

TOWN OF FALMOUTH
AGREEMENT FOR LAND MANAGEMENT SERVICES

This Agreement, dated as of _____, 2023 (the “Effective Date”), is by and between the Town of Falmouth, a municipality of the State of Maine with its place of business at 271 Falmouth Road, Falmouth, ME 04105 (the “Town”) and the Falmouth Conservation Trust d/b/a Falmouth Land Trust, a Maine nonprofit corporation with its place of business at 190 Middle Road, Falmouth, ME 04105 (“FLT”).

Whereas, the Town owns certain parcels of open space land totaling ~1,649 acres in the aggregate (listed in Appendix A, attached hereto) that are subject to conservation management plans (the “Town-Owned Properties”);

Whereas, the Town wishes to contract for land management services for the Town-Owned Properties;

Whereas, FLT currently provides land management services for ~1,509 acres of real property within the Town, comprising ~748 acres of land owned by FLT, ~368 acres of private land with easements held by FLT, and ~393 acres of Town-owned open space with easements held by FLT; and

Whereas, providing such land management services for the Town-Owned Properties would advance FLT’s mission to preserve and care for natural and agricultural lands in perpetuity, to enhance habitat for plants and wildlife, to advance the quality of life for all in our community, and to educate the public on the history and stewardship of protected lands;

Now therefore, in consideration of the mutual covenants contained herein, the parties agree as follows.

1. **Term.** The term of this Agreement shall commence on the Effective Date and end on June 30, 2025 (the “Term”). If the parties wish to renew this Agreement after the end of the Term, FLT shall submit a proposal for renewal to the Town in the fall of 2024.
2. **Termination.** Either party may terminate this Agreement for cause after providing the other party with written notice of a material breach of this Agreement and a reasonable opportunity to cure. Either party may terminate this Agreement for convenience after providing the other party with six (6) months’ written notice.
3. **Scope of Work.**
FLT shall provide the following scope of work (the “Services”) for the Town-Owned Properties.
 - A. Land Management
 1. Make a one-time, assessment of land conserved in fee by FLT and the Town, grouping together abutting and/or close by parcels into Conservation Management Units (CMUs) where sensible. This will streamline management, although external reporting may still need to be done according to historical

parcel boundaries in some cases. This assessment, including a map showing CMUs, will be completed by June 30, 2023.

2. Develop or update a proposed written land management plan for each CMU by the end of the Term, Said plans shall:
 - a. Identify the conservation values, including any significant cultural and natural features or those that have significant community value.
 - b. Identify the overall management goals.
 - c. Identify activities to achieve the goals and to reduce risks or threats to the conservation values.
 - d. Specify the uses that are appropriate, in keeping with the conservation values, plus any restrictions and donor or funder requirements.
 - e. Provide public access opportunities as appropriate.
 - f. The Town shall have the right to approve, to amend, or to reject proposed plans and substitute its own plans. The proposed land management plans are not intended to serve as forest management plans, and any such forest management activities shall remain the responsibility of the Town in accordance with Section.4.
3. Manage each CMU in accordance with its management plan, and review and update the plan at least every five years, provided the term of the agreement has been extended
4. Provide electronic copies of all management plans which include Town-Owned Properties to the Town, with the understanding that such plans are subject to freedom of access requests.
5. Monitor all CMUs, either aerially or on foot, on a frequency and scope comparable to FLT fee properties, to document the status of conservation values, prevent misuse, and identify any issues of encroachment.
6. Endeavor to improve the health and resilience of CMUs over time and, as appropriate, apply to grant-making bodies for additional funds to do so (e.g. invasive plant removal and native species planting).
7. Check boundary signs annually and replace them as needed. (Town will separately reimburse FLT for the expense of new signs).
8. Facilitate and manage any town, state and federal application and permit requirements for site improvements of CMUs which include Town properties (Town will separately reimburse FLT for the expense of applicable fees).
9. Maintain databases for all CMUs, including GIS layers.
10. Maintain information on all CMUs on FLT website, including updates as needed to trail maps and other information.
11. Begin to streamline signage at all CMU trailheads to make them easier to locate, as determined by FLT; signs will list FLT as the organization to contact in regards to any non-emergency issues (Town will separately reimburse FLT for the expense of additional and/or replacement signs on Town properties).
12. Update and unify proposed and existing Town policies and associated forms as needed regarding hunting, fishing, biking, dogs, and other public uses of open space and associated trails. All applicable Town ordinances will be followed and upheld at all times.
13. Coordinate with the Town, requests for gatherings and events on the Town-Owned Properties.

14. Be available to meet with the Town at least quarterly, at the discretion of the Town, regarding this Agreement.
15. Prepare an annual report that includes all of FLT's work for the year, including contracted work, and submit the report to the Town Manager.

B. Outreach, Education and Coordination

FLT will partner with Falmouth Schools and the Falmouth community to provide opportunities for children and adults to learn about and/or explore natural areas in Falmouth. The following are examples; is not meant to be proscriptive and may change, at FLT's discretion, as school and community needs may change.

1. Partner with the Falmouth Elementary School by providing approximately fifteen events per year (generally to one class at a time), on average over the Term, including, but not limited to:
 - a. guided recess walks through the FLT trails behind the school (FLT's McCrann Preserve);
 - b. field trips to various properties around town to learn about biology, land use history, and other topics.
2. Partner with the Falmouth Middle School by providing approximately ten events per year (generally to one class as a time), on average over the Term, including, but not limited to:
 - a. learning activities on campus or within walking distance which build on existing curriculum.
 - b. local field trips which complement the curriculum.
3. Partner with the Falmouth High School by providing:
 - a. opportunities for community service hours;
4. Partner with Falmouth Community Programs and other organizations in the Town on nature-based activities and outreach to both established and new residents.
5. Create content to educate and inform the public and disseminate it via website, email, social media, press outlets, etc. (the Town shall have the right to republish any of this content and disseminate via its communications and media).
6. Prepare grant applications for additional funding for outreach and education.

C. Land and easement acquisition

FLT will continue to evaluate all offers of sale or donation to FLT of properties or easements for the purpose of land conservation and/or trail connectivity. FLT will also continue to proactively pursue properties with high conservation values. FLT may invite the Town, as appropriate, to consider allocating additional funds for the purchase of additional properties or easements, on a case-by-case basis.

D. Performance of Services

FLT shall:

1. perform all administrative duties related to the Services in a timely and responsible manner, including reporting to funding sources (as listed in Appendix C).

2. perform the Services in accordance with applicable professional standards and in a manner that retains FLT's public credibility.
3. perform the Services in compliance with all federal, state, and local laws, regulations, and ordinances; and
4. be fully responsible to the Town for the acts and omissions of FLT's subcontractors and persons directly or indirectly employed by FLT or who volunteer for FLT, and shall hold subcontractors, employees or volunteers to the same terms and conditions as FLT is held under this Agreement.

Commented [NP1]: Needs additional legal review

E. Services not Provided

1. The Services shall not include construction or maintenance of trails on the Town-Owned Properties or any Town-owned trail easements/licenses unless agreed to by the parties as provided in Section 4(B)(4) below.
2. FLT shall not be responsible to remedy any violations of law committed by the Town unless specifically agreed to in writing.

4. **Rights and Responsibilities of the Town**

The Town shall retain ownership of the Town-Owned Properties during the Term, except as otherwise provided herein or agreed to in writing by the parties.

A. Rights

The Town retains rights with respect to the Town-Owned Properties, including without limitation, the following:

1. To remove particular properties or parts of properties from FLT management if the Town plans to alter the acreage in question, such that the land use is no longer centered on low-impact recreational trails and general land management;
2. To pursue broader land management goals which are outside the scope of this agreement, including timber harvesting and invasive species management;
3. To host events and otherwise access the Town-Owned Properties at any time and for any reason; and
4. To incur expenditures related to acquisition of additional open space if so desired by the Town and to make a determination about whether or not to transfer new acquisitions to FLT in fee.

B. Responsibilities

The Town, at its cost, shall have the following responsibilities with respect to the Town-Owned Properties:

1. Continue to perform routine maintenance and scheduled improvements, and repairs to all bridges, roads and parking areas that are currently serviced by the Town; (See **Appendix B** for a list of roads and parking areas.)
2. Continue to plow all roads and parking areas that are currently serviced by the Town;
3. Conduct timber harvesting and related forest management activities as deemed necessary by the Town;
4. Coordinate with FLT on the performance of management activities (such as those listed in **Appendix B**) including rotary-cutting (for paths and to keep meadow habitats open), timber harvesting, and invasive species management to minimize negative impacts to wildlife and ecosystems; and

5. During the Term, the Town shall be responsible for trail construction and maintenance on the Town-Owned Properties and any Town-owned trail easements/licenses. On or after July 1, 2023, the parties may agree to add trail management services to the Services for an additional cost agreed upon by the parties at the time by written amendment to this Agreement.

5. Cost of Services

The annual costs for the Services shall be based be:

<u>Budget Item</u>	<u>Annual cost</u>
<i>Permanent Staff:</i>	<i>% of staff member's time allocated to contracted services:</i>
Executive Director	45% (of a .75FTE position)
Stewardship Manager	45% (of a 1. FTE position)
Outreach & Ed. Coord.	55% (of a 1. FTE position)
Administrator	45% (of a .25FTE position)
Sub-total:	\$79,000
Seasonal Staff hours	\$6,000
Indirect Costs & Contingencies (20%)	\$17,000
Annual total	\$102,000

- **Prorated Cost Year 1** (February 1, 2023 - June 30, 2023): **\$42,500**
- **Cost Year 2** (July 1, 2023-June 30, 2024), including 5% price adjustment measure and \$10,000 in additional contingencies: **\$117,100**
- **Cost Year 3** (July 1, 2024-June 30, 2025), including 5% price adjustment measure and \$10,000 in additional contingencies: **\$122,455**

At the end of the Term, FLT shall return to the Town any unused contingency funds (but only up to \$20,000 in the aggregate).

- **Total for the Term** (ending June 30, 2025): **\$282,055** (minus any unused contingency funds, up to \$20,000)

Costs of materials, property management contracts with the Town, and other direct costs that are the responsibility of the Town will be coordinated between both parties, and such costs will be paid directly by the Town. Cost of materials and property management contracts with FLT will be reimbursed by the Town. FLT will request written approval from the Town prior to incurring such costs for materials or entering into such contracts for expenses exceeding \$500 in any month.

Note: the parties may agree to changes in the costs for the Services based on unusual changes in cost-of-living adjustments and materials pricing or other unforeseen circumstances which may impact overall pricing in subsequent years.

6. Billing

FLT shall submit quarterly invoices to the Town for Services rendered during the previous quarter. Each invoice shall summarize the Services rendered as reasonably required by the Town. Each invoice shall be payable within thirty (30) days of receipt. The final invoice at the end of the Term shall include the return of any unused contingency funds to the Town.

7. Insurance

During the Term and any extensions or renewals, each party shall maintain insurance of the types and in such amounts reasonable to protect itself from risks associated with this Agreement and the parties' performance of their respective obligations herein. Such insurance shall include general liability insurance, motor vehicle liability insurance, workers' compensation insurance, and property and casualty insurance for properties owned by the respective parties. Each party shall name the other party as an additional insured on its general liability policy. Each party shall provide the other party with proof of such insurance coverages as reasonably requested by the other party. In addition to the coverages required herein, FLT shall maintain professional liability insurance and name the Town as an additional insured on such policy.

Commented [NP2]: Needs additional legal and insurance coverage review

8. Limitation of Liability

The parties acknowledge that the Town is a political subdivision of the State of Maine to which the Maine Tort Claims Act applies. Accordingly, nothing in this Agreement (including provisions to indemnify, defend, and/or hold harmless) shall operate in any practical effect to waive any defense, immunity, limitation of liability, or other protection available to the Town or FLT pursuant to applicable law, including the Maine Tort Claims Act and 14 M.R.S. § 159-A. Furthermore, FLT agrees that nothing in this Agreement (including provisions to indemnify, defend, and/or hold harmless) is intended to create or shall have the effect of creating a greater liability on the Town's part to FLT for third party claims than the Town has or would have for claims brought by such third party directly against the Town in accordance with the provisions of the Maine Tort Claims Act.

The Town agrees to indemnify, defend, and hold harmless FLT against any liability and/or pay for any and all damages, losses, or expenses incurred by FLT in connection with the Town-Owned Properties, beyond that covered by FLT's insurance, except for harm proximately caused by the negligent act or misconduct of FLT, its agents, employees, volunteers or contractors, or as may arise out of its workers' compensation obligations.

9. Independent Contractor

Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between the parties. This Agreement does not make either party an agent or legal representative of the other party for any purpose whatsoever. No party is granted, by this Agreement or otherwise, any right or authority to assume or create any obligation or responsibilities, express or implied, on behalf of or in the name of any other party, or to bind any other party in any manner whatsoever. The parties expressly acknowledge that FLT is an independent contractor with respect to the Town in all respects, including with respect to the provision of the Services.

10. Dispute Resolution

Any dispute between the parties arising out of or relating to this Agreement shall be resolved in accordance with this paragraph. Either party may give written notice of a dispute arising out of or related to this Agreement the other party in person or by certified mail, return receipt requested. The parties shall attempt to resolve the matter through informal communication or negotiation for a period of thirty (30) days from the date of receipt of notice by the noticed party. If the dispute has not been resolved within thirty (30) days, either party may serve written notice on the other party of a request for mediation. The mediation shall be conducted in Maine by a mediator mutually agreeable to the parties, shall not exceed one full day or two half days in length, and shall be completed within ninety (90) days from the date of receipt of notice of a request for mediation. The parties shall share the cost of the mediator, but each shall bear its own costs related to mediation. If the parties are unable to resolve the dispute through mediation, then either party may commence an action in the Maine Superior Court (Cumberland County).

11. Miscellaneous

- A. This Agreement may not be assigned without prior written approval of the parties.
- B. This Agreement shall be interpreted, governed, construed, and enforced in accordance with the laws of State of Maine, without regard to any of its conflict of laws principles.
- C. This Agreement contains the entire agreement between the parties in relation to its subject matter, and there are no other agreements or understandings, oral or otherwise, between the parties at the time of execution of this Agreement.
- D. Each party represents that its signatories to this Agreement are duly authorized by that party to execute this Agreement and in so doing to bind that party to its terms.
- E. The headings and subheadings of the sections and paragraphs of this Agreement are inserted for convenience of reference only and shall not control or affect the meaning or construction of any of the agreements, terms, covenants and conditions of this Agreement in any manner.
- F. If any provision(s) of this Agreement is determined to be invalid or unenforceable in whole or in part for any reason, such provision(s) shall be severed, and the parties shall negotiate in good faith to amend this Agreement so as to effect the original intent of the parties as closely as possible. The remaining provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect to the full extent permitted by law.
- G. The parties acknowledge that this Agreement is a “public record” that is subject to public disclosure in accordance with the Maine Freedom of Access Act.
- H. The parties agree that there shall be no unlawful discrimination against or segregation of any person or group of persons on account of age, race, color, religion, creed, disability, sex, sexual orientation, gender identity, or national origin in the parties’ performance of their respective obligations under this Agreement.
- I. This Agreement may be executed in counterparts, each of which shall be an original and together shall constitute one and the same instrument. The counterparts may be executed by electronic signature and delivered by facsimile or electronic format (including portable document format) by either of the parties and the receiving party may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received.

- J. In any case in which either party hereto is required to perform any act (except for the payment of fees and other charges by the Town), the time for performance thereof shall be extended by a period equal to any delay caused by or resulting from an act of God, war, civil commotion, fire or other casualty, labor difficulties, shortages of energy, labor, materials or equipment, government regulations (except imposed by the Town), pandemic or endemic and government mandates related thereto, delays caused by either party to the other, or other causes beyond such party's reasonable control (collectively, "force majeure"), whether such time be designated by a fixed date, a fixed time or a "reasonable time." The party claiming a justifiable delay shall promptly notify the other party of the cause of the delay and shall use diligence to eliminate the cause of the delay and shall complete the unfulfilled task as soon as reasonably possible after the cause of the delay has been eliminated.

[signature page follows]

In witness whereof, the parties hereto have set their hands as of the date first above written.

FALMOUTH CONSERVATION TRUST d/b/a
FALMOUTH LAND TRUST

Date: _____, 2023

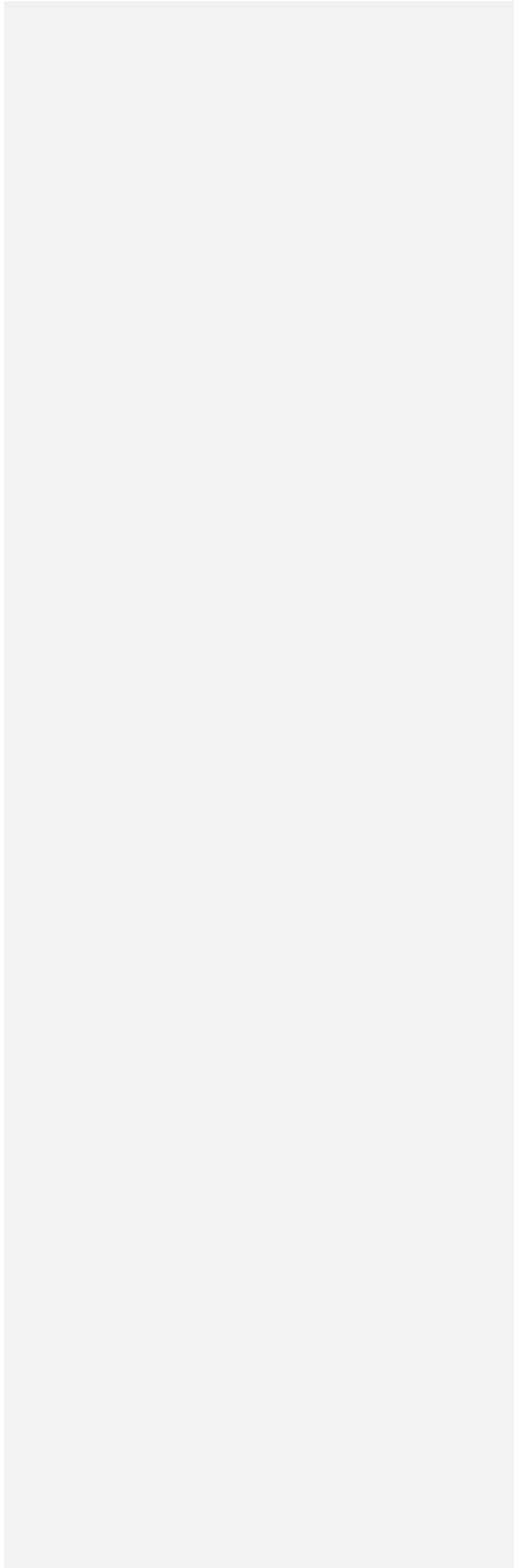
Mila Plavsic
Executive Director

TOWN OF FALMOUTH

Date: _____, 2023

Nathan A. Poore
Town Manager

DRAFT



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Appendix A. List of Town Properties to which this proposal will apply; status of associated management plans are also shown

1. Blackstrap Hill Community Forest – management plan on file
2. East Branch (easement held by FLT) – management plan on file
3. Falmouth Community Park North (only the three easements held by FLT, not playing fields) – management plan on file
4. Falmouth Nature Preserve (including easement held by FLT) – management plan on file
5. Hadlock Community Forest (including easements held by FLT) – management plan on file
6. Hardy Road Conservation Area – management plan on file
7. North Falmouth Community Forest – management plan on file
8. Pine Grove Preserve – management plan on file
9. River Point Conservation Area – management plan on file
10. Suckfish Brook (easement held by FLT) – management plan on file
11. Suckfish Brook II (easement held by FLT) – management plan needed
12. Tidewater Farm – management plan needed
13. Town Forest (easement held by FLT) – management plan needed
14. Woods Road Community Forest – management plan on file
15. Brookfield and selected other smaller holdings (to be decided)

Table 1. Lands currently under FLT stewardship

<u>Property Type</u>	<u>Acres</u>
Land owned by FLT	748
Private land with easements held by FLT	368
Town open space with easements held by FLT	393

Table 2. Proposed increase in acreage under FLT stewardship

Area currently under FLT stewardship	1,509 acres
Additional Town open space proposed for contracted stewardship by FLT	1,256 acres
Proposed total area to be managed by FLT	2,765 acres

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Appendix B. List of Management Activities

1. Blackstrap Hill Community Forest – maintain the Hurricane Rd parking lot.
2. Falmouth Community Park North - mow paths from fields and parking lot.
3. Falmouth Nature Preserve - maintain Rte 88 parking lot.
4. Hadlock Community Forest - maintain Hadlock Rd parking lot.
5. Hardy Road Conservation Area – maintain mowed field near entrance.
6. North Falmouth Community Forest – maintain the parking area on Blackstrap Rd near Happy Cats as well as the parking lot at Stillings Field. Maintain mowing at Stilling Field.
7. Pine Grove Preserve – maintain forest management plan, and parking area on Rte 88.
8. River Point Conservation Area – maintain bridge over Piscataqua into Adams/Smith, maintain bridge over Pan Am Railroad, maintain barn.
9. Suckfish Brook – maintain parking lots on Mast Rd. (Westbrook Line lot & Upland Way)
10. Suckfish Brook II – continue yearly road maintenance per agreement with HOA
11. Tidewater Farm – maintain entrance road (Presumpscot Point Road) and parking area
12. Town Forest – N/A.
13. Woods Road Community Forest – maintain parking lots on Woods Rd. & Longwoods Road

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Appendix C. List of Entities/Properties requiring on-going reporting

1. **Lands for Maine's Future (LMF)** – Walton Park - Presumpscot River Bridge Site, Hadlock Community Forest properties -Central Falmouth Corridor and North Falmouth Community Forest – parking area/trail access
2. **Land Water Conservation Fund (LWCF)** – North Falmouth Community Forest
3. **National Forest Service (NFS)**– North Falmouth Community Forest
4. **The Nature Conservancy in Maine** - Falmouth Nature Preserve
5. **Maine Natural Resource Conservation Program (MNRCP)** – Suckfish II (Complete)