

MEMORANDUM OF UNDERSTANDING

BY AND AMONG

EASTERN SHORE PUBLIC LIBRARY BOARD OF TRUSTEES, ACCOMACK COUNTY BOARD OF SUPERVISORS, AND THE EASTERN SHORE PUBLIC LIBRARY FOUNDATION

This Memorandum of Understanding (“MOU”) is made and entered into this ___ day of _____, 2018 by and among the EASTERN SHORE PUBLIC LIBRARY BOARD OF TRUSTEES, (“Trustees”), ACCOMACK COUNTY BOARD OF SUPERVISORS, a political subdivision of the Commonwealth of Virginia (“County”), and THE EASTERN SHORE PUBLIC LIBRARY FOUNDATION (“Foundation”).

STATEMENT OF PURPOSE

This tri-partite MOU develops and memorializes the understanding and agreement among the parties for the purposes of funding and construction of the Eastern Shore Public Library.

RECITALS

WHEREAS, the Trustees have determined to construct a new main library in Parksley, Virginia for the Eastern Shore Public Library system; and

WHEREAS, the Trustees identified an existing, unused commercial space at 2413 Bennett Street in Parksley, Virginia and determined it to be suitable for renovation and expansion; and

WHEREAS, the Trustees and Foundation have undertaken a fundraising campaign for the purpose of generating funds to cover all expenses needed to accomplish said renovation and expansion; and

WHEREAS, the Trustees and Foundation have estimated a total budget of \$5 million for the project and raised approximately \$1.5 million to the date of signing of this MOU; and

WHEREAS, \$2,000,000.00 has been pledged by the County for the library project; and

WHEREAS, the Trustees through the Eastern Shore Public Library Foundation have identified a potential lender to fund the outstanding balance needed to accomplish the renovation and expansion; and

WHEREAS, the County Board of Supervisors has unanimously agreed that the County and the Trustees, on behalf of the Eastern Shore Public Library, shall be held harmless against any and all claims and recourse for the payment of any loan proceeds from any lender;

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

CONTRIBUTIONS & RESPONSIBILITIES

1. The County shall be the fiscal agent for the project and will perform financial management in terms of administrative, investment, and payment functions. Further, the County will contribute \$2,000,000.00 towards construction of the new library.
2. The Trustees shall contribute all funds generated in the fundraising campaign for the library, including but not limited to the \$500,000.00 from the Virginia General Assembly, and any other funds or grants that may be procured for the project. Title to the facility to be constructed or renovated shall be held by the ESPL Board of Trustees ; provided, that the ESPL Board of Trustees shall grant the County a first lien deed of trust on such real property if required by the County or its lender/bonding company for the contribution of \$2,000,000.00.
3. The Foundation shall contribute all grant and loan proceeds to the project without recourse to the County or the Trustees, holding both the County and the ESPL Board of Trustees harmless against any and all claims. It shall also continue to seek the funding of all pledges made to the project and contribute the same to the project fund.

TERMS

1. Creation of a Library Construction Committee. A Library Construction Committee shall be appointed by the Eastern Shore Public Library Board of Trustees and consist of nine (9) members as follows:
 - a. Two (2) Trustees from the Eastern Shore Public Library Board of Trustees, one of which shall be appointed Committee Chair;
 - b. Three (3) private citizens appointed by the Trustees with experience in construction and/or library design;
 - c. One (1) representative from the Town of Parksley;
 - d. The Accomack County Deputy Administrator of Public Works and Facilities;
 - e. One (1) member of the Accomack County Board of Supervisors;
 - f. The Director of the Eastern Shore Public Library.

The Library Construction Committee shall be responsible to:

- a. Review and approval of final design for the Library project.
 - b. Oversee the day to day project management provided by the firm of Waller, Todd & Sadler Architects, Inc. and the Accomack County Department of Public Works,
 - c. Provide monthly status reports to the Trustees and Board of Supervisors during the construction period; and
 - d. Dissolve itself upon the issuance of a Certificate of Occupancy, based on the ad hoc status of the Library Construction Committee.
2. Duration of MOU. This MOU shall continue in force and effect for the term of the County's bond repayment schedule.
 3. Disposition of Existing Library Property. The Eastern Shore Library facility and real property located at 23610 Front St., Accomack, VA shall remain with the Library Board of Trustees to do with as such sees fit, including, but not limited to, selling such real property. Should such be sold, the net proceeds shall be used to pay down the loan with any lender, if any outstanding balance shall be due and owing at the time of such sale.
 4. Exhibits. This MOU is predicated on the exhibits attached. (Design, Budget, etc.)
 5. Operational Funding not Affected. This MOU does not alter, change, or otherwise affect any future operational funding provided by Accomack and Northampton Counties. Operational funding is shared on a pro-rata basis between Accomack and Northampton Counties.
 6. Termination. This MOU may be terminated by mutual written agreement, if the parties agree, upon the repayment of the County's bond debt pledged for the library project.
 7. Indemnification. The Trustees and the Foundation shall indemnify, defend, and hold harmless the County, its elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the County's acts and/or omissions arising from and/or relating to this MOU.
 8. Notices. All notices of matters under this MOU shall be given in writing by first class mail, personal delivery, or email. Mailed notices shall be addressed as set forth below, but any party may change its address by giving written notice thereof to the others in accordance with the provision of this section:

Accomack County:

Michael Mason, County Administrator
P. O. Box 388

Accomac, VA 23301
mmason@co.accomack.va.us

Eastern Shore Public Library
Board of Trustees: _____, Chairperson

Accomac, VA 23301

Eastern Shore Public Library Foundation: _____, President

9. Amendments. Any Amendments to this MOU shall be in writing and executed by all parties.
10. Signing Authority. The person executing this MOU on behalf of each of the parties warrant and represent that they have the authority to execute this MOU on behalf of the party for whom they execute and the authority to bind the party to the obligations herein.
11. Complete Agreement. This MOU is the entire agreement between the parties hereto with respect to the Eastern Shore library project hereof and supercedes all other agreements between and among the parties with respect to the matters contained in this MOU. Any waiver, modification, consent or acquiescence with respect to any provision of this MOU shall be set forth in writing and duly executed on behalf of the party to be bound. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.
12. No Assignment or Transfer. No party shall assign or transfer any rights or obligations in this MOU whether by assignment or novation, without the prior written consent of the other parties. Any purported assignment without such consent shall be void and without effect.

IN WITNESS WHEREOF, the County, the Trustees, and the Foundation have executed this MOU as of the day, month, and year first above written.

ACCOMACK COUNTY BOARD OF SUPERVISORS

By: _____
v.2, 01-18-18
ESPL edits 1-23-2018

Its: _____

EASTERN SHORE PUBLIC LIBRARY BOARD OF TRUSTEES

By: _____

Its: _____

EASTERN SHORE PUBLIC LIBRARY FOUNDATION

By: _____

Its: _____

CONFIDENTIAL & DRAFT