

MEMORANDUM OF UNDERSTANDING

**Between
THE FALMOUTH LAND TRUST
And
TOWN OF FALMOUTH**

This Memorandum of Understanding (hereinafter "MOU") by and between the Falmouth Land Trust, a non-profit organization (hereinafter referred to as the "Land Trust") and the Town of Falmouth, a municipal corporation of the County of Cumberland and State of Maine (hereinafter the "Town"), (collectively known as the "Parties").

RECITALS

WHEREAS, acquisition of real property at _____Road in Falmouth, (the "Property") and recorded at the Cumberland County Registry of Deeds in Book ____, Page ____ by the Land Trust serves a public purpose by supporting agriculture, open space, wildlife habitat, scenic lands, and public recreation in harmony with the Falmouth Comprehensive Plan.

WHEREAS, the Land Trust expects to acquire the Property with a purchase price of approximately \$600,000 and with associated transactional and transitional expenses of approximately \$50,000 and stewardship fees of \$50,000 for a total project cost of approximately \$700,000.

WHEREAS, the Town voted to fund up to \$400,000 toward the acquisition of the Property, with payment is to be made by the date of the closing of the Property, which is currently anticipated to be June 15, 2015 unless a different closing date is agreed by the Parties and;

WHEREAS, the Parties agree that the Land Trust will vacate an approved subdivision on the property as soon as possible upon the closing of the Property;

WHEREAS, the Parties further agree that it is the Land Trust's intent that the Property be managed in a manner that protects open space, wildlife habitat, scenic lands and public access and preserves the ability of the majority of the Property to be used for agricultural purposes, and;

WHEREAS, recognizing that the Town is contributing a substantial amount of the total project costs, in the event that the Land Trust decides to sell the Property, it must first offer the Town the right of first refusal to purchase the property at the price of one dollar (\$1), which offer, at a minimum, shall include all of the Property except the existing small residential home and approximately two acres around the home site, and;

WHEREAS, in the event that the Land Trust develops a committee that is charged with managing and overseeing aspects of the Property, a representative of the Town, such as but not limited to a member of the Town's Land Management and Acquisition Committee, shall be a designated member of such Land Trust management oversight committee;

WHEREAS, in the event the Land Trust decides to change the intended use of the majority of the land from agricultural use to some other use, the Land Trust must first seek agreement of the Town Council.

WITNESSETH

NOW THEREFORE, based on the promises contained herein, the Parties agree as follows:

1. Vacate Subdivision: The Land Trust will, upon obtaining clear title and closing on the Property, take action to vacate the Town approved subdivision on the property at their own expense.
2. Agricultural Purposes: The Land Trust agrees that the Property be managed in a manner that protects open space, wildlife habitat, scenic lands and public access and preserves the ability of the majority of the Property to be used for agricultural purposes in perpetuity.
3. First Right of Refusal: The Land Trust agrees that, upon acquisition of the property, it will execute a First Right of Refusal to the Town to be recorded in the registry of deeds that will ensure that if the Land Trust decides to sell all or a portion of the Property, that it must offer the Town first right of refusal at the price of one dollar (\$1), which First Right of Refusal shall include, at a minimum, all of the Property except the existing small residential home and approximately two acres around the home site.
4. Town Representation: The Land Trust agrees that if a committee is formed that is charged with managing and overseeing aspects of the Property, a representative of the Town, such as a member of the Town's Land Management and Acquisition Committee shall be a designated member of such Land Trust management oversight committee.
5. Change of Intended Use: The Land Trust agrees that if they decide to change the intended use of the majority of the Property from agricultural use to some other use, the Land Trust must first seek agreement of the Town Council.
6. Town Contribution: The Town agrees to fund up to \$400,000 toward the acquisition of the property, which funding shall be due at closing.
7. Transaction Costs Lower than Projected: The Land Trust agrees that if the transition and transaction costs associated with the acquisition of the property, including but not limited to legal expenses, land surveys, hazard surveys, and subdivision vacation application, are less than \$50,000, that the Land Trust shall reimburse to the Town the difference between the actual transition and transaction costs and \$50,000.
8. Effect of Fundraising on Town Contribution: If the Land Trust raises funds in excess of \$300,000 from other sources toward the total project costs prior to closing, then the Town's contribution at closing shall be reduced by the amount in excess of \$300,000.

9. Seller Financing: If any portion of the purchase price is financed by the Seller, or some other entity, that takes or retains any present or future interest in the Property, the Land Trust shall ensure that any obligation of the Land Trust under such arrangement, and all of the Land Trust's interest in the Property, is assignable to the Town. The Land Trust shall give the Town reasonable notice of any likely default of the Land Trust's obligations under such arrangement, and immediate notice of any existing default. In the event of an existing default, the Land Trust agrees that the Town, at its option, may satisfy the Land Trust's obligations and the Land Trust will convey its interest in the Property to the Town.

10. Payment of Town Funds: Payment of the Town Funds is conditioned on the review to the reasonable satisfaction of the Town of the closing documents, including the deeds, title insurance documents, the Right of First Refusal, any financing documents, and any document that could affect the Town's rights under this Memorandum of Understanding and the Right of First Refusal.

This MOU embodies the principle understandings of the Land Trust and the Town. Nothing in this MOU is intended to or will be construed to limit or affect in any way the legal responsibilities or authorities vested by applicable law or regulation of the Land Trust or the Town. The Land Trust and the Town shall in good faith endeavor to achieve the understandings and intentions as contemplated herein.

This MOU shall be effective as of the date the last participant executes the MOU and remains in effect until such time as the Land Trust has fulfilled its obligations hereunder. While in effect, the MOU may be modified only by written agreement executed by all Parties.

TOWN OF FALMOUTH

By: _____
 Nathan Poore, Town Manager

Date: _____

FALMOUTH LAND TRUST

By: _____
 xxxxxxxxxxxx, Falmouth Land Trust President

Date: _____