

Draft: August 15, 2013

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

This document represents a Memorandum of Understanding made on the ____ day of _____, 2013, 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, the Library is not a public agency or instrumentality of the Town, but does provide an important non-governmental service of benefit to the inhabitants of the Town;

WHEREAS, the Library has endeavored to provide free library services to the residents of the Town since 1954 [*we need to verify this date. The library association was incorporated in 1944. The 1994 agreement says free library services have been provided since 1954; the draft 2011 agreement says 1952, which might be a typo; we know that the library opened its doors in 1952, but are trying to determine if the library charged a fee until 1954, which would explain the use of this date in the 1994 agreement*];

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;

WHEREAS, historically and in recent years, approximately 75% of the Library’s annual operating budget has been supported by a contribution from the Town;

WHEREAS, peer public libraries in the greater Portland, Maine area historically have received between approximately 75% to 100% of their operating revenue from their respective municipalities;

WHEREAS, the Library has independent assets including Board Designated Funds, an Endowment Fund, a Land and Building Fund and Restricted and Unrestricted Funds, and regularly conducts fund-raising activities and appeals;

WHEREAS, the Parties previously entered into an Affiliation Agreement dated March 30, 1994 (the “1994 Agreement”);

WHEREAS, the Parties wish to replace the 1994 Agreement with this Memorandum of Understanding between the Library and the Town, to clarify their respective obligations, authorities and responsibilities;

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 Services and Management: For the duration of this agreement, the Library shall provide reasonable customary services to the residents of Falmouth at no charge, in a manner consistent with the Library's Articles of Incorporation and Bylaws, as they may be amended from time to time, subject to adequate funding by the Town and private fundraising by the Library.

2. Use of Premises: For the duration of this agreement, both Parties agree that the Premises shall be used only 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. The Library may charge fees for the use of any portion of the Premises, provided that no fee shall be charged the Town for its use of the Premises for meetings.

3. Town Share of Future Operating Costs: The parties acknowledge that:
- a. The Library's annual operating budgets typically have been supported to a large extent by appropriations from the Town;
 - b. In Fiscal Year 2012-2013, as in recent years, the Town underwrote approximately 75% of the Library's operating budget;
 - c. Town appropriations for the Library are determined on an annual basis by the Town Council;
 - d. Binding agreements regarding the precise amount of financial support to be provided to the Library from the Town in future years cannot be made in this agreement.

Nevertheless, in recognition of the above and the value of the services provided by the Library to the inhabitants of the Town, the Town states its current intent to continue to support the Library's annual operating budget at a level at or around 75%.

4. Library's Ability to Raise Funds: In anticipation of the need for future expansion of the Library's facilities and collections and to supplement the funds provided by the Town for operational expenses, the Library has conducted, and may continue to conduct, fundraising activities. The Library has sole discretion to develop, amend and implement any investment strategies and programs for such funds, and to expend such

funds in accordance with its bylaws. Any such funds previously raised or raised in the future by the Library are and will remain the property of the Library, and are not intended to reduce the Town's financial support as set forth in paragraph 3 above.

5. Town's Access to the Library's Financial Records: The Parties recognize that the Library is a private non-profit corporation and is not a department of the Town subject to direct oversight by the Town. Nevertheless, given the Town's historical level of financial support for the Library and the Parties' expectation that such support will continue, the Parties agree that it is appropriate for the Town to have a role in the oversight of the Library's finances. To further that end, the Parties agree that:

- a. The Town Council has appointed, and may continue to appoint, three (3) of the twelve (12) members of the Library's Board of Trustees, for staggered three-year terms.
- b. The Town has assigned, and may continue to assign, a member of the Town Council to serve as liaison between the Town Council and the Library. The Town Council's liaison shall be entitled to attend all meetings of the Library's Board of Trustees, except meetings or portions of meetings conducted in executive session in accordance with the provisions of the Library's Board of Trustees' bylaws. The Town Council's liaison is not a member of the Library's Board of Trustees and is not entitled to vote on any matters pending before the Board of Trustees in his or her capacity as liaison.
- c. The Town Council may appoint one (1) individual at a time to serve as a member of the Library Board of Trustees' Finance Committee, for a term to be set by the Town Council. That individual will be entitled to receive all materials distributed to members of the Library Board of Trustees' Finance Committee, to attend all meetings of the Library Board of Trustees' Finance Committee and to report information provided or obtained through the Library Board of Trustees' Finance Committee to the Town Council in the manner requested by the Town Council.
- d. If requested by the Town Council, once each fiscal year, at a time before the Library's submission of its annual budget request to the Town, the Library Board of Trustees' Finance Committee and the Town Council's Finance Committee may hold a joint meeting, the purpose of which will be for the Library to provide an update on its year-to-date finances and an initial estimate of the Library's anticipated financial needs for the following fiscal year. If the Town Council desires such a meeting in any particular year, the meeting will be held at a mutually convenient date and time and shall be initiated by a request from the Town Manager to the Library Director.

- e. The Library shall continue to commission an annual audit of its financial statements, and shall forward a copy of the completed audit report each year to the Town Manager.

6. Library Capital Expenditures: Historically the Library has set aside a portion of its annual revenue into a Land and Building Fund, to be used toward necessary capital improvements and expenditures for the Premises. The Library's Board of Trustees, through its Finance and Buildings and Grounds Committees, reviews the Library's anticipated capital improvement needs over a projected period of time and determines an amount to be set aside on an annual basis to meet those anticipated needs. For all anticipated capital improvements that have been included in the set aside for the Land and Building Fund, the Library will pay the entire cost of such improvements without seeking additional reimbursement from the Town. The Parties recognize that, from time to time, there may be unanticipated capital improvements necessitated by unexpected repairs or failures in the Premises that have not been budgeted and included in the Library's Land and Building Fund. In recognition of the equal ownership of the Premises by the Town and Library, the Parties agree that the Parties will share equally the costs of any such unanticipated capital improvement expenditures that have not been budgeted and included in the Library's Land and Building Fund.

7. 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."

8. Dissolution: In the event of the Library's dissolution in accordance with its articles of incorporation and bylaws, any corporate assets shall be distributed in a manner consistent with the corporation's tax exempt status under Section 501(c)(3) of the Internal Revenue Code. The Parties agree that the Town will be entitled to determine the manner of distribution of a percentage of the Library's assets equal to the percentage of the Library's annual operating budget funded by the Town in the fiscal year in which the Library's dissolution occurs. The Parties further agree that the Library will be entitled to determine the manner of distribution of the remaining percentage of the Library's assets. The Parties further agree that they will distribute the Library's assets to another organization or organizations with obligations and purposes similar to those of the Library.

9. Delegation:

- a. 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.
- 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.

10. Duration of Agreement: This agreement shall remain in effect for as long as both Parties have an ownership interest in the Premises.

11. 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 Parties have participated equally in the drafting and preparation of this agreement. The Parties agree that there have been two Memoranda of Understanding signed that are identical, and that both parties have received a copy.

12. Governing Law: This agreement shall be governed, construed and interpreted in accordance with the laws of the State of Maine.

13. Effect on the 1994 Agreement: This agreement is intended by the Parties to replace and supersede the 1994 Agreement in its entirety.

14. Modification: This agreement may be modified only by written agreement signed by both Parties.

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