

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

This document represents an Amended Memorandum of Understanding made on the ___ day of August, 2014, 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 to borrow and spend up to \$ _____ \$2,808,839 towards the Library Project. A copy of the Order and Referendum Question is attached hereto as Exhibit AB;

WHEREAS, the Library intends to engage construction professionals, including architects, engineers, library designers and project coordinators to assist in the Library Project (the “Library Construction Team”);

WHEREAS, the Library Construction Team will include Library representatives as well as 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 ~~a minimum of \$ _____ towards the Library Project~~; 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.

WITNESSETH

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

1. Submission of Bond Referendum: The Town Council of the Town will submit to the voters of the Town a referendum on the issuance of up to \$ _____ \$2,808,839 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 A. 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 Bond remain outstanding, the Library shall not use or or permit the use of the Library Project in a manner that would have adversely affect the tax-exempt status of the Bonds.
2. Responsibility for bond specific costs: The Town will be solely responsible for the payment of all Bond related expenses including issuance expenses and debt

service costs (principal and interest). Bond or debt issuance related costs will be considered part of the total project budget. The term of the debt shall not exceed 20 years with an anticipated average annual interest rate of between 3.0% and 4.0%.

3. Total 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, and will be finalized upon acceptance by the Town Manager and the President of the Library's Board of Trustees of the construction bid for the Library Project by the Parties. In the event the total construction cost exceeds \$5,617,678, the Library shall be solely responsible for securing additional funds to satisfy the total construction cost.
4. Pre-Construction Costs: The Town agrees to pay up to an amount not to exceed \$300,000, upon request of the Library, for the preconstruction costs, ~~not to exceed \$400,000~~, 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 and the Library, within a reasonable time following termination, not to exceed _____ 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.
5. Library Responsibilities: The Library's share of the Library Project's costs shall be the total cost of the Library Project less 50% of the total project budget or the \$2,808,839 _____ (whichever is less) contribution from the Town. The Library shall be responsible for conducting a capital campaign with a fundraising goal of not less than an amount equal to or greater than 50% of the total project budget \$ _____ (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. The Library also shall be responsible for managing the Library Project construction process with assistance provided by a professional construction manager/owner's representative. The Library may modify, upgrade or expand the Library Project (as depicted in architectural plans provided by Scott Simons Associates, dated _____ and hereto attached as Exhibit BC), provided that such change will 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 forementioned items will ~~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.

6. Ownership: Upon completing of the Library Project, the ownership share of the Premises shall remain owned in equal shares, 50% Library and 50% Town.

7. Library Fundraising Deadline: On or before December 31, 2016 (the “Fundraising Deadline”), 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 total project budget \$_____ for the Library Project, 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’s cost, after deducting amounts obtained through other fundraising sources described in this paragraph, plus 5% of the total amount of outstanding pledges, iii.) bridge loans, iv) grants and/or v.) private and foundation giving, vi.) and the like other acceptable sources, or vii.) a combination of the foregoing. The Library shall be solely responsible for the guarantee of any bridge loans.

8. Required Town Approvals:
 - a. The Library shall obtain written ~~consent~~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;

 - b. The Library shall obtain written ~~consent~~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;

 - c. The Library is not restricted from presenting addendums and change orders to the approved construction documents, 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 after bids are awarded for construction. \$_____;

 - d. Any material deviation from the approved construction documents during construction and any change in the Library Project, further described in Section 5 of this Agreement, will require prior written consent by the Town Council. Any and all costs which increase the agreed-upon construction budget after bids are awarded for

construction shall be the sole responsibility of the Library unless the Town Council authorizes additional funding from the Town, so long as the Town's commitment does not exceed the lower amount of \$2,808,839 or 50% of the Project costs. The Town Manager shall review all proposed addendums and change orders, not considered a material deviation, within five (5) working days upon receipt of the same.

9. 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, ~~F~~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) ~~working~~ 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 ~~\$ _____~~; \$2,808,839 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.
10. Governing Law: This agreement shall be governed, construed and interpreted in accordance with the laws of the State of Maine.
11. 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.
12. 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