

GRANT AND OPTION AGREEMENT

THIS AGREEMENT entered into this _____ day of _____, 2010, by and between THE SHERMAN LIBRARY ASSOCIATION, INC. (“Association”), a nonprofit charitable corporation organized and existing under the laws of the State of Connecticut and having an address of P.O. Box 40, Sherman, CT 06784, and the TOWN OF SHERMAN (“Town”), a municipal corporation organized and existing under the laws of the State of Connecticut and having an office and place of business at Mallory Town Hall, Sherman, Connecticut 06784:

WITNESSETH:

Whereas, the Association owns and operates the Sherman Public Library on land located on Conn. Route No. 37 in the Town of Sherman as more particularly described in deeds recorded at Volume 21, Page 266 and at Volume 123, Page 141 of the Sherman Land Records; and

Whereas, the Association has developed plans to expand the existing library building from approximately 4,000 square feet to approximately 12,370 square feet; and

Whereas, the Association estimates that the cost of the library expansion will not exceed the sum of \$3,300,000, which sum includes design and construction management costs and an estimated \$250,000 expense for library furnishings and equipment, the “not-to-exceed” sum of the project to be determined in consultation with a Construction Manager; and

Whereas, the Association has requested that the Town finance a portion of said costs by grant-in-aid of said project (hereafter “Grant”); and

WHEREAS, the Town is empowered under Section 7-148(c)(2)(E) of the General Statutes, Revision of 1958, as amended (the “General Statutes”) to appropriate funds for the performance of public functions by nonprofit libraries; and

WHEREAS, the Town is further empowered under Section 11-20 of the General Statutes to expend such sums of money as may be necessary to provide and maintain such suitable buildings as may be necessary for any library which is the property of any corporation without capital stock or for any public library established in such municipality, provided the use of such library shall be free to its inhabitants under such regulations as its directors or trustees may prescribe; and

WHEREAS, the Town recognizes the substantial benefits to be derived by the Town from the proposed library expansion and the efforts made by the Association in planning and raising funds for said library expansion and further desires to facilitate the financing, construction and equipping of said library expansion to assure its successful completion and to provide the Grant described herein, which Grant is to be financed with proceeds of the Town’s tax exempt general obligation bonds, notes or temporary notes (the “Bonds”):

Agreement between the Town of Sherman and the Sherman Library Association

NOW, THEREFORE, in consideration of the above premises and the following promises, commitments and agreements, the parties do hereby agree as follows:

1. Association Representations and Warrantees: The Association represents and warrants as follows:

(a) The Association is: (i) a Connecticut nonstock corporation in good standing; and (ii) is recognized as a charitable organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code").

(b) The Association holds title to the existing library lands and building, free and clear of all encumbrances.

(c) The existing library building and facilities are used by the Association for the purposes of a public library, which public library is free to all of the inhabitants of the Town, as provided by the Connecticut General Statutes.

(d) The Association's execution and delivery of this Agreement, and its performance hereunder, are duly authorized and do not conflict with any other material obligation of the Association.

2. Association's Covenants: The Association covenants and agrees as follows:

(a) The Association shall take all necessary action to ensure that: (i) it remains a Connecticut nonstock corporation in good standing; and (ii) it remains recognized as a charitable organization described in Section 501(c)(3) of the Code.

(b) The Association shall not encumber the library lands and building, as expanded, nor permit the library lands and building, as expanded, to become encumbered without the prior written approval of the Town, which approval shall not be unreasonably withheld.

(c) In the administration and execution of the library expansion project, the Association shall comply with all pertinent provisions of local, State and Federal law applicable to it and/or its properties and/or its business, and shall maintain its property in good condition and repair.

(d) The Association will pay and discharge promptly when due and payable all taxes, assessments and governmental charges levied or imposed upon it, its property, or any part thereof, or upon its income or profits, or any part thereof, as well as all lawful claims for labor, materials and supplies, which, if unpaid, might by law become a lien or charge upon its property, provided that such charges need not be paid while being contested by the Association in good faith and by appropriate legal proceedings so long as adequate reserves have been established with respect thereto and the Association's title to, and its right to use, its property is not materially and adversely affected there

Agreement between the Town of Sherman and the Sherman Library Association

(e) The Grant provided by the Town shall be used by the Association only to fund costs of construction and equipment and furnishings related to the expansion of the library as contemplated herein. Without limiting the generality of the foregoing, no portion of the Grant may be used to fund any expense of the project that would not be of a type properly chargeable to capital account (or would be so chargeable with a proper election or with the application of the definition of “placed in service” under Department of the Treasury of the United States Regulation § 1.150-2(c)) under general Federal income tax principles.

(f) The Association shall maintain its books and records in such a manner as to permit verification of its compliance with the terms of this Agreement, including without limitation the accomplishment of the library building expansion as contemplated herein and the expenditure of all proceeds of the Grant, and shall make such books and records immediately available for review at the Town’s request. The Association shall provide such certifications as to the expenditure, investment, and/or earnings on other funds pledged or obtained for the library expansion as may be required by the Town.

(g) As a condition to the funding of the Grant the Association shall amend and restate its certificate of incorporation and its by-law to read as set forth on Exhibit A to this Agreement.

(h) As a condition of the Grant and the Town’s continuing contribution to the Association’s operating budget, the Association shall provide to the Board of Selectmen copies of minutes of the Association’s Board of Directors’ meetings, Treasurer’s reports, and Director’s reports upon their approval and/or acceptance by the Board of Directors. Additionally, the Board of Selectmen shall appoint an ex officio member of the project Building Committee.

(i) As a condition of the Grant and prior to any payment of Grant funds, the Association shall cause the contract for the construction of the library expansion to be submitted to competitive public bidding substantially in accordance with the requirements of the Town’s compulsory bidding ordinance, and to award such contract, if at all, to the lowest responsible and qualified bidder who is prequalified for such work pursuant to Section 4b-91 and Section 4a-100 of the General Statutes. The contract documents shall require the successful bidder to post a performance bond and a labor and materials payment bond for the protection of the Association, as obligee, from default by the contractor in the performance of the contract or in the payment of materialmen and subcontractors. The payment provisions of the contract documents shall provide for a retainage to be withheld by the Association of not less than five percent (5%) until substantial completion of the contract and not less than two and one-half percent (2 ½%) until final completion and acceptance of the contract work by the Association.

(j) As a condition of the Grant and prior to the execution of the construction contract with the successful bidder, the Association shall demonstrate to the satisfaction of the Town that the bid of the successful bidder, together with a reserve of 15% of the bid price for contingencies, is within or below the unencumbered funds available for construction after accounting for all other project expenses such as the costs of architectural and engineering services, construction management, incidental services such as utility, water and sewage

disposal, and the costs of furnishings and equipment. Grant funds will be provided to the Association to fund construction provided that at the time the construction contract is awarded the Association can demonstrate to the Town's satisfaction that sufficient funds are in place and available to complete the proposed construction and furnishing of the library expansion.

3. Implementation of Library Expansion: The Association agrees that it shall construct and equip the proposed library expansion. The Association further agrees that it shall maintain, operate and use the expanded building and facilities for the purposes of a public library, which public library shall be free and reasonably available to all of the inhabitants of the Town, subject to such reasonable rules and regulations as the Association may adopt from time to time as provided by the Connecticut General Statutes. The phrase "reasonably available" as used herein means that the library shall be open to the public for not less than twenty (20) hours per week and not less than four (4) days per week. A temporary closure of the library for up to forty-five (45) days in any calendar year for emergency repairs, renovations, or because of fire or other casualty shall not be deemed to be a violation of this paragraph, provided that the Association shall give the Town written notice of such closure and the justified reason therefore within seven days of such closure.

4. Grant for Capital Improvements Related to the Library Expansion: The Town shall provide grant assistance to the Association in an amount not to exceed in the aggregate the sum of One Million Dollars and 00/100 Dollars (\$1,000,000), subject to, and payable in accordance with, the terms and conditions hereof (the "Grant"). The legal and other direct expenses incurred by the Town in issuing bonds, notes or other debt obligations necessary to raise the Grant funds shall be deducted from said Grant amount prior to any payments to the Association..

The Association agrees that it shall use the Grant proceeds to pay for the capital costs incurred in connection with the library expansion, and for no other purpose. Specifically, unless otherwise authorized by the Town, the Association shall not reimburse itself from the Grant proceeds for any expenditures made on account of the library expansion prior to the date of this Agreement nor shall any unexpended grant assistance funds from the Town be added to the Association's reserves.

All costs in excess of the Town's Grant shall be the sole responsibility and obligation of the Association.

5. Payment of the Grant: The Town shall make payment to the Association on a reimbursement basis for capital costs incurred and due from the Association, net of any required retainage, with respect to the construction, equipping and furnishing of the library expansion. Except as provided herein, the amount of the Town's grant payment shall be up to one-half (1/2) of the amount then due from the Association to the contractor or other provider of services, material, equipment or furnishings.

The Association shall submit a duly executed requisition for payment in the form attached hereto as Exhibit B (each a "Payment Requisition Certificate") not more than once each

month, attaching to such requisitions the Association approved invoices to be paid with grant funds. Provided that the Payment Requisition Certificate is duly certified and the required attachments submitted and the payment requisition is approved by the First Selectman, the Town shall make payment from the Grant funds due within thirty (30) days of the presentation of such requisition to the Town or within thirty (30) days of the date of issuance of the Bonds, whichever is later.

6. Obligations of the Town under this Agreement: The Town shall have no obligations under this Agreement until such time as the Town shall have issued its Bonds in the amount of One Million Dollars (\$1,000,000) to fund the Grant and the costs associated with the financing thereof.

By providing grant assistance to the Association, the Town assumes no responsibility and shall have no obligation for the maintenance, repair or upkeep of the library property, including without limitation, the building, grounds, sidewalks, driveways and parking areas and other improvements and appurtenances.

7. Indemnification and Insurance: The Association shall indemnify and hold the Town and all of its officials, employees and agents harmless from any and all suits, actions, claims, losses, costs, damages, liabilities, fines, expenses and penalties (including, but not limited to, reasonable attorneys fees) arising out of: (i) the Association's breach of any term or condition hereof; (ii) the accomplishment of the library expansion as contemplated hereby; (iii) any use of the library building as expanded; and (iv) the negligence or willful misconduct of the Association. Throughout the term hereof, the Association shall carry a policy of comprehensive general liability insurance plus an umbrella liability policy each with a combined single limit of at least \$1,000,000, or such greater amount as shall from time-to-time be reasonably requested by the Town, and of all risk casualty insurance in an amount sufficient to provide for the replacement of the library building, as expanded, and the personal property related thereto, and each issued by an insurer satisfactory to the Town. Each such insurance policy shall provide that such policy shall not lapse or be cancelled or modified except upon not less than thirty (30) days' prior written notice to the Town. The Town will be named as an additional insured on all such insurance policies. A copy of each such insurance policy shall be delivered to the Town prior to the disbursement of any portion of the Grant funds to the Association. Annually prior to the close of each calendar year, the Association shall deliver to the Town a certificate of insurance evidencing the foregoing insurance coverage.

8. Town's Powers and Remedies:

(a) The Town shall have the power to investigate the Association's compliance with the terms and conditions hereof, including, but not limited to, the power to review, during normal business hours, the Association's books and records with respect to: (i) the costs of the library expansion as contemplated herein and the expenditure of all proceeds of the Grant; and (ii) the use of the library building, as expanded.

Agreement between the Town of Sherman and the Sherman Library Association

(b) The Town shall have the power to declare a default by the Association hereunder, upon a determination by the Town that the Association is in violation of any of its representations and warranties or not in compliance with any of its obligations hereunder, as follows: If the Town makes a good faith determination that the Association is in violation of any of its representations and warranties or not in compliance with any of its obligations hereunder, it shall provide written notice thereof to the Association which articulates in reasonable detail the facts and circumstances which the Town believes have caused the default, together with a request that the Association either cure the default within sixty (60) days of the notice or commence the cure and diligently attend thereto if the default is of a type that cannot be remedied within sixty (60) days. In the event that the Association disagrees with the determination of the Town that there has been a default or that a default has not been cured or an adequate cure process commenced, the dispute shall be resolved by binding arbitration in accordance with Section 17 below.

(c) Upon a default by the Association hereunder (and after the process described in the previous subsection has been followed): (i) the Town may immediately cease further payments of the Grant; and (ii) may exercise its rights under Section 9 below. The foregoing remedies shall be in addition to, and not in substitution for, any other remedy to which the Town is or may be entitled by law or in equity, including, but not limited to, the right of specific performance hereof by the Association.

9. Option to Purchase - Event of Default: The Association, in consideration of the Town's Grant and the other considerations set forth herein, gives, grants, bargains, sells and conveys to the Town for a term of twenty (20) years from the date hereof, the exclusive option, right and privilege to purchase the parcels of land described herein, together with all buildings and improvements thereon, for the purchase price of one hundred dollars (\$100.00) payable upon exercise of this option, as hereafter provided:

a) The Town may exercise this option only in the event that the Association has declared the Association to be in default and the procedure set forth in Section 8 (b) above has been followed. If the Town has the right to exercise this option and decides to do so, it shall give the Association written notice of the same by certified or like mail, return receipt requested, or by personal delivery to a proper officer or agent of the Association.

b) The notice of the Town's exercise of the option pursuant to paragraph (a) above shall establish a time, date and location for the closing of title. Unless otherwise agreed by the parties, such closing shall take place within sixty (60) days of the date that the Town gives notice of its exercise of this option and shall take place at the location designated by the Town, provided the same shall be located within thirty (30) miles of the Town Hall of the Town of Sherman. At such closing, the Town shall tender to the Association the consideration of one hundred dollars (\$100.00) and the Association shall tender to the Town a Quitclaim Deed conveying good and marketable title to the Town of Sherman. The Town shall be responsible for the payment of any real estate conveyance tax and recording.

c) All adjustments at closing for taxes, assessments, fuel oil and the like shall be made in accordance with the then standards for the practice of real estate transactions by lawyers in the Town of Sherman.

10. Right of First Refusal - No Event of Default: The Association, in consideration of the Town's Grant and the other considerations set forth herein, gives, grants, bargains, sells and conveys to the Town, for a term of twenty (20) years from the date hereof, the right and privilege to purchase the parcels of land described herein, together with all buildings and improvements thereon, on the following terms:

In the event that The Sherman Library Association, Inc., its successors and assigns, desire to sell the parcels of land and the buildings and improvements described herein, or in the event it otherwise receives a bona fide offer to purchase said land and buildings which it is willing to accept, it shall give the Town of Sherman the first option to purchase said parcels of land at such price and upon such terms as may be mutually agreeable to them, or if an acceptable bona fide offer has been received, to purchase the parcel at the same price and upon the same terms and conditions as offered to said Association. In the latter case, the Association shall exhibit to the Town a copy of the contract, if such a contract shall be in writing, and if not, shall fully disclose in writing the full and complete terms of any such offer, and the Town of Sherman shall have ninety (90) days to exercise said option in writing, and if so exercised, to purchase the parcel on the same terms and conditions as those offered less a purchase credit in the amount of the Grant funds actually expended by the Town plus accumulated Bond interest paid by the Town with respect to such Grant funds. If the event that the Town declines to exercise its option to purchase the property and the Association sells the property to a third party, the Association shall reimburse and pay to the Town from the closing proceeds an amount equal to the amount of the Grant funds actually expended by the Town plus accumulated Bond interest paid by the Town with respect to such Grant funds.

11. Waiver: Enforcement of the agreements and covenants established by this Agreement, and exercise of the option to purchase hereby established, [option remains in] shall be at the sole discretion of the Town (subject to Section 8(b) and Section 17), and no forbearance, delay or omission by the Town in the exercise of any right or remedy upon any breach by Association nor upon the occurrence of a library closure as prohibited by Paragraph 3, shall impair such right, remedy or privilege or be construed as a waiver of same. The Association hereby waives any defense of lack of consideration, laches, estoppel or prescription with respect to any delay by the Town in acting to enforce any provisions or to exercise any rights it may have under this Agreement, or in any action to enforce same (subject to Section 8(b) and Section 17).

Agreement between the Town of Sherman and the Sherman Library Association

12. Notices: Notices under this Agreement shall be in writing and shall be delivered by certified mail, return receipt requested, or by courier or overnight delivery service, or by in hand service. Notices to the Town shall be directed to:

Town of Sherman
Attention: First Selectman
Mallory Town Hall
9 Route 39 North,
P. O. Box 39
Sherman, Connecticut 06784

Notices to the Association shall be addressed to:

Sherman Library Association, Inc.
Attention: Board of Trustees
P. O. Box 40
Sherman, Connecticut 06784

Either the Town or the Association may unilaterally inform the other of a change in the person or address to which notices are to be given by giving written notice of such change in accordance with this Paragraph.

13. Entire Agreement - Amendment, Assignment: This Agreement, including, but not limited to, the attachments hereto, constitutes the entire agreement between the Town and the Association with respect to the subject matter hereof and supersedes any and all prior agreements, either oral or written, with respect thereto. Any modification to this Agreement shall be in writing, duly authorized and executed by both the Association and the Town. This Agreement is not assignable by the Association without the prior written consent of the Town. Any such assignment without the consent of the Town is void and of no force or effect.

14. Survival of Representations: For the purposes of this Agreement, the term “the Association” shall mean and include any successor or assigns of the Association including any representative of the Association under the provisions of any state or Federal law governing bankruptcy, insolvency, receivership or reorganization. All warranties, representations and covenants made by the Association in this Agreement or in any certificate or instruments delivered to the Town in connection with the Grant shall be considered to have been relied upon by the Town. This Agreement shall be binding upon and insure to the benefit of the successors and assigns of each of the parties, provided, however, that nothing in this provision shall imply that the Association has the right or authority to assign its rights, duties or obligations hereunder without the written consent of the Town.

15. Governing Law: This Agreement shall be governed by the laws of the State of Connecticut.

16. Counterparts: This Agreement may be executed in counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

17. Effective Date of Agreement: This Agreement shall become effective as of the date first written above.

18. Resolution of Disputes: Any and all disputes among the parties to this Agreement arising out of or in connection with the negotiation, execution, interpretation, performance or nonperformance of this Agreement and the transaction contemplated herein shall be solely and finally settled by arbitration, which shall be conducted in Stamford, Connecticut by a single arbitrator selected by the parties. The arbitrator shall be a lawyer familiar with transactions of the type contemplated in this Agreement who shall not have been previously employed or affiliated with any of the parties hereto. If the parties fail to agree on the arbitrator within thirty (30) days of the date on of them invokes this arbitration provision, either party may apply to the American Arbitration Association to make an appointment. The parties hereby renounce all recourse to litigation and agree that the award of the arbitrator shall be final and subject to no judicial review. The arbitrator shall conduct the proceedings pursuant to the Commercial Arbitration Rules of the American Arbitration Association, as now or hereafter amended. Judgment on the award of the arbitrator may be entered in any court having jurisdiction over the party against which enforcement of the award is being sought and the parties hereby irrevocably consent to the jurisdiction of any such court for the purpose of enforcing any such award. The cost of any arbitration proceeding under this Agreement shall be shared equally by the parties to the dispute and each party shall be responsible for its own legal and other professional fees.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals by their duly authorized officers to the original and to two duplicate copies thereof each of which shall constitute an original and one and the same instrument.

Signed, Sealed and Delivered
in the presence of:

The Sherman Library Association, Inc.

By: _____
Sharon Danosky, President

Town of Sherman

By: _____
Andrea O'Connor, First Selectman

Agreement between the Town of Sherman and the Sherman Library Association

STATE OF CONNECTICUT)
)
COUNTY OF FAIRFIELD) ss: Sherman _____, 2011

Personally appeared Sharon Danosky, who acknowledged herself to be the President of The Sherman Library Association, Inc., a Connecticut corporation organized and existing under the laws of the State of Connecticut, and that she, as such President, being authorized to do so, executed the foregoing instrument on behalf of said corporation for the purposes therein contained by signing the name of the corporation as her and its free act and deed, before me.

In witness whereof I hereunto set my hand and seal.

Notary Public:
My commission expires:

Agreement between the Town of Sherman and the Sherman Library Association

STATE OF CONNECTICUT)
)
COUNTY OF FAIRFIELD) ss: Sherman _____, 2011

Personally appeared Andrea O'Connor, who acknowledged herself to be the First Selectman of the Town of Sherman, a Connecticut municipal corporation organized and existing under the laws of the State of Connecticut, and that she, as such First Selectman, being authorized to do so, executed the foregoing instrument on behalf of said Town of Sherman for the purposes therein contained by signing the name of the corporation as her and its free act and deed, before me.

In witness whereof I hereunto set my hand and seal.

Notary Public
My commission expires:

LEGAL DESCRIPTION

EXHIBIT A

Certificate of Incorporation and Association By-Laws

EXHIBIT B

Form of Grant Requisition Certificate

I, _____, being the duly authorized _____ of Sherman Library Association, Inc. (the "Association"), hereby request payment of \$ _____ (the "Requested Grant Payment"), in accordance with that certain Grant and Option Agreement (the "Grant Agreement") by and between the Association and the Town of Sherman, Connecticut (the "Town"), dated as of _____, 2010. All defined terms used in this Certificate shall have the meaning set forth in the Grant Agreement.

With respect to the Requested Grant Payment, I hereby certify as follows:

1. The Association is in full compliance with all of its obligations under the Grant Agreement as of the date hereof.
2. The entire Requested Grant Payment shall be used only to pay vendors' purchase orders, contractors' invoices or similar evidences of the Association's obligation to make payment to third parties, directly in connection with the library building expansion contemplated by the Agreement, and photocopies of such vendors' purchase orders, contractors' invoices or similar evidences of the Association's obligation to make payment to third parties, totaling in the aggregate not less than the Requested Grant Payment, are attached hereto. All of such expenses are costs of the Association of a type that is properly chargeable to capital account (or would be so chargeable with a proper election or with the application of the definition of "placed in service" under Department of the Treasury of the United States Regulation § 1.150-2(c)) under general Federal income tax principles; and none of such expenses were with respect to expenditures made by the Association prior to the Town's June 9, 2007 authorization of the borrowings to fund the Grant.
3. The amount of the Requested Grant Payment when aggregated with the amount of all prior grant payments requested by the Association pursuant to the Grant Agreement does not exceed \$1,000,000 less the cost of issuing the bonds to fund the Grant.

Dated this _____ day of _____ 201__

Sherman Library Association, Inc.

By: _____
Name: _____
Title: _____