



Memorandum

To: Town Council

From: Lynn Griesemer, President, Amherst Town Council

Re: Questions and Responses regarding the DRAFT MOU between Town and Jones Library, Inc.

Date: March 29, 2021

This memo accompanies the DRAFT MOU sent to the Town Council and Finance Committee on March 27, 2021. It is attached here for your convenience.

Background:

On March 12, 2021 the Jones Library trustees approved by a vote of 6-0-0 the following motion:
“MOVED: that Jones Library, Inc. (JLI) enter into an agreement with the Town of Amherst pursuant to which, if the Town authorizes and signs the contract required by the Massachusetts Board of Library Commissioners (MBLC) for the Town to receive the provisional grant award offered by the MBLC, JLI will provide \$6,656,576 toward the renovation/expansion project funded by that grant, such \$6,656,576 to be provided as it is received by JLI, less any campaign fundraising costs, with any balance to be provided simultaneously with the final payment of the MBLC grant.”

In addition, several Councilors and many residents have asked questions about the balance and state of the endowment and fundraising. Those questions and responses are included in the Q&A updated as of March 26, 2021. However the most relevant points related to the MOU are as follows:

- The endowment, which is managed by a third party professional investment company, is presently worth over \$9 Million. It is drawn upon annually for partial support of the Jones Library at a rate of about 4%. Based upon the significant analysis conducted by Trustee and Treasurer Robert Pam should the fundraising for the library require a final draw “simultaneously with the final payment of the MBLC grant”, it could still pay out as much as \$2 Million and still be able to meet the annual operating commitment it has in past years.
- The payment of historic tax credits, which is one of the largest contributions to the fundraising effort, will not happen until the completion of the project. Therefore as with a “balloon” loan, structuring the MOU so that the largest payment from Fundraising is tied to the end of the project allows the Library Endowment to remain intact; and if the Fundraising strategy is successful, will in fact mean, that the Endowment will never be touched.

Questions:

1. We are making this with the current Trustees. These people not a lien or claim against the building. They do not technically own the building. Ordinarily, they would be paying their share up front. Similar to down payment on a house.
2. There is no collateral or consequences in this MOU as written.
3. If the intent is they agree to take out a loan against the building or pay out of the endowment, it should say this and perhaps put the endowment in escrow as a security. This would secure the loan
4. They are not being asked to pay interest on the loan from the Town.
5. The endowment itself may be encumbered for purposes other than construction. Donors to the endowment may have specified the gift purpose and could sue. This would stop the flow of funds to the Town.

Response:

The Library Trustees are elected by the people and have similar standing in the Town Charter to the Town Council. They are elected by and accountable to the electorate and all residents and taxpayers in Amherst. It goes without saying that members of the Trustees – and of the Town Council, for that matter – may not be in their respective seats during the length of this Memorandum of Agreement.

There is a strong statement about enforcement including the language about costs of litigation. There is a range of measures that can be included to “guarantee” the Trustees perform on their fundraising efforts. This ranges from putting the equivalent amount of funds from the Trustees’ endowment into an escrow account to providing for enforcement to compel action for failure to perform. This was discussed in the group. While placing the proper amount from the endowment in escrow is the most aggressive way for the Town to secure its funds, it may not be the wisest as it would require the Trustees to liquidate its holdings and for the Town to place the funds in a designated bank account, likely garnering minimal interest. It may make sense to have a clause in the Memorandum of Agreement that the Trustees are not permitted to obligate the endowment to any other purpose, aside from meeting the annual budget needs of the Jones Library and backstopping the fundraising goals.

It is our understanding that the Trustees intend to keep their options open as to how they would meet their obligation to the Town should they fail to perform on the fundraising. This could include liquidating the endowment, but there are other steps they may take, as well.

We do not see this as a “loan” to the Trustees, any more than it is a “loan” to the Massachusetts Board of Library Trustees. Interest costs are embedded in the cost of the project and the allocation of funds to pay for the project, including interest, are allocated with that in mind.

Both parties recognize that the endowment will be used if necessary but neither believe it will be necessary nor want to affect the Endowment investments and growth. If any donors to the Endowment believe this is contrary to their intent that needs to be clarified during the gift making. This is standard practice in fundraising.

“Whereas” clauses are not the terms of an agreement but bear on the interpretation.

Cc: Jones Library Trustees
Town Manager

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (this “Agreement”) is entered into by and between the **Town of Amherst** (the “Town”), acting by and through its Town Manager, and **The Jones Library, Inc.** (the “Library”), a Massachusetts nonprofit corporation, and the **Board of Trustees of the Jones Library, Incorporated, and of the Amherst Town Library** (the “Trustees”), as the Library’s governing body.

Recitals

Whereas, the Library is the owner of a parcel of land with the improvement thereon known as the Jones Library (the “Building”), located 43 Amity Street, Amherst, MA 01002 (the “Property”);

Whereas, the Building, originally constructed around 1928, is in urgent need of capital repairs and improvements, including, without limitation, repairs to seal the Building to the elements, the HVAC system, and improvements to make the Building fully handicapped-accessible, all as documented in an existing-conditions survey/study;

Whereas, the Building is a significant building in the Town of Amherst, not just as a unique historic building that is worthy of preservation, but also as an essential part of the culture, education, and community of the Town of Amherst and requires expansion to enable it to continue to meet the current and future needs of the community;

Whereas, the Trustees have, through diligent efforts, obtained a grant in the amount of \$13,871,314 from the Massachusetts Board of Library Commissioners (“MBLC”) to undertake the renovation and expansion of the Building (the “Project”) as shown more particularly on plans and specifications entitled “Schematic/Sustainability Study”, dated September 8, 2020, prepared by Finegold Alexander Architects (the “Project Plans”);

Whereas, the Project is estimated to cost \$36,279,700 (the “Total Project Cost”), and the Town has, at the request of the Trustees, appropriated the sum of \$15,751,810 to contribute to the Total Project Cost (the “Town Share”);

Whereas, the Trustees have agreed to provide funds in the amount of \$6,656,576 for the balance of the Total Project Cost (the “Library Share”), \$1,000,000 has been granted under the Community Preservation Act (“CPA”), and the Trustees intend to raise the remaining \$5,656,576 by applying for grants available to it, whether governmental or private, and gifts to it from individuals or other sources, and, further, have agreed that if the Library Share is not obtained through such sources, the Trustees shall use either the Library’s endowment, valued at \$9,118,837 (the “Endowment”) as of February 28, 2021, or other sources of funds available to it, to pay the Library Share; and

Whereas, the Town, the Library, and the Trustees wish to enter into this Agreement to memorialize their understanding and agreement on the Project funding.

Now, Therefore, for good and valuable consideration, the parties agree as follows:

Agreement

1. Library Share. The Trustees hereby agree, confirm and irrevocably commit that, in consideration for the Town appropriating the Town Share, the Trustees are responsible for and shall pay the full Library Share of the Total Project Cost in accordance with the terms of this Agreement.

2. CPA Funds. The Trustees agree that the Amherst Community Preservation Committee has approved, and the Amherst Town Council has appropriated, funds in the amount of \$1,000,000 from the CPA for the Special Collections of the Library Renovation/Addition to applied toward the Total Project Cost (the “CPA Funds”), and that said CPA Funds shall be deposited with the Town Treasurer in the Project Account (defined below) and count toward the Library Share.

3. Fundraising; Deposit. The Trustees agree that they will exercise good faith and diligent efforts to raise the balance of the Library Share (that is, \$5,656,576) through grants, gifts, donations and other fund-raising efforts (the “Library Project Donations”), and that the Trustees shall deposit with the Town Treasurer all amounts of the Library Project Donations as and when the same is received by the Trustees, less any direct and reasonable fundraising costs and expenses. The Library Project Donations shall not be added to the Library Endowment.

4. Library Account. The Town shall maintain a separate account into which the CPA Funds and the Library Project Donations shall be deposited (the “Project Account”), and the Town shall have the right to use the same from time to time, at the Town’s discretion, to pay debt service and other costs associated with borrowing the Town’s Share with prior notice to the Trustees.

5. Reports, Records. The Trustees agree to provide the Town with the following reports, records, and information:

- (a) Annually, the audited financial statement of the Library, federal tax filings (Form 990), state tax filings (Form PC), and the Endowment Statement used for its annual tax filings, simultaneously with the filing of the same;
- (b) Annually, a summary of the results of the Library’s fundraising efforts over the past Fiscal Year, including pledges made, receipt of funds, and status of other initiatives such as tax credits and grants; and
- (c) Such other relevant information as the Town Manager may reasonably request from time to time to apprise itself of the financial status of the Library, the Trustees, and/or the Endowment.

6. Due Date. The Trustees agree that the Library Share shall be paid in full to the Town (a) simultaneously with the final payment made to the Town by the MBLC for the Total Project Cost (the “Library Share Due Date”), which is projected to occur on or after June 30, 2026, or (b) in the event that the MBLC final payment is delayed for any reason, one (1) year from the date on which a certificate of occupancy is issued for the Project, unless the Town, through the Town Council, approves a later date.

7. Town’s Rights and Remedies. In the event that the full Library Share is not paid by the Library Share Due Date, the parties agree that the Town shall have all available rights and remedies to enforce the Library’s obligations under this Agreement, including, without limitation, the right to compel the Trustees to use the Endowment to pay the Library Share. The Trustees shall reimburse the Town for any and all reasonable costs, expenses, loss, penalties, interest, damage and/or liabilities (including, without limitation, attorneys’ fees), in enforcing the Town’s rights to obtain the Library Share from and after the Trustee’s default.

8. Restriction. The Trustees agree that, in consideration of the public funds contributed by the Town, the Trustees shall, on behalf of the Library, record with the Hampshire Registry of Deeds a

restriction, providing that the Trustees and the Library shall hold the Property in trust as a free library for the benefit of the public at large and the Town , on terms reasonably acceptable to the parties, initially for thirty (30) years (from the recording of said restriction) consistent with the requirements of the CPA, and that said restriction shall be recorded with the Hampshire Registry of Deeds within thirty (30) days from the date of this Agreement.

9. Notice. Any and all notices or other communications required or permitted by this Agreement to be served on or given to any party hereto by any other party hereto shall be personally served upon the party to whom it is directed, sent by recognized overnight courier, by certified or registered, by confirmed facsimile transmission or by electronic mail addressed to the respective parties at the following addresses:

Town: Amherst Town Hall
4 Boltwood Avenue
Amherst, MA 01002
Attn: Town Manager
Tel: (413) 259-3002
Fax: (413) 259-3405
Email: townmanager@amherstma.gov

Trustees: Jones Library Inc.
43 Amity Street
Amherst, MA 01002
Attn: Library Director
Tel: (413)
Fax: (413)
Email

8. Miscellaneous. The parties to this Agreement represent, warrant, and agree as follows:

- (a) Each representative of any entity executing this Agreement on behalf of that entity is empowered to do so and thereby binds such entity;
- (b) The parties agree to execute all additional documents and take such additional actions as shall be reasonable and necessary to carry out the provisions of this Agreement;
- (c) If any portion of this Agreement is declared to be illegal, unenforceable or void, then all parties to this Agreement shall be relieved of all obligations under that portion; provided, however, that the remainder of this Agreement shall be enforced to the fullest extent permitted by law;
- (d) The captions in this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions thereof;
- (e) This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, and any disputes regarding this Agreement shall be brought in the courts of Hampshire County;
- (f) This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one fully executed original Agreement, binding upon the parties hereto, notwithstanding that all of the parties hereto may not be signatories to the same counterpart. Additionally, telecopied, DocuSigned or e-mailed

signatures may be used in place of original signatures on this Agreement. Each party intends to be bound by the signatures on the telecopied, DocuSigned or e-mailed document, is aware that the other party will rely on the telecopied, DocuSigned or e-mailed signatures, and hereby waives any defenses to the enforcement of the terms of this Agreement based on the form of signature; and

(g) The recitals to this Agreement are true and accurate and incorporated herein by reference.

[signature page follows]

Signed under seal as of this _____ day of _____, 2021.

TOWN OF AMHERST,
By its Town Manager

THE JONES LIBRARY, INC.

Paul Bockelman, Duly Authorized

By: _____
Name:
Title: President, Jones Library Inc.

By: _____
Name:
Title: Treasurer, Jones Library Inc.

**BOARD OF TRUSTEES OF THE JONES
LIBRARY, INCORPORATED, AND OF
THE AMHERST TOWN LIBRARY**

