

~~Draft: October 7, 2013~~

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

This document represents a Memorandum of Understanding made on the \_\_\_\_  
9th day of \_\_\_\_\_, December, 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~~  
residents of the Town;

WHEREAS, the Library has ~~endeavored to provide~~ provided free library services  
to the residents of the Town since opening in 1952;

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, 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-residents~~ 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.

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~~ a persona Town Councilor or Town employee to serve as ~~a member of its~~ representative on the Library Board of Trustees' Finance Committee, ~~for~~ a term to be set by the Town Council. ~~That individual will~~ The Town Council's appointee shall be entitled to attend all meetings of the ~~Library Finance Committee, except meetings or portions of meetings conducted in executive session in accordance with provisions of the Library's~~ Board of Trustees' ~~Finance Committee bylaws,~~ and to ~~review~~ receive all materials distributed to members of the ~~Library Board of Trustees' Finance Committee at those meetings. To the extent that individual provides information obtained from the Library Board of Trustees' Finance Committee meetings to other members of the Town Council or to other Town employees, it will be done in a manner that reflects the confidential and sensitive nature of the information~~ Finance Committee, except materials pertaining to executive sessions. The Town Council's appointee shall not be a member of the Finance Committee and is not entitled to a vote in the Finance Committee.
- 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~~ Reserve Set-Aside, 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~~ Reserve Set-Aside, 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~~ Reserve Set-Aside. In recognition of the equal ownership of the Premises by the Town and Library, the Parties agree that they will discuss any such unanticipated capital improvements at the time they arise, to reach a mutually satisfactory arrangement for sharing those costs between the Parties.

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, ~~and if the Library's corporate assets are to be sold, the Library shall have sole discretion, except as otherwise provided in this paragraph, to distribute~~ dispose of those assets in a manner consistent ~~with applicable law. In recognition of the Parties' equal ownership of the Library's tax exempt status under Section 501(c)(3) of the Internal Revenue Code. The Library agrees to provide at least six (6) months' notice to the Town of its intention to dissolve. If before dissolution, the Town notifies the Library that the Town Council has voted to continue to operate a library, either alone or in partnership with a non-profit organization, at the Premises for an indefinite period but in no event less than five (5) years, the Library shall transfer all its interest in its personal property, not including the balances in the "independent assets" referenced above and in any trust funds, as well as its undivided one-half (1/2) interest in the Premises to the Town without consideration. In the event that the Town Council does not vote to continue to operate a library at the Premises, the Parties agree that the Premises~~ premises will be provided transferred (a) to another organization or organizations with obligations and purposes similar to those of the Library, to be agreed upon mutually between the Library and the Town. In the event the Library and Town on

which the Parties agree and (b) upon terms of transfer on which the Parties agree. In the event that the Parties cannot agree upon ~~such entity~~ the organization or the terms or both, the Premises will be sold in accordance with the Town's adopted procedures for the sale of real estate, with the ~~Library and Town Parties~~ sharing equally in the proceeds of such sale and distributing those proceeds in accordance with applicable law.

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, provided that the Town shall have the unilateral right to alter or to terminate its financial support of the Library upon reasonable notice to the Library. Nothing herein shall prevent the Parties from negotiating the terms for termination of this agreement by conveying its undivided one-half interest in the Premises to the other Party and, if such negotiations are unsuccessful, by filing a partition action in the Superior Court. No partition action shall be filed without providing the other Party with at least six (6) months' notice of the intent to file such action.

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