

**Amended Memorandum of Understanding
Between
Falmouth Memorial Library Association and Town of Falmouth**

This Amended Memorandum of Understanding is entered into this ___ day of September, 2016, by and between the Falmouth Memorial Library Association, a non-profit corporation organized under the laws of the State of Maine (hereinafter referred to as the “Library”), and the Town of Falmouth, a municipal corporation organized under the laws of the State of Maine (hereinafter referred to as the “Town”) (collectively referred to herein as the “Parties”).

R E C I T A L S

WHEREAS, ownership of the real property and building currently occupied by the Library at 5 Lunt Road in Falmouth (the “Premises”) is shared equally by the Town and the Library as tenants in common pursuant to a deed from the Library to the Town dated June 24, 1994 and recorded at the Cumberland County Registry of Deeds in Book 11627, Page 246;

WHEREAS, the Town has typically supported the operations of the Library through appropriating public funding that underwrites approximately 75% of the total Library’s annual operating budget;

WHEREAS, the Parties previously entered into a Memorandum of Understanding dated December 9, 2013 (the “2013 Agreement”). A copy of the 2013 Agreement is attached as Exhibit A;

WHEREAS, for more than a decade, the Library has researched options and performed feasibility analyses to determine the need for additional square footage in order to continue to provide the level of library and programming services expected by Falmouth residents;

WHEREAS, the current facilities of the Library are insufficient to meet the needs of the residents of the Town;

WHEREAS, the Library, in order to continue providing adequate and varied services and programming to current and prospective users, wishes to renovate and expand its facility on the Premises and on the adjacent property now owned by the Library at 9 Lunt Road in Falmouth, into a new facility that will encompass not less than 16,000 square feet of interior space (the “Library Project”);

WHEREAS, the Library’s Board of Trustees have participated in an extensive consensus building process with the Town Council and with input from Falmouth citizens, which has culminated in an Order and Referendum Question approved by the Town Council on September 8, 2014, which requests the authority for the Town to

borrow and spend up to \$2,810,000 towards the Library Project. A copy of the Order and Referendum Question is attached hereto as Exhibit B;

WHEREAS, the Library intends to engage construction professionals, including architects, engineers, library designers and project coordinators to assist in the Library Project;

WHEREAS, there will be a “Library Construction Team” which will include Library representatives, the Town Manager or his designee, and one Town Councilor;

WHEREAS, the Library Construction Team will be primarily responsible for the design generation, development, and implementation of the Library Project, throughout each design and construction phase, and the Library will routinely provide status reports and disbursement requests to the Town Manager;

WHEREAS, the Library has committed to raise through a capital campaign and other fundraising efforts, including but not limited to private foundation, grants and individual contributions, an amount equal to or greater than 50% of the total project budget; and

WHEREAS, the Parties wish to supplement the 2013 Agreement with this Memorandum of Understanding between the Library and the Town, to clarify their respective obligations, authorities and responsibilities in connection with the Library Project.

W I T N E S S E T H

NOW THEREFORE, based on the promises and mutual covenants contained herein, the parties agree as follows:

1. **Library Project Cost:** The total construction cost, inclusive of architectural, engineering, demolition, construction and site work, of the Library Project is projected to be \$5,617,678 but will be finally determined upon acceptance by the Town Manager and the President of the Library’s Board of Trustees of the winning bid(s). The accepted bid(s) amount is hereinafter referred to as the “Library Project Cost.”
2. **Town Responsibilities:**
 - a. The Falmouth Town Council will submit to the voters of the Town a referendum on the issuance of up to \$2,810,000 of the Town’s general obligation bonds for the Library Project, on or before November 4, 2014, substantially in the form of the Order and Referendum Question attached

hereto as Exhibit B. Upon issuance of such Bonds, the Library shall deliver to the Town such documents and certificates relating to the use of the Library Project as the Town (or its Bond Counsel) shall reasonably request in support of the tax-exempt status of the Bonds. While the Bonds remain outstanding, the Library shall not use or permit the use of the Library Project in a manner that would adversely affect the tax-exempt status of the Bonds.

- b. The Town will be solely responsible for the payment of all Bond related expenses including issuance expenses and debt service costs (principal and interest). The term of the debt shall not exceed 20 years with an anticipated average annual interest rate of between 2.75% and 3.50%.
- c. The Town agrees to pay up to an amount not to exceed \$300,000, upon request of the Library, for the preconstruction costs of the Library Project, including architectural, engineering and other related preconstruction costs, but excluding any fundraising costs. Preconstruction costs are included in the total Library Project cost. In the event of termination of the Library Project all preconstruction expenses will be shared equally between the Parties. The Library, within a reasonable time following termination of the Library Project, not to exceed 3 months, will reimburse the Town for 50% of the preconstruction costs paid by the Town. All preconstruction costs may be included in the Bond issuance, not to exceed the total borrowing authorized by the voters.
- d. In no event shall the Town's financial responsibility for the Library Project exceed \$2,810,000.

3. Library Responsibilities:

- a. If the Library Project Cost is \$ 5,620,000 or less, then the Library's share shall be 50% of Library Project Cost plus 100% of the costs associated with any modification, upgrade or expansion of the Library Project, hereinafter referred to "change orders." If the Library Project Cost exceeds \$ 5,620,000 then the Library's share shall be the Library Project Cost less \$2,810,000 plus 100% of the costs associated with change orders.
- b.. The Library shall be responsible for conducting a capital campaign with a fundraising goal of not less than 50% of the Library Project Cost (the "Fundraising Goal"). In the event the Library raises monies in excess of its Fundraising Goal, all excess monies raised first shall be applied to the Library Project or repayment of the Term Promissory Note dated March 25, 2014, given by the Library to the Town. Funds not used for completion of the Library Project or repayment of the Term Promissory Note will be added to the endowment of the Library.

- c. The Library Construction Team shall be responsible for managing the Library Project construction process with assistance provided by a professional construction manager/owner's representative. The Library Construction Team may authorize change orders modifying, the Library Project (as depicted in architectural plans provided by Scott Simons Associates, dated June 2014 and hereto attached as Exhibit C), provided that such change orders do not require the following: i) an amendment to the anticipated Site Plan Review permit by the Planning Board or ii) a substantial increase in the anticipated annual operating costs of the Library. Any changes that require the aforementioned items will require prior consent by the Town Council. The Library intends to remain reasonably operational and open to the public during the construction process to the extent feasible.
4. Ownership: Upon completion of the Library Project, the ownership share of the Premises shall remain owned in equal shares, 50% Library and 50% Town.
5. Library Fundraising Deadline: On or before ~~December 31, 2017 (the "Fundraising Deadline")~~ six weeks after the Fundraising Deadline of December 31, 2017, and prior to execution of a construction contract for the Library Project, the Library shall submit for approval by the Town Manager documentary support, in form and substance satisfactory to the Town Manager in his sole discretion, that the Library has met its fundraising commitment of an amount equal to or greater than 50% of the Library Project Cost in the form of the following: i) cash, ii) pledges to be paid within the construction timeframe sufficient to cover at least 105% of the Library's remaining share of the Library Project Cost, after deducting amounts obtained through other fundraising sources described in this paragraph, iii) bridge loans guaranteed by the Library, iv) grants v) private and foundation giving, vi) other sources acceptable to the Town or vii) a combination of the foregoing.
6. Required Town Approvals:
 - a. Prior to the execution of the construction contract, the Library shall obtain written approval, which shall not be unreasonably withheld, from the Town Manager of final construction documents for the Library Project prior to bidding. The final construction documents shall include an agreed-upon construction budget with allowances for construction incentives;
 - b. The Library shall obtain written approval, which shall not be unreasonably withheld, from the Town Manager, upon finalization of the construction documents for the Library Project by the Library Construction Team, prior to execution of the construction contract;

- c. The Library is not restricted from presenting addendums and change orders to the approved construction documents after bids are awarded for construction, as long as the costs of same shall be the sole responsibility of the Library beyond the Town's commitment of 50% of the agreed-upon construction budget.
7. Draw Procedure for Town Share of Library Project Costs: The Town shall pay out its financial contribution in accordance with the following:
 - a. No more frequently than once a month, the Library shall submit draw requests to the Town's Finance Director supported by contractor and vendor invoices, lien waivers and such other material and documents as the Finance Director may reasonably request;
 - b. The Town Manager shall review and approve or disapprove draw requests within five (5) business days upon receipt of same, based upon whether the invoiced expenses were incurred as part of the Library Project and the work was satisfactorily completed;
 - c. The Town Manager shall issue payment to the Library in an amount equal to the proportional share of the Town's contribution of the total Project Cost of approved invoices up to total maximum payment (including preconstruction payments made by the Town) of \$ 2,810,000 or 50% of the total project budget (whichever is less); and
 - d. Payment by the Town will be made within 10 business days of approval of invoiced amounts.
8. Governing Law: This agreement shall be governed, construed and interpreted in accordance with the laws of the State of Maine.
9. Effect on the 2013 Agreement: Except as expressly amended by this agreement, all terms and provisions of the 2013 Agreement remain in full force and effect between the Parties.
10. Modification: This agreement may be modified only by written agreement signed by both Parties.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Town and the Library have executed this Amended Memorandum of Understanding, the day and year above written.

WITNESS:

TOWN OF FALMOUTH

By: _____
Its Town Manager

WITNESS:

FALMOUTH MEMORIAL LIBRARY
ASSOCIATION

By: _____
Its President of the Board of Trustees