

Draft: May 16, 2011

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

This document represents a Memorandum of Understanding made on the \_\_\_\_ day of \_\_\_\_\_, 2011, 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”).

**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 increased use since its last expansion in 1995 and wishes to expand its facilities.

WHEREAS, since 2003, 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 the Falmouth townspeople.

WHEREAS, the Library, in order to be able to provide adequate and varied services and programming to current and prospective users, wishes to relocate its facilities to the Lunt School, 74 Lunt Road, Falmouth, once the Lunt School has been vacated by the Falmouth School Department, and renovate and modify Lunt School into a new library that will encompass not less than 13,000 square feet of assignable space (“the Library Project”).

WHEREAS, the Library’s Board of Trustees have participated in a consensus building process with the Town Council, with input from Falmouth citizens, which has culminated in an Order and Referendum Question approved by the Town Council on March 28, 2011, which requests the authority to spend \$5,650,000 towards the redevelopment and renovation of the Plummer-Motz/Lunt school property. A copy of the Order and Referendum Question is attached hereto as Exhibit A).

WHEREAS, the Order includes relocation of the library facility to the Lunt School, creation of a community recreation center at the Mason-Motz portion of the Plummer-Motz School, and provision of leasable space at the Plummer building (“Plummer-Motz/Lunt Project”).

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

WHEREAS, the Library Construction Team will include Library representatives as well as the Town Manager or his designee.

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

WHEREAS, the Library and the Town wish to sell for private redevelopment the current Library 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 a contribution by the Town.

WHEREAS, of the twelve (12) Board of Trustees members, three (3) members are appointed to the Library Board by the Council of the Town.

WHEREAS, the Town intends to finance a portion of the Library Project in furtherance of the Library's public purpose through the sale of town properties and the use of certain undesignated fund balances.

WHEREAS, the Library has committed to raise through a capital campaign, including private foundation, grants and individual contributions, a minimum of \$1,250,000 towards the Library Project.

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

WHEREAS, ~~upon should the approval of the Plummer-Motz/Lunt project questions be approved at the June 2011 election,~~ the Parties wish to replace the 1994 agreement with this Memorandum of Understanding between the Library and the Town, which the Parties intend to bind themselves towards the completion of the Library Project in a timely and efficient manner.

#### WITNESSETH

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

~~1.—Ownership of Lunt Property: Upon approval of the Plummer-Motz/Lunt Project Question at the June 2011 Referendum, the Town Manager will prepare and execute a deed for the Lunt property which will make the Library and the Town tenants in common with the Library possessing 50% interest and the Town possessing 50% interest. This deed will be executed upon showing of documentary support, in form and substance satisfactory to the Town Manager, that the Library has met its fundraising commitment of \$1,250,000 for the Library Project. The deed description and plot plan for the Lunt property will be prepared upon consultation and approval of the Library. The Lunt property will encompass land area sufficient in size to accommodate 13,000 square feet of assignable building space, room for future building expansion, parking and vehicular circulation areas, and landscaped/buffer areas, not to exceed \_\_\_ acres.~~

~~2-1.~~

~~3-2.~~ Sales Process for Current Library Property: Subject to such approvals as may be required under the Town Charter, the Town Manager and President of the Library's Board of

Trustees, will jointly select a real estate brokerage firm to list for sale the 5 Lunt Road property and jointly review and negotiate a Purchase and Sales Agreement with a prospective purchaser. Execution of a Purchase and Sale Agreement shall only occur upon agreement of the Parties. The timing for any closing and relocation of the current Library shall be determined jointly by the Town Manager and the President of the Library's Board of Trustees, upon consideration of all relevant factors concerning the Library Project.

3. Proceeds of Current Library Property: The current Library property is co-owned by the Library and the Town in equal shares. All net proceeds from the sale of the current Library property shall be reserved for the Library project. These proceeds, which are anticipated to be approximately \$1,250,000, are, for the purpose of this agreement, included in the maximum Town share of the Library Project of \$1,750,000.

Town Share of the Library Project: The Town will fund its share of the costs (\$1,750,000) of the Library Project from a combination of sources which may include:

- a. Anticipated proceeds from the sale of a portion of the land at the Plummer-Motz/Lunt School Complex;
  - b. Anticipated proceeds from the sale of the existing Falmouth Memorial Library;
  - c. Anticipated proceeds from the sale of the Pleasant Hill Fire Station;
  - d. Up to \$1,500,000 from the Town's available undesignated fund balances as referenced above with the intent to replenish the fund with the same amount;
  - e. Grants, gifts and other unencumbered revenues not including new property tax revenues; and
  - f. Any investment earnings thereon;
- 4.
  5. Library Fundraising: On or before December 31, 2015 (the "Fundraising Deadline"), and prior to execution of a Construction Contract for the Library Project, the Library shall submit to the Town Manager for his approval documentary support, in form and substance satisfactory to the Town Manager, that the Library has met its fundraising commitment of \$1,250,000 for the Library Project, in the form of cash, guaranteed pledges, bridge loans, grants and/or private and foundation giving, and the like. The Library shall be solely responsible for the guarantee of any bridge loans.
  6. 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 \$3,000,000, 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 \$3,000,000, the Library shall be responsible for securing additional funds to satisfy the total construction cost.
  5. Pre-Construction Costs: The Town agrees to pay, upon request of the Library, the pre-construction costs of the Library Project, including architectural, engineering and other related pre-construction costs, but excluding any fundraising costs. Pre-construction costs are included in the total Library Project cost. In the event of termination of the Library Project all pre-construction expenses will be shared equally between the Parties.

Formatted: Indent: Left: 0.5", No bullets or numbering

6. Library Responsibilities: The Library shall be responsible for conducting a capital campaign with a fundraising goal of not less than \$1,250,000 (“Fundraising Goal”). In the event the Library exceeds its Fundraising Goal, all excess monies raised shall be deemed property of the Library. The Library shall also be responsible for managing the Library Project construction process. The Library may modify, upgrade or expand the Library Project, which will require prior consent by the Town Manager, which consent shall not be unreasonably withheld.
7. Library Contribution to the Library Project: The Library may make financial contributions from Library capital campaign funds or Library Board designated funds to support aspects of the Library Project in excess of its fundraising goal of \$1,250,000.
8. Required Town Approvals:
  - a. The Library shall obtain written consent, 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. The Parties intend to review and approve a construction budget as soon as practicable, which budget shall limit the obligation of the Town to contribute \$1,750,000, which includes the net proceeds of the current Library property, toward the Library Project.
  - b. The Library shall obtain written consent, 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 \$1,750,000, which includes the net proceeds of the current Library property, towards the Library Project.
  - d. Any material deviation from the approved construction documents during construction and any change in the Library Project will require prior written consent by the Town Manager, which consent shall not be unreasonably withheld. The Town Manager shall review all proposed addendums and change orders within ten (10) working days upon receipt of the same.
  - e. 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 Manager, which consent shall not be unreasonably withheld.
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 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 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 pre-construction payments made by the Town) of \$1,750,000; and
- d. Payment by the Town will be made within 10 days of approved invoice amounts.

10. Town Share of Future Operating Costs: The parties acknowledge that:

- a. the Library's annual operating budgets have been typically supported to a large extent by appropriations by the Town;
- b. in Fiscal Year 2010-11 the Town underwrote 75% of the Library's operating budget of \$498,988;
- c. the Library Project will likely result in increased operating costs by the Town;
- d. Town appropriations for the Library are determined on an annual basis by the Town Council;
- e. 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%.

- 11. Library Services: For the duration of this agreement, the Library shall provide reasonable 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. Dissolution: In the event of dissolution of the Library or termination of its activities, the Library's ownership share in the Lunt property shall revert to the Town.
15. Delegation:
  - a. The Town Manager 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.
  - b. The President of the Library's Board of Trustees shall execute this Agreement on behalf of the Library and shall be primarily responsible for carrying out the responsibilities and duties of the Library hereunder.
16. Duration of Agreement: This Agreement shall remain in effect for as long as both Parties have an ownership interest in the Lunt property.
17. 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.
18. Governing Law: This Agreement shall be governed, construed and interpreted in accordance with the laws of the State of Maine.
19. Modification of Agreement: This Agreement may only be modified by the written agreement of the Parties.
20. Nullification of Agreement:
  - a. Neither Party shall have the right to unilaterally terminate the Plummer-Motz/Lunt Project or the Library Project and declare this Agreement null and void prior to December 31, 2013.
  - b. This Agreement is null and void by express Council action if the required financing for the Plummer-Motz/Lunt Project is not in place by December 31, 2015.

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

