

Approved by the Cape Elizabeth Town Council 7/11/2022

**AGREEMENT BETWEEN
THE TOWN OF CAPE ELIZABETH and the
CAPE ELIZABETH HISTORICAL PRESERVATION SOCIETY**

This Agreement made as of this ____ day of _____, 2022, by and between **THE TOWN OF CAPE ELIZABETH**, a body corporate and politic with a mailing address of 320 Ocean House Road, Cape Elizabeth, Maine 04107 (the "**Town**"), and the **CAPE ELIZABETH HISTORICAL PRESERVATION SOCIETY**, a Maine nonprofit corporation with a mailing address of 325 Ocean House Road, Cape Elizabeth, Maine 04107 (the "**Historical Society**").

In recognition of the Town and the Historical Society having had a longstanding partnership in the preservation of historical public and private records related to the Cape Elizabeth community, including both public documents and materials and artifacts that have been donated to the Historical Society; and have been co-signers to a Records Management Agreement dating back at least to 2014.

And in recognition of the Town and the Historical Society seeing the significant value to Cape Elizabeth citizens, young and old, in the establishment of a place of operation wherein the Historical Society can expand its work of preserving, safely storing, digitally cataloging and publicly displaying historical photos, artifacts and other items for the educational benefit of residents and visitors, and in providing increased awareness of the historic contributions to the state and nation made by the town and its residents since colonial times,

The Town and the Historical Society enter into the following:

- 1) A new Bachelor Officers' Quarters Occupancy Agreement whereby the Historical Society will relocate its operations from the Public Safety Building to the former Bachelor Officers' Quarters Building at Fort Williams Park, and
- 2) An updated Records Management Agreement.

BACHELOR OFFICERS' QUARTERS OCCUPANCY AGREEMENT

WHEREAS, the Town has created a Cape Community Campus as part of its updated Master Plan for Fort Williams Park, which includes the Bachelor Officers' Quarters Building, and has approached the Historical Society about locating its operations there; and

WHEREAS, the Historical Society has indicated its strong interest in establishing a CAPE ELIZABETH HISTORY CENTER and FORT WILLIAMS MUSEUM at the Bachelor Officers' Quarters Building, the Town and Historical Society agree to the following:

- 1) The Historical Society agrees to the establishment at the Bachelor Officers' Quarters of the CAPE ELIZABETH HISTORY CENTER, a project of the Historical Society, which will provide the following: 1) the safe storage of the Historical Society's archival collection, 2) the ongoing work of digitizing the archival collection into a specialized database designed for libraries and historical societies, 3) provide workstations and assistance for the public to do family history research and other

- research into town history, 4) provide space for the Historical Society's series of history-related presentations that are open to the community; and 5) for public display of the Society's own collection of documents, artifacts, models, recorded oral histories and other items relating to Cape Elizabeth town history.
- 2) The Historical Society agrees to the establishment at the Bachelor Officers' Quarters of the FORT WILLIAMS MUSEUM, a project of the Historical Society, that will be open to town residents and visitors to the park at hours to be determined. The Fort Williams Museum will display documents, artifacts, photos, models, video presentations and other items illustrating the historical role of the military base in the defense of our nation at war (including World Wars I and II) and especially the defense of Portland harbor, and the impact of Fort Williams on the lives of the people who resided and served there.
 - 3) The space at the Bachelor Officers' Quarters at Fort Williams will be provided to the Historical Society by the Town at no monthly rental fee or heating costs for a period of 10 years and this agreement will be renewable for additional 10-year intervals. This space will include the areas on both the first and second floors **as indicated in the attached floor plans**. This space may be increased to include other offices in the building as they become available and at the Town's discretion.
 - 4) For at least the first two years of operation, to allow the Historical Society to focus its resources on establishing the Cape Elizabeth History Center and Fort Williams Museum, the Town will waive electrical utility costs to the Historical Society.
 - 5) The Town agrees to move the Historical Society property and Town Records from the Public Safety Building to the Bachelor Officers' Quarters at the Town's expense.
 - 6) In order to adequately secure Town Records and Historical Society Property at the Bachelor Officers' Quarters, the Town agrees at a minimum to have locks on all exterior doors and windows, and an intruder alarm system and fire alarm system, which shall be provided by and maintained by the Town.
 - 7) The Town and the Historical Society shall have access to the Historical Society's offices at the Bachelor Officers' Quarters during business hours, and non-business hours upon mutual agreement (including for the use of the building for Historical Society evening presentations open to the public).
 - 8) The Historical Society will comply with all Americans with Disability Act (ADA) requirements in laying out the interior space for the public and non-public areas; and the Town will be responsible for the design and costs of all exterior accessibility requirements in compliance with the ADA.
 - 9) The Historical Society will be responsible for the cost of all interior and exterior signage installed at the Bachelor Officers' Quarters, and will obtain the prior approval on all exterior signage (i.e. signage attached to the building) from the Town; and the Town will be responsible for the design and cost of all signage directing park visitors to the Cape Elizabeth History Center and/or the Fort Williams Museum, and will work with the Historical Society in the planning of this signage.

- 10) The Historical Society will be permitted to send membership recruitment and fundraising appeals to support its activities at the Bachelor Officers' Quarters; and will be allowed to have a "donation jar" or similar device located at the Cape Elizabeth History Center and/or the Fort Williams Museum for voluntary donations.
- 11) The Historical Society will obtain prior approval from the Town if, in the future, it wishes to add a gift shop at the Bachelor Officers' Quarters, and the proceeds from this operation will be intended for a historical preservation/restoration project within the park with Town approval and in compliance with the Fort Williams Master Plan.

RECORDS MANAGEMENT AGREEMENT

WHEREAS, the Town and the Historical Society having had a mutual interest in the preservation of historical public and private records related to the Cape Elizabeth community, including both public documents and materials and artifacts that have been donated to and are owned by the Historical Society; and have been co-signers to a Records Management Agreement that has been in effect since at least 2014 to the present (despite technically having expired in 2019), and

WHEREAS, pursuant to 5 M.R.S.A. §§ 91-98, records created by or belonging to the State of Maine, to a local or county government in the State, or to any agency of the State are the property of the State until ownership and possession are formally relinquished in accordance with statute and rules; and

WHEREAS, the Town's public records may not be removed from Cape Elizabeth municipal property except with permission of the Town Manager (the term "public records," as used herein this Agreement, shall have the same definition as that provided in 1 M.R.S.A. § 402(3)); and

WHEREAS, the Town has an interest in locating certain public records in a space the Town makes available to the Historical Society, and the Historical Society is willing to assist the Town in making these records available for public inspection, pursuant to the requirements of 1 M.R.S.A. §§ 400-521, and in ensuring that the public records are secure from removal or damage; and

WHEREAS, the Historical Society holds artifacts and personal papers that are not the property of the Town, the care and disposition of which are determined solely by the Historical Society (the "Historical Society property"), the Town and Historical Society agree to the following:

1. The Town and the Historical Society shall coordinate together to create and maintain an index listing of all artifacts, records, and public records stored in its collection. The public records of the Town and the Historical Society property shall not be comingled in a manner that prohibits the quick and efficient removal of the public records from the Historical Society's offices at the Bachelor Officers' Quarters by the Town, if necessary.
2. The Historical Society property is not the property of the Town. The Town shall not be responsible for, and the Historical Society shall indemnify and hold the Town harmless

from, any and all damages, including the destruction of the Historical Society's records, artifacts, or other property, that occurs at the Historical Society's offices at the Bachelor Officers' Quarters, unless such damage is caused by the gross negligence or willful misconduct of the Town.

3. The public records shall not be loaned, sold, or otherwise removed from the Historical Society's offices at the Bachelor Officers' Quarters unless to be returned to the sole custody of the Town.
4. The Town shall at all times retain legal title to all public records transferred to Historical Society's offices at the Bachelor Officers' Quarters. Notwithstanding anything contrary herein, the Town shall have the right to regain physical custody of the public records at any time, in its sole discretion.
5. The transfer of public records to the Historical Society's offices at the Bachelor Officers' Quarters and the retention of the public records at these premises is at all times subject to the approval of the Maine State Archives Advisory Board. The premises may be inspected by the Maine State Archives' staff before the transfer of public documents thereto, with reinspection possible any time afterwards.
6. The Historical Society shall at all times comply with the policies and directives of the Town governing confidentiality and the preservation of public records in accordance with state and federal law.
7. The Historical Society shall at all times maintain its non-profit corporate status with the State of Maine, and shall provide evidence of a capacity to care for the public records by providing evidence (1) of a mission statement; and (2) that a person who cares for the public records has basic archival training, such as a workshop approved by the Maine State Archives, formal education, or related experience.
8. In the event that the Town agrees to transfer, and the Historical Society wishes to hold, public documents in its offices at the Bachelor Officers' Quarters that are considered by the Town to be "permanently valuable records," such records shall be contained in a fireproof safe or vault at the premises, provided by the Town and built in accordance with the guidelines provided at <http://www.maine.gov/sos/arc/records/local/storage.html>, and pursuant to 5 M.R.S.A. § 95-B.
9. This Agreement represents the entire agreement between the parties and no oral statements or representations or prior written matter not contained in this Agreement shall have any force and effect. This Agreement shall not be modified in any way except by a writing executed by both parties. This Agreement shall be governed by the laws of the State of Maine.
10. All notices and other communications authorized or required hereunder shall be in writing and shall be sent by recognized overnight carrier or by certified or registered mail, return receipt requested, postage prepaid. Any such notice or other communication which requires or anticipates a response by the receiving party within a certain period, or prior to a certain date, shall be deemed to have been given to the receiving party when

received, or refused by the party to whom such notice or other communication is addressed. For the

purposes hereof, the parties' addresses shall be as set forth in first paragraph hereof, but either party may change its address by written notice to the other party.

Annual Review and Termination of Agreements

The Historical Society agrees to provide the Town Manager a report of its activities at the Bachelor Officers' Quarters upon request, and to participate in an annual review of the terms of this agreement with the understanding that both the Town and the Historical Society can seek revisions to the terms at this time.

The above agreements may be terminated by the Town or the Historical Society, which election must be in writing and provided to the other party upon sixty (60) days' notice for termination of the Records Management Agreement and ninety (90) days' notice for termination of the Bachelors Quarters Occupation Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement, effective on the day and year first above written.

WITNESS:

TOWN OF CAPE ELIZABETH

By Matthew E. Sturgis, Town Manager

WITNESS:

**CAPE ELIZABETH HISTORICAL
PRESERVATION SOCIETY**

By Robert A. Dodd, President

STATE OF MAINE
CUMBERLAND, SS.

_____, 2022

Personally appeared the above named Matthew E. Sturgis, in his capacity as Town Manager of the Town of Cape Elizabeth, and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of the Town of Cape Elizabeth.

Before me,

Notary Public/Maine Attorney at Law

Printed Name

STATE OF MAINE
CUMBERLAND, SS.

_____, 2022

Personally appeared the above named Robert A. Dodd, in his capacity as President of Cape Elizabeth Historical Preservation Society, and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of corporation.

Before me,

Notary Public/Maine Attorney at Law

Printed Name