

Draft: September 2, 2010

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Red line comments are from Councilor Payne

Bold red line comments are from Attorney Jim Saffian

Memorandum of Understanding
between
Falmouth Memorial Library Association and Town of Falmouth

This document represents a Memorandum of Understanding made on the ____ day of _____, 2010, 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").

RECITALS

WHEREAS, the Library provides an essential service to the inhabitants of the Town and serves a public purpose.

WHEREAS, the Library has endeavored to provide free library services to the residents of the Town since 1952.

WHEREAS, the Library has successfully increased use since its last expansion in 1995 and wishes to expand its facilities.

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WHEREAS, since 2003, the Library has researched options and performed feasibility analyses to determine the desired expansion.

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WHEREAS, the Library, in order to be able to provide adequate and varied services to current and prospective users, wishes to relocate its facilities to the Lunt School, 74 Lunt Road, Falmouth, once this building has been vacated by the Falmouth School Department.

WHEREAS, Library representatives have participated in the Town's Community Facilities Planning Committee, which developed a proposal for a "Town Center" at the Plummer-Motz-Lunt school property.

WHEREAS, the "Town Center" proposal includes relocation of the library facility to the Lunt School, relocation of the Town offices to the Plummer portion of the Plummer-Motz School, and the creation of a community recreation center at the Mason-Motz portion of the Plummer-Motz School, which is attached hereto as Exhibit A (hereinafter referred to as the "Town Center Project").

WHEREAS, a schematic floor plan for reuse of the Lunt School was prepared by Oak Point Associates, which is attached hereto as Exhibit B (the "Library Project").

WHEREAS, additional architectural services are required to further develop and modify this schematic floor plan into a final construction document.

WHEREAS, the Library wishes to sell for private redevelopment its current facilities, located at 5 Lunt Road, Falmouth, which are jointly owned by the Library and the Town.

WHEREAS, 75% of the Library's annual operating budget in FY 2010-11 of \$498,988 is supported by an appropriation by the Town.

WHEREAS, the Town intends to finance a portion of the Library Project in furtherance of the Library's public purpose.

WHEREAS, the Library must raise through private contributions a minimum of \$750,000 for the Library Project before construction begins. All funds raised by the Library will be applied to completion of the Library Project.

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WHEREAS, at the time of the Library's most recent facility expansion in 1994, the parties signed an Affiliation Agreement.

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WHEREAS, the parties wish to replace the 1994 agreement with this Memorandum of Understanding between the Library and the Town.

WITNESSETH

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

1. Submission of Bond Referendum: The Town Council will submit to the voters of the Town at the November 2010 Referendum a question on the issuance of up to \$ of the Town's General Obligation Bonds for the Town Center Project (including the Library Project and renovations of other Town-owned properties) on September 13, 2010.

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2. Ownership of Lunt Property: Upon approval of the question at the November 2010 Referendum, the Town will prepare and execute a deed for the Lunt property which will make the Library and the Town tenants in common with one-half (1/2) interest each. The deed description will be prepared upon consultation with the Library.

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3. Sale and Proceeds of Current Library Property: Subject to such approvals as may be required under the Town Charter, the Town will oversee the sale of the current library property at 5 Lunt Road and contract for real estate brokerage services as required. The Town and the Library will jointly review and execute a Purchase and Sales Agreement with a prospective purchaser. Actual sale and transfer of the current library property must take place on or before June 30, 2012. All net sales proceeds of the 5 Lunt Road Property will be applied to offset the Library Project expenses.

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4. Library Fundraising: On or before June 30, 2012, prior to execution of a Construction Contract for the Library Project, the Library shall submit for Town approval documentation in form and substance reasonably satisfactory to the Town that the Library has sufficient cash on hand to cover the Library's share of the costs of the Library Project.

Deleted: <#>Obtained a commitment from a commercial lending institution, foundation, and/or other investor, to loan a sum sufficient to cover the Library's share of the Library Project's costs; or¶ <#>A combination of the above. ¶ Multi-year pledges are acceptable to the Town if they are included in (a) or (b) above.¶

5. Total Library Project Cost: The total cost of the Library Project is projected to be \$3,500,000, and will be finalized upon acceptance by the Town and the Library of the construction bid for the Library Project.

6. Share of Total Library Project Cost: The Library's share shall be 21.5% and the Town's share of the Library Project cost shall be 78.5% of the total Library Project cost, up to total costs of \$3,500,000,

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If the cost of the total Library Project exceeds \$3,500,000, the Library will be responsible for securing the required additional funds.

The proceeds from the sale of the current Library building shall be considered part of the Town's contribution of its share of the costs of the total Library Project,

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7. Library Responsibilities: The Library shall be responsible for completing fundraising of a minimum of \$750,000 and for managing the Library Project construction process. This includes preparation of the required construction documents for the Library Project and overseeing Library Project construction. Costs for such work shall be included in the Library Project cost.

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8. Required Town Approvals:

- a. The Library shall obtain written approval from the Town of the total Library Project cost prior to execution of the construction contract.
- b. The Library shall obtain written approval from the Town of final construction documents for the Library Project prior to bidding, which approval shall not be unreasonably withheld.
- c. Any subsequent material deviation from the construction plans approved by the Town during construction and any change in the Library Project involving a project cost of \$ or more will require prior consent by the Town, which consent shall not be unreasonably withheld. For all other alterations or improvements to the premises, except as provided above, the Library shall have sole discretion, without first obtaining written permission from the Town.
- d. Once the Library Project is completed, any further alterations, additions, or improvements to the Library involving structural changes shall require prior written consent of the Town, which consent shall not be unreasonably withheld.

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9. Draw Procedure for Town Share of Library Project Costs: The Town shall pay out its financial contribution in accordance with the following:

- a. The Library shall on a monthly basis submit a draw request 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 shall review and approve or disapprove draw requests based upon whether the invoiced expenses were incurred as part of the Library Project, and the work was satisfactorily completed;
- c. The Town shall issue payment to the Library in an amount equal to the approved invoice amount multiplied by 78.5%, up to total maximum of \$2,750,000.
- d. Payment by the Town will be made within 10 days of approved invoice amounts.

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10. Town Share of Future Operating Costs: The parties acknowledge that:
- the Library's annual operating budgets are typically supported to a large extent by appropriations by the Town;
 - in Fiscal Year 2010-11 the Town underwrote 75% of the Library's operating budget of \$498,988;
 - the Library Project will likely result in increased operating costs by the Town;
 - appropriations for the Library are determined on an annual basis by the Town Council;
 - binding agreements regarding the continuation of such support in the future cannot be made in this agreement.

In recognition of the above, the Town states its current intent, but offers no guarantee and is not obligated in any fashion, to continue to support the Library's annual budget at or around 75%.

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11. Library Services: For the duration of this agreement, the Library shall provide customary services to the residents of Falmouth at no charge.
12. Insurance: For the duration of this Agreement, the Library shall keep the premises insured against fire and other casualties in an amount sufficient to protect the Town's interest in the premises and shall name the Town as an "additional named insured." The Library further agrees that it shall maintain general liability insurance and shall name the Town as an "additional named insured." During the period of construction of the Library Project, the Library shall maintain builders risk insurance and shall name the Town as an "additional named insured."
13. Use of premises: For the duration of this Agreement, both parties agree that the premises shall only be used for library purposes provided, however, that this shall not preclude use of appropriate facilities within the premises for governmental and community meetings upon reasonable conditions set by the Library. No fee shall be charged the Town for its use of the premises for meetings.
14. Delegation: The Town Manager of the Town shall execute this Agreement on behalf of the Town and shall be primarily responsible for carrying out the responsibilities and duties of the Town hereunder.
15. Duration of Agreement: This Agreement shall remain in effect for as long as the Town has an ownership interest in the former Lunt School premises.
16. Execution: This Agreement shall be binding on and for the benefit of the respective successors and assigns of both the Library and the Town. All words in this Agreement shall be considered in the appropriate masculine or feminine gender, and in the appropriate singular or plural form. The Town and the Library agree that there have been two Memoranda of Understanding signed that are identical, and that both parties have received a copy.
17. Governing Law: This Agreement shall be governed, construed and interpreted in accordance with the laws of the State of Maine.
18. Entire Agreement: All understandings and agreements between the parties are merged in this Agreement which fully and completely expresses their agreement and supersedes any prior Agreement or understanding relating to the subject matter.

19. Modification of Agreement: This Agreement may only be modified by the written agreement of the parties.

20. Nullification of Agreement: This Agreement shall be null and void if the required financing for the Town Center Project, including fundraising and property sale proceeds, is not in place by June 30, 2012.

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

WITNESS:

TOWN OF FALMOUTH

By: _____
Its Town Manager

WITNESS:

FALMOUTH MEMORIAL LIBRARY
ASSOCIATION

By: _____
Its President of the Board of Trustees

DRAFT