

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;

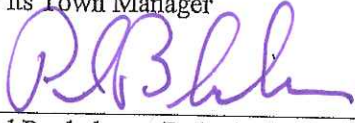
(f) This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one fully executed original Agreement, binding upon the parties hereto, notwithstanding that all of the parties hereto may not be signatories to the same 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]

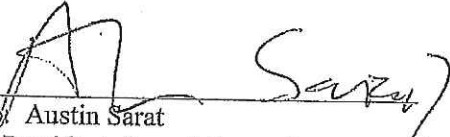
Signed under seal as of this _____ day of _____, 2021.

TOWN OF AMHERST,
By its Town Manager

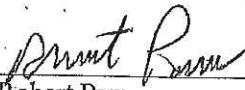


Paul Bockelman, Duly Authorized

THE JONES LIBRARY, INCORPORATED

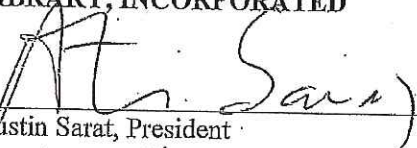
By: 

Name: Austin Sarat
Title: President, Jones Library, Incorporated


By: 

Name: Robert Pam
Title: Treasurer, Jones Library, Incorporated

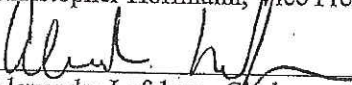
**BOARD OF TRUSTEES OF THE JONES
LIBRARY, INCORPORATED**



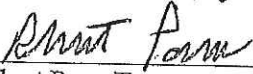
Austin Sarat, President




Christopher Hoffmann, Vice President



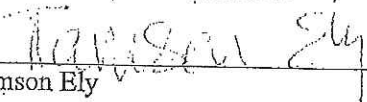
Alexandra Lefebvre, Clerk



Robert Pam, Treasurer



Lee Edwards, Vice Treasurer



Tamson Ely

AMENDMENT TO MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (this "Amendment") is entered into on this 27th day of October, 2022, 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 Town and the Library entered into a Memorandum of Agreement ("MOA"), setting forth, among other things, the funds to be contributed by the Town and by the Library to undertake and complete the Project. Capitalized terms used but not defined in this Amendment shall have the meaning ascribed to such terms in the MOA;

Whereas, at the time the parties entered into the MOA, the Total Project Cost was estimated to be \$36,279,700 (the "Original Total Project Cost"), of which \$13,871,314 was to be paid by the Massachusetts Board of Library Commissioners, \$15,751,810 was to be paid by the Town (the "Town Share"), and the remaining \$6,656,576 was to be paid by the Library (the "Library Share") on the Library Share Due Date;

Whereas, since the time the parties entered into the MOA, given the Covid-19 pandemic and shortfalls in materials and labor, the new Total Project Cost, as of the date of this Amendment, is expected to be between \$43.5 million and \$49.8 million (the "New Total Project Cost");

Whereas, the Library has agreed to fund the difference between the New Total Project Cost and the Original Total Project Cost (together with the Library Share, the "Library Adjusted Share") through its fundraising efforts;

Whereas, as of the date of this Amendment, the Town is at the end of the schematic design phase and will expend an additional sum of approximately \$1,800,000 to complete the design development, preparation of construction drawings, and bidding (the "Design, Construction Plans, and Bidding," and this portion of the Project is referred to herein as the "Bidding Phase");

Whereas, the parties agree that in the event the Project does not proceed past the Bidding Phase, the parties will address the urgent repairs required to the Building including, but not limited to, its roof and HVAC system (the "Building Repairs"); and

Whereas, given that the Town will proceed with the Design, Construction Plans, and Bidding notwithstanding such uncertainty, the Town seeks assurance from the Library that the Library will invest at least \$1,800,000 of its own funds toward designing, planning, and carryout of the Building Repairs;

Whereas, the Library, in the interest of advancing the Project, agrees to contribute \$1,800,000 towards the Building Repairs from its Endowment or other sources provided those sources are not from the Town's operating budget if the Project does not proceed past the Bidding Phase; and

Whereas, the parties wish to amend the MOA to reflect the understanding of the parties as set forth above.

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

1. The Library shall be responsible for the Library Adjusted Share.

2. The Library agrees that, given the urgent need of the Building Repairs, it will work with the Town to develop a repair plan and schedule for the Building Repairs should the Project not proceed.

3. Notwithstanding the provisions of Section 6 of the MOA to the contrary, the Library agrees in the event that the Project does not proceed past the Bidding Phase, as determined by the Town, the Library shall pay the full \$1,800,000 towards the cost of the Building Repairs within three (3) years from the date the Town decides to end the Project or such other time as agreed to by the Town Manager and the Library (the "Building Repair Due Date"). This contribution shall be from its Endowment or other sources provided those sources are not from the Town's operating budget. If the Project does not proceed beyond the Bidding Phase, the Town Manager will memorialize the date of the decision in writing.

4. The Town's decision to proceed with the Project past the Bidding Phase may occur under the following circumstances:

- (a) The Town Council appropriates funds to cover all eligible costs of the Project as required by the MBLC, and
- (b) The Town Manager determines, in his or her sole discretion, that the Project is financially feasible, taking into account the funds received by the Library, including secured commitments and/or obtained grants, and progress in meeting fundraising goals, as of the opening of construction bids.

5. The parties agree that if the Library does not pay \$1,800,000 to the Town in full by the Building Repair Due Date, the Town shall have the right to exercise the remedies set forth in Section 7 of the MOA.

6. All references to the Library Share in the MOA will refer instead to the Adjusted Library Share, which, except as provided for in this Amendment, will be paid on the Library Share Due Date.

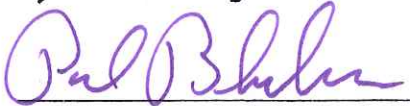
7. Other than as amended herein, the MOA is hereby ratified and continues in full force and effect.

8. The recitals to this Amendment are incorporated herein by reference.

[signature page follows]

Signed under seal as of this 27th day of OCTOBER, 2022.

TOWN OF AMHERST,
By its Town Manager



Paul Bockelman, Duly Authorized

THE JONES LIBRARY, INCORPORATED


By: 
Name: Austin Sarat

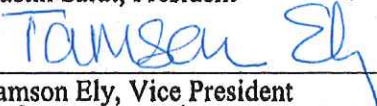
Title: President, Jones Library Incorporated

By: 
Name: Robert Pam

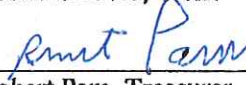
Title: Treasurer, Jones Library Incorporated

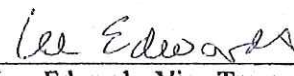
**BOARD OF TRUSTEES OF THE JONES
LIBRARY, INCORPORATED, AND OF
THE AMHERST TOWN LIBRARY**

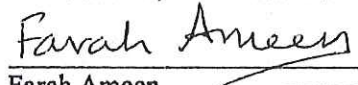

Austin Sarat, President


Tamson Ely, Vice President


Alex Lefebvre, Clerk


Robert Pam, Treasurer


Lee Edwards, Vice-Treasurer


Farah Ameen

AMENDMENT #2 MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (“#2 Amendment”) is entered into on this ____ day of December, 2023 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, a Memorandum of Agreement was entered into between the Town and the Library in 2021 (attached) regarding the renovation and expansion of the Jones Library building (“Project”); and

Whereas, an Amendment to the Memorandum of Agreement was entered into between the Town and Library in 2022 (attached); and

Whereas, since the time the parties entered the Memorandum of Agreement and the Amendment to the Memorandum of Agreement (together, the “Agreements”), updated estimates have been procured based on more detailed designs; and

Whereas, since the time the parties signed the Agreements, the Massachusetts Board of Library Commissioners (MBLC) increased the grant for the Library by \$1,694,158, bringing the total of the grant from MBLC to \$15,565,472; and

Whereas, having secured substantial commitments for Federal grants and from Amherst College in addition to pledges from community fundraising, the Library agrees that it shall deposit with the Town Treasurer all funds once received less fundraising costs and expenses; such fundraising costs which shall neither increase nor reduce the New Library Share; and will use due diligence in accelerating receipt and deposit of funds raised as part of the New Library Share; and

Whereas, the Town and Library seek to amend the Agreements by clarifying the expectations of the parties, including financial commitments;

Now, therefore, for good and valuable consideration, the Town and Library agree to this Second Amendment to the Memorandum of Agreement as follows:

1. The New Total Project Cost is estimated to be \$46,139,800 (“New Total Project Cost”) based on recent estimates;
2. The Town has appropriated the sum of \$15,751,810 (“Town Share”) to contribute to the New Total Project Cost;
3. The Massachusetts Board of Library Commissioners has committed the sum of \$15,565,472 (“MBLC Share”) to contribute to the New Total Project Cost;

4. The Library has been granted \$1,000,000 under the Community Preservation Act (“CPA Share”);

5. The Library has agreed to provide funds (“New Library Share”) estimated to be in the amount of \$13,822,518 for the balance of the New Total Project Cost (Town Share + MBLC Share + CPA Share + New Library Share = New Total Project Cost);

6. The Library intends to raise the New Library Share in the amount of \$13,822,518 by applying for grants available to it, whether governmental or private, and through gifts to it from individuals or other sources, and, further, has agreed that if the New Library Share is not obtained through such sources, the Library shall use either the Library’s endowment or other sources of funds available to it, which may include taking out a bank loan, to pay the New Library Share;

7. The Library agrees that the remainder of the New 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 New Total Project Cost, which is projected to occur on or about June 30, 2027 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;

8. During construction, the Town will be paying for the principal and interest on short-term loans/BANS necessary for construction and a long-term loan;

9. The Library and the Town will do everything possible to expedite providing funds to the Town to minimize the amount and length of time of borrowing the short-term loans/BANS during construction. Expedited payments will not increase the New Library Share of the Project.

10. The Library agrees that during FY25 and FY26 it will not make requests for funding through the Town’s Joint Capital Planning Committee for any items related to the Jones Library, except reasonable requests such as those associated with normal wear and tear and replacement.

11. The Library also understands that the Town will not pay more than its Town Share committed by this agreement and the previous Agreements.

12. All other provisions of the Agreements remain in force.

(signature page including all Trustees, the Town Manager, and a date follows)

Projected Project Cost	\$46,139,800
Town's Local Share (no change)	\$15,751,810
MBLC Grant Contribution (increased)	\$15,565,472
Jones Library, Inc. Commitment (increased)	\$13,822,518
Subtotal	\$45,139,800
Community Preservation Act Funding (debt)	\$1,000,000
Total Funding Sources	\$46,139,800

Attachments:

Memorandum-of-Agreement – April, 2021

MOA Amendment 10-27-22

Town Manager Memo to Town Council 11-27-23 (including Updated Cash Flow)

[signature page follows]

Signed and effective as of this _____ day of _____, 2023.

TOWN OF AMHERST,

By its Town Manager



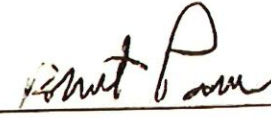
Paul Bockelman, Duly Authorized

THE JONES LIBRARY, INCORPORATED

By: 

Name: Austin GARAT

Title: President, Jones Library Incorporated

By: 

Name: Robert Pam

Title: Treasurer, Jones Library Incorporated

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

