

AMENDMENT TO MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (this "Amendment") is entered into on this _____ day of _____, 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 out 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.

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- 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.

Paul Bockelman, Duly Authorized

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

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