

**Approved by the Cape Elizabeth Town Council
Item #134-2014 November 6, 2014**

RECORDS MANAGEMENT AGREEMENT

This Records Management Agreement (the "**Agreement**") made as of this ____ day of _____, 2014, by and between **THE INHABITANTS OF THE TOWN OF CAPE ELIZABETH**, a body corporate and politic with a mailing address of 320 Ocean House Road, P.O. Box 6260, Cape Elizabeth, Maine 04107 (the "**Town**"), and the **CAPE ELIZABETH HISTORIC PRESERVATION SOCIETY**, a Maine nonprofit corporation with a mailing address of 6 Scott Dyer Road, Cape Elizabeth, Maine 04107 (the "**Society**").

RECITALS

WHEREAS, the Town and the Society have 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 the Historic Society; 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's Clerk (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 Society, and the 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 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 Society (the "Society Property").

NOW, THEREFORE, in consideration of One Dollar and other valuable consideration to each party paid, the receipt and sufficiency of which is hereby acknowledged, the Town and the Society agree as follows:

1. The Town hereby agrees to provide the Society with up to _____ square feet of secure space in a municipal facility (the size and location of which shall be determined in the Town's sole discretion) (the "**Shared Premises**"), for the use of the Society for the storage of public records of the Town and for the storage of the Society Property.

- a. The Shared Premises shall, at a minimum, have locks on all doors and windows, and an intruder alarm system and fire alarm system, which shall be provided by and maintained by the Town.
 - b. The Shared Premises may be utilized for archival work and for the display of records and artifacts and such other Society Property.
 - c. The Shared Premises shall be accessible during normal daytime business hours to all individuals authorized by the Town Clerk and the Society. Access by the public, however, shall be supervised by the Society to ensure that the public records are not damaged or removed from the Shared Premises.
 - d. At a minimum, the public shall be provided reasonable access to the public records, as required by the Freedom of Access Act (1 M.R.S.A. §§ 400-521).. Additionally, there shall be no charge for retrieving or viewing the public records, and any charge for obtaining copies shall be limited to the Society's actual cost to produce such copies. Notwithstanding the foregoing, in the event that the Society's staff is requested to research the public records for the requestor, the Society may charge any fee that it would normally require for such research services.
 - e. The Town and the Society shall have access to the Shared Premises during non-business hours upon mutual agreement between the Society and the Town. The Society shall provide to the Town Clerk a list of persons authorized to access the collection during non-business hours..
2. The Town and the Society shall coordinate together to create and maintain an ~~inventory~~ index listing of all collections, artifacts, records, and public records stored in the Shared Premises (the "~~Inventory Index~~"). Said ~~Inventory Index~~ shall be reviewed annually by the Society and by the Town's Clerk (the "**Clerk**"), or the Clerk's designee, at a mutually agreeable time and location. The public records of the Town and the Society Property shall not be comingled in a manner that prohibits the quick and efficient removal of the public records from the Shared Premises by the Town, if necessary.
 3. The Society Property is not the property of the Town. The Town shall not be responsible for, and the Society shall hold the Town harmless from, any and all damages, including the destruction of the Society's records, artifacts, or other property, that occurs on the Shared Premises, unless such damage is caused by the gross negligence or willful misconduct of the Town.
 4. The Shared Premises made available to the Society hereunder may be relocated by the Town upon sixty (60) days notice to the Society. In the event that the Shared Premises is relocated following the Town's unilateral decision to relocate the Shared Premises, the Town shall be responsible for all reasonable moving expenses.
 5. The public records shall not be loaned, sold, or otherwise removed from the Shared Premises, unless to be returned to the sole custody of the Town.
 6. The Town shall at all times retain legal title to all public records transferred to the Shared Premises and/or held in custody by the Society. Notwithstanding anything contrary herein, the Town shall have the right to regain physical custody of the public records at any time.

7. The transfer of public records to the Shared Premises and the retention of the public records at the Shared Premises is at all times subject to the approval of the Maine State Archives Advisory Board. The Shared Premises may be inspected by the Maine State Archives' staff before the transfer of public documents thereto, with reinspection possible any time afterwards.
8. The 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.
9. The 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.
10. In the event that the Town agrees to transfer, and the Society wishes to hold, public documents in the Shared Premises that are considered by the Town to be "permanently valuable records," such records shall be contained in a fireproof safe or vault at the Shared 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.
11. This Agreement, and all of the rights created hereunder, shall terminate and be of no further effect at the election of either party, upon sixty (60) days notice, which election must be in writing and provided to the other party. In any event, this Agreement shall terminate on December 31, 2019, unless extended by written agreement between the parties.
12. 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.
13. 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.

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

WITNESS:

TOWN OF CAPE ELIZABETH

By Michael K. McGovern
Its Town Manager

WITNESS:

**CAPE ELIZABETH HISTORIC
PRESERVATION SOCIETY**

By
Its

STATE OF MAINE
CUMBERLAND, SS.

_____, 2014

Personally appeared the above named Michael K. McGovern, 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.

_____, 2014

Personally appeared the above named _____, in his/her capacity as _____ of Cape Elizabeth Historic Preservation Society, and acknowledged the foregoing instrument to be his/her 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