

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, Incorporated** (the “Library”), a Massachusetts nonprofit corporation, acting by and through its Board of Trustees.

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 Library has, 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 Library, appropriated the sum of \$15,751,810 to contribute to the Total Project Cost (the “Town Share”);

Whereas, the Library has 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 Library intends 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, has agreed that if the Library Share is not obtained through such sources, the Library 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 and the Library 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 Library hereby agrees, confirms, and irrevocably commits that, in consideration for the Town appropriating the Town Share, the Library is 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 Library agrees 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 area of the Library Renovation/Addition to be 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 Library agrees that it 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 Library shall deposit with the Town Treasurer all amounts of the Library Project Donations as and when the same is received by the Library, less any direct and reasonable fundraising costs and expenses. The Library Project Donations shall not be added to the Library Endowment. Nothing in this paragraph shall enjoin the Library from continuing to solicit, receive, and use gifts and grants for its annual fund, operations, programs and endowment which are not earmarked for the Project.

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 Library.

5. Reports, Records. The Library agrees 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 and/or the Endowment.

6. Due Date. The Library agrees that the remainder of 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 Library to use the Endowment to pay the Library Share. The Library 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 Library's default.

8. Restriction. The Library agrees that, in consideration of the public funds contributed by the Town, the Library shall, record with the Hampshire Registry of Deeds a restriction, providing that the Library shall hold the Property 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

Library: Jones Library, Inc.
43 Amity Street
Amherst, MA 01002
Attn: Library Director
Tel: (413) 259-3106
Fax: (413) 256-4096
Email sharrys@joneslibrary.org

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]

DRAFT

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

TOWN OF AMHERST,
By its Town Manager

THE JONES LIBRARY, INCORPORATED

Paul Bockelman, Duly Authorized

By: _____
Name:
Title: President, Jones Library Incorporated

By: _____
Name:
Title: Treasurer, Jones Library Incorporated

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

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