falmouth, Maine 04105

7. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

8. This Agreement may not be changed or modified except as agreed in writing signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors and assigns.

9. Governing Law. This Agreement shall be governed by the laws of the State of Maine.

10. Effective Date. This Agreement shall take effect on the latest date of execution by FLT and the Town.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the date first written above.

WITNESS

FALMOUTH LAND TRUST

By: _____

Its:

Date: _____, 2018

TOWN OF FALMOUTH

By: _____

Its Town Manager, duly authorized by Town Council vote on _____, 2018

Date: _____, 2018

ACCEPTED BY:

ESCROWEE

By: _____

Treasurer, Town of Falmouth

Dated: _____, 2018
