

**Washburn Memorial Library
Board of Trustees Meeting
December 2, 2014 5:00 pm**

Members in attendance: Rita Kingsbury, Linda Bourgoine, Gary Cole, Charlotte Griffin, Bev Turner, Laurie Blackstone, Warrena Forbes and Lois Walton.

Financial Report:

Bev gave the report. Lois will pick up health insurance.

Rita motioned to have \$50 go from equipment to Library supplies. Warrena seconded. The motion passed. This will eliminate the equipment line.

We will look more closely at the budget next year.

Secretary's report:

Laurie read the minutes from the October 28th meeting. Gary moved to accept and Charlotte seconded. Motion carried.

Librarian's report:

Lois sent a note to the body odor offender. They sent a note back to say that they will no longer come to the library and then listed many reasons as to why they had such bad body odor. Lois told us that they have many books checked out.

The numbers for the month are attached.

Lois received a CIPA survey (audit) to fill out. Bev will look into information about Town Council approval for internet safety.

Old business:

Adam still has not been able to get in touch with the person that will do the gutters.

The cement work will have to wait until next year.

Chunks of pavement have been torn up by the plow. People need to be aware of this safety issue.

Linda and Lois went to early literacy training in Caribou. The literacy expert came and visited our library. She loved the new room. Lois said that she learned a lot and that Shannon will be making a list of good books for early literacy. It will be a good start for our story time program.

New business:

Gary moved to rescind acceptance of Warrena's resignation, Charlotte seconded. Motion carried.

Christina Maynard has accepted our request to be on the Library board.

We made many changes to the bylaws and we feel they are ready to go to the Town Council. Gary passed out the library bylaws from PI and Caribou for reference.

Charlotte moved that we accept the internet safety policy that Lois wrote. Rita seconded and the motion carried. It now needs to go to the Town Council for approval. Bev will submit it.

We will leave the Randall fund as is for this year since the meeting is next week.

We will look at the Maine Community Fund for the next year. We will have a meeting with her in April or May. Renewal is in June.

We need to add hygiene and odors (to include BO and heavy perfume) to our library behaviors. We will go over this at our next meeting. Rita suggested looking into buying a spray from B and D.

Next meeting:

Tuesday, January 6, 2015 at 5:00 PM

Agenda will include budget, bylaws etc.

Gary moved to adjourn and Charlotte seconded. Motion carried.

Respectfully submitted by Laurie Blackstone



Proposal to Washburn Memorial Library from the Maine Community Foundation

EXECUTIVE SUMMARY

The Maine Community Foundation ("MaineCF") proposes to manage and administer the Washburn Memorial Library fund on behalf of the Town of Washburn. Bringing over 30 years of achievement and performance to bear, MaineCF is committed to the highest level of excellence on behalf of its charitable funds. MaineCF offers a multi-manager investment approach, which utilizes the combined investment expertise of some of the nation's foremost investment managers. Specific services and advantages of working with MaineCF include:

1. Fund Investment and Management

- Participation in a diversified investment portfolio with total assets under management in excess of \$380 million
- Investment oversight from a dedicated investment committee comprised of financial and business professionals each with extensive experience in the investment and financial services industries
- Investment advisory and monitoring services from Cambridge Associates, a preeminent national investment consulting group specializing in nonprofit endowment management

2. Endowment Services

- Clear and concise reporting of all financial activity
- Online access to fund statements and fund summary reports
- Sub-accounting for multiple gifts or restrictions on charitable use
- Periodic meetings with board of directors and/or committees
- Processing gifts of securities and tangible property
- Planned giving expertise in the area of charitable gift annuities

ORGANIZATION

MaineCF's purpose is to work with donors and other partners to improve the quality of life for all Maine people by building permanent and long-term charitable financial resources, mobilizing people and resources to effect positive change for Maine, increasing post-secondary degree and credential attainment rates, and helping communities and the environment flourish. Founded in 1983, MaineCF is a nonprofit organization incorporated in the state of Maine and governed by a 20-member board of directors drawn from business and community leaders across the state. Our professional staff works in three program areas: grant making and program initiatives, resource development/donor relations, and finance/investments. With a strong record of fiscal and programmatic achievement, the community foundation is an important philanthropic leader in Maine.

MaineCF is a public charity established under the laws of the state of Maine, and recognized as an Internal Revenue Code § 501(c)(3) organization (EIN 01-0391479). MaineCF is also regulated by the attorney general's office of the state of Maine.

Below is a table listing the major types of funds that MaineCF manages, along with number of funds within each category, respective dollar value, and percentage of the total assets under management (AUM). A fund for Washburn Memorial Library would be considered an Agency Fund.

Data as of 12/31/2013:

Fund Type	# of Funds	\$ Value	% of Total AUM
Donor Advised	302	\$154,994,640	40.7%
Designated	328	\$59,529,193	15.6%
Agency ¹	175	\$56,721,107	14.9%
Field of Interest	85	\$53,543,374	14.1%
Scholarship	196	\$29,527,731	7.8%
Administrative and Other	65	\$17,339,787	4.6%
Supporting Organizations	2	\$8,837,776	2.3%
TOTAL	1,469	\$380,493,608	100%

¹ Represents number of nonprofit organizations with funds managed by MaineCF. Including sub-funds, number of nonprofit agency funds is 491.

INVESTMENT OVERSIGHT AND FUND MANAGEMENT

Permanent and other long-term assets are invested in the community foundation's primary investment portfolio. The portfolio is managed by a volunteer investment committee. The committee sets investment policy and strategy, hires investment managers, and monitors investment performance against industry benchmarks. The members of the investment committee have extensive experience in business, investment, and financial services industries. All committee members are subject to the approval of MaineCF's Board of Directors. Members include:

Elizabeth R. Hilpman (Committee Chair), Partner, Barlow Partners; New York City, and Woolwich, Maine

Forrest Berkley, retired Partner, GMO LLC, member of independent Board of TIAA-CREF mutual funds; Boston, Massachusetts, and Mount Desert, Maine

Jean Deighan, President, Deighan Associates; Bangor, Maine

Martha Dumont, retired Managing Director, CreditSights; New York City and Windham, Maine

Maggie Keohan, Vice President, Goldman Sachs; Boston, Massachusetts, and Freeport, Maine

John B. Sullivan, President, Portland Global Advisors; Portland, Maine

The community foundation also benefits from the expert counsel of independent investment advisors. They are Elizabeth Cohen, John Train, and Robert Rothschild.

Peter Rothschild, MaineCF's chief investment officer, is responsible for developing the community foundation's strategic asset allocation plan and making recommendations on investments and use of money managers. Peter is the former chair of the MaineCF investment committee and has managed the endowments of several educational and charitable institutions over the last 30 years.

Jim Geary, MaineCF's vice president and director of investments, coordinates the staff effort to oversee the investment program. Trained as a CPA and bank trust officer, Jim works directly with the investment committee, Cambridge Associates, and the individual investment managers to carry out the investment strategies of MaineCF. Jim joined MaineCF in April of 2002.

Liana Kingsbury, MaineCF's senior foundation officer, manages the nonprofit endowment fund program. Prior to joining MaineCF, Liana was a tax manager at a large local public accounting firm in Bellevue, WA. Her client base included over 100 public charities and private foundations located throughout the Pacific Northwest. Liana joined MaineCF in April of 2007.

The investment committee works closely with Cambridge Associates to assist in the manager selection and monitoring procedures. Cambridge Associates also provides extensive analytical and comparative reporting to assist the committee with its decision-making.

Cambridge Associates was established in the 1970s to conduct a comprehensive study of endowment management practices for Harvard University. Since then, Cambridge Associates has become one of the nation's preeminent investment consultants, servicing over 900 clients, the majority of which are nonprofit institutions.

MaineCF's primary contact at Cambridge Associates is Larry Chang. Larry joined the firm in 2002 and is one of consulting team's managing directors. Before joining Cambridge Associates, Larry was a manager and engineer with General Electric and is a graduate of the University of Michigan. Larry also received his MBA from the Yale School of Management.

INVESTMENT STYLE AND PROCESS

One of the most important benefits that MaineCF offers is its professional investment management services. Since the vast majority of funds held by MaineCF are pooled into one primary investment portfolio, MaineCF has access to several investment options that are generally not available at lower asset levels. Because different sectors of the markets will perform well at different times, the MaineCF investment strategy calls for a portfolio diversified across U.S. domestic and global asset classes. A diversified portfolio reduces the impact of individual market volatility and helps to control risk.

The investment objective of the portfolio is to preserve and enhance the real value of assets over time in order to provide sufficient rate of return for fulfilling the philanthropic purposes of the foundation and its component funds. The portfolio is allocated across eight asset classes and invested with a select group of professional investment managers.

Each of MaineCF's investment managers has its own investment process and style of management. Investment managers are hired based on their expertise in a particular asset class or style of investing. The investment committee and Cambridge Associates regularly monitor and evaluate each manager's adherence to the investment strategy and discipline for which it was selected. MaineCF instructs active managers to be fully invested.

INVESTMENT PERFORMANCE AND ASSET ALLOCATION

The year-to-date, one-, three-, five-, and ten-year annualized returns as of June 30, 2014 for the MaineCF primary investment portfolio, net of investment fees, are as follows:

	YTD	1-yr	3-yr	5-yr	10-yr
MaineCF	4.9%	14.4%	9.1%	12.2%	8.4%
Custom Benchmark (see below)	5.7%	16.5%	8.8%	11.8%	6.7%
60/40 Blend (see below)	5.9%	16.3%	11.5%	13.3%	6.9%

The investment committee, along with Cambridge Associates, set a target allocation in each of the asset classes. These allocations were developed through a simulation which analyzed risk by evaluating the various sources of uncertainty affecting asset value. The committee uses these targets as a guide and at times will deliberately be under/over weighted depending on current market conditions.

U.S. Equity (includes VC/PE of 5%)	35%	Natural Resources	5%
Global ex U.S. Equity	20%	Real Estate	5%
Marketable Alternatives	20%	U.S. Bonds and Cash	15%

Benchmark

The investment performance benchmark for the primary investment portfolio consolidates the S&P Total Market Index, MSCI All Country World ex U.S. Index, Wilshire U.S. REIT Index, HFRI (Hedge Fund Research, Inc.) Composite Index, Barclays Capital Government Bond Index, and a Natural Resources blend. This is intended to reflect the asset diversification of the portfolio. The performance of each individual manager is measured against a benchmark appropriate to its asset class as well as a peer group of other investment managers with a similar investment style.

The 60/40 Blend consists of 60% S&P 500 Index and 40% Barclays Aggregate Bond Index.

PRESERVATION AND ENHANCEMENT OF THE REAL VALUE OF ASSETS

MaineCF's long-term investment objective is to preserve and enhance the real value of the assets of the foundation over time. The following data demonstrates the success of this objective. This data is from an actual fund invested in the primary investment portfolio between January 1, 2004 and December 31, 2013 and is representative of all funds invested in the primary investment portfolio during this time period.

		Beginning Balance	Distribut ions	Investment Return	Investment Related Fee	MaineCF Admin Fee	Ending Balance	Return, Net of Fees
10	2004	118,513	(5,560)	14,736	(439)	(1,004)	126,246	13,293
9	2005	126,246	(5,500)	13,094	(523)	(1,072)	132,245	11,499
8	2006	132,245	(5,860)	18,994	(404)	(1,142)	143,833	17,449
7	2007	143,833	(6,310)	20,397	(323)	(1,263)	156,335	18,811
6	2008	156,335	(6,820)	(38,215)	(433)	(1,223)	109,643	(39,871)
5	2009	109,643	(7,120)	24,348	(351)	(941)	125,580	23,056
4	2010	125,580	(5,380)*	14,508	(352)	(1,058)	133,298	13,098
3	2011	133,298	(5,050)	12	(395)	(1,118)	126,747	(1,501)
2	2012	126,747	(4,890)	16,462	(484)	(1,117)	136,718	14,861
1	2013	136,718	(5,160)	20,853	(542)	(1,197)	150,672	19,114
10 years		118,513	(57,650)	105,189	(4,245)	(11,135)	150,672	89,809

* In 2010, MaineCF changed the spending policy from 5% to 4% of the average value of a fund over the preceding 12 quarters

FEES

MaineCF charges an administrative fee for managing the investment portfolio and providing services to nonprofit agency fund holders. The annual administrative fee is graduated as follows and is assessed quarterly based on fund value at the end of each quarter:

0 - \$ 1,000,000	0.85%
\$1,000,000 - \$3,000,000	0.75%
\$3,000,000 - \$10,000,000	0.25%
Over \$10,000,000	0.20%

The annual minimum administrative fee for any fund is \$200. There is a one time start-up fee of \$250.

MaineCF pays a fee to each of its investment managers based on a fee schedule negotiated with the manager. The investment management fee is netted against investment earnings before earnings are allocated to the individual funds participating in the investment pool. For 2013, the weighted average investment management fee was 0.88%. This fee is variable and has ranged between 0.82% - 0.93% annually. Performance figures presented in this proposal and on MaineCF's website are net of all investment related fees.

SPENDING POLICY

Funds for nonprofit organizations can be established as true endowments (limited to an agreed upon spending policy) or with the option of distributing principal.

MaineCF's Board of Directors sets a general spending policy with the goal of achieving a real rate of return (after inflation and fees) over a rolling five- to ten-year period. For new funds, the spending policy for 2015 is 4% of the average asset value of the fund over the preceding twelve quarters. This rate may be tailored to the needs of specific funds. The amount calculated based on MaineCF spending policy is available for distribution each year. Organizations may choose to receive this amount on a set schedule or at their request. Any amount not requested will roll forward and be available the following year.

To comply and conform to the Uniform Prudent Management of Institutional Funds Act (UPMIFA), there may be times when a rate lower than the current policy is recommended.

REPORTING

MaineCF provides fund holders with a statement each quarter indicating the year-to-date activity in the fund. Quarterly statements detail investment returns allocated to the fund, fees assessed, transfers received, and distributions made from the fund. Year-end fund statement also includes the amount available for distribution in the following year. Current and previous year fund statements, as well as other fund information, are available online via secured internet access.

MaineCF posts investment performance and asset allocation information on its website on a quarterly basis: www.mainecef.org. This information can be found under About MaineCF, Financial Information & Tax Returns section. Investment reports are available approximately six weeks after the close of a quarter.

MaineCF relies on the fund holders (our clients) to establish the frequency and timing of check-in meetings and updates. Liana and Jim are available any time to answer questions on the fund or schedule distributions. As requested, MaineCF staff members will attend board or committee meetings. Some fund holders prefer an update on the investment portfolio on an annual basis; others only as needed.

ACCOUNTING FOR SEPARATE GIFTS OR USE OF FUNDS

MaineCF manages nonprofit endowment funds for over 190 different nonprofit organizations, including public charities, school districts, and local municipalities. Fund holders have the option of setting up separate funds (sub-funds) to track individual gifts and/or specific charitable purposes. Each sub-fund receives a quarterly fund statement detailing year-to-date fund activity, including contributions, investment activity, fees, and distributions attributed to the specific sub-fund. There is no additional fee for establishing sub-funds. Many school districts in particular have found sub-funds helpful in order to consolidate several named scholarship funds under one umbrella.

ADDITIONAL SERVICES

In addition to investment management, MaineCF can offer access to its charitable gift annuity fund program for donors who are interested in life-income gifts. A charitable gift annuity is a contract between MaineCF and your donor whereby the donor makes a gift to MaineCF in exchange for a fixed income payment for the remainder of the donor's life. Upon the death of the donor, the remaining money becomes a permanent fund at MaineCF to benefit Washburn Memorial Library.

MaineCF is also available to process gifts of securities and certain tangible property, such as real estate. Although MaineCF does not impose a fee for processing gifts of stock, there is generally a brokerage commission associated with the sale of stock gifts. Any fee for processing gifts of real estate and other tangible property would be negotiated prior to the transaction.

CONCLUSION

MaineCF offers nonprofit organizations a unique and prudent approach to managing their permanent or long-term funds. The community foundation is proud to be a resource for nonprofit organizations and ensuring the stability of your organization is essential to our mission. We look forward to building a relationship with the Town of Washburn and the Washburn Memorial Library and thank you for your consideration.

October 30, 2014



MAINE COMMUNITY FOUNDATION

Management of Gifts to Municipalities

INTRODUCTION

When a Maine municipality receives an offer of a conditional gift of money¹, the legislative body of the municipality votes whether to accept the gift. Then the municipality must spend additional efforts managing the money or property in accordance with the donor's wishes. Some municipalities may prefer instead that another organization hold the money and manage it. This memorandum explores whether Maine Community Foundation (MaineCF) could legally serve as that organization and explains how such a partnership would operate.

QUESTION

Can MCF legally manage the conditional gifts given to municipalities on their behalf?

SHORT ANSWER

Legally, it would be possible to create such a relationship; however, each transfer of a gift to MaineCF may look different depending on the conditions the donor created.

DISCUSSION

This memo (1) addresses the statutory requirements for municipalities when they initially receive a conditional gift, (2) explains the future responsibilities of municipalities beyond initial acceptance and (3) speaks to the responsibilities a municipality may legally transfer to MaineCF and the procedure that should be utilized to do so. Due to the range of conditional gifts municipalities are likely to receive, the memorandum also provides some thoughts about why each transfer of a municipal conditional gift to MaineCF must be considered separately for its legal implications.

1. Statutory Requirements for Acceptance of Conditional Gifts

¹ This memo does not address conditional gifts of real or personal property.

According to the state statute that provides municipalities with the legal authority to accept conditional gifts, once a gift is offered to a municipality, the "municipal officers" must submit the gift at the next meeting of the "municipal legislative body," at which it will accept or reject the gift. 30-A M.R.S.A. §5654(1).² Municipal officers are defined as the selectmen or councilors of a town or the mayor, aldermen or councilors of a city. 30-A M.R.S.A. § 2001. A municipal legislative body is defined as the town meeting in a town, the city council in a city, or that part of a municipal government that exercises legislative powers under a law or charter. 30-A M.R.S.A. § 2001. After the municipal legislative body accepts or rejects the gift, the municipal officers must send written notice of its acceptance or rejection to the donor or donor's representative within ten days after the meeting. 30-A M.R.S.A. §5654(1). Because these procedures for acceptance outline obligations of specific municipal government entities or officials, they cannot be delegated to MCF.

2. Perpetual Compliance with Conditions on Municipal Gifts

The conditional gift statute also requires a municipality to "perpetually" comply with the conditions upon which the agreement was made with the donor or donor's representative. 30-A M.R.S.A. § 5654(2).³ Thus, even if a municipality transfers the management responsibilities of a gift to MaineCF, the municipality would remain liable under this statute for the compliance with the conditions and terms placed on that gift.

3. Responsibilities That May Be Transferred To an Outside Entity

The law in Maine is silent on whether the task of managing gifts of money to municipalities can be delegated to an outside entity. However, the conditional gift statute delineates the particular obligations that municipalities do have. As long as the municipalities do not shirk these responsibilities, a transfer to MaineCF appears permissible.

The Law Court has shown it believes charitable organizations and municipalities belong in the same category with respect to the receipt of gifts. The case of In re

² Another statute, 30-A M.R.S.A. Section 5653, provides municipalities with the authority to accept gifts of property or money in trust; however, we do not include an analysis of the transfer of trusts from municipalities to MaineCF given the judicial procedure already in place for such a transfer.

³ This statute also provides municipalities with the authority to raise money to carry into effect the conditions of the gift. 30-A M.R.S.A. § 5654(2). Conditional gifts of money may be deposited or invested according to "subchapter III-A." 30-A M.R.S.A. §5654(3). Subchapter III-A refers to Title 30-A M.R.S.A. Section 5706 et. seq. This statute governs the deposit and investment of funds by municipalities. The conditional gift statute, however, states that gifts of money "may" be deposited or invested according to subchapter III-A. "May" is a permissive word, not requisite, therefore, compliance with subchapter III-A is not a requirement for municipalities when dealing with conditional gifts of money.

Clark's Estate, 159 A. 500 (Me. 1932) ruled that a gift of money for the purpose of building and maintaining a Town Hall in the Town of Berwick qualifies under the exemption for inheritance tax for educational, charitable, or benevolent institutions. The Court concluded that "In so holding we are but giving a reasonable interpretation of the obvious intent and spirit of the statute, designed as it was to encourage liberality on the part of those testators whose means permit them to indulge their generosity in the line of promoting the public good by contributing to the cause of religion, education, benevolence, and charity." *Id.* at 503. The fact that the Law Court views charitable organizations and municipalities as similar entities with respect to, what was then called, the inheritance tax suggests that asking a charitable organization to effectuate the charitable purpose of a municipal gift would be permissible in the eyes of the law. In addition, the quote from the Court states a tendency toward liberality in allowing for municipal, charitable gifts because of their contribution to the public good. Under this reasoning, it would be better to allow for MaineCF to manage a gift on behalf of a municipality rather than have the municipality reject the gift because it can't see to its management.

In order to transfer management of a municipal conditional gift to MaineCF, a municipality would first need to comply with each of the steps in the statutory procedure for accepting or rejecting conditional gifts outlined in Section 1. Next, the municipal legislative body should then determine whether it will transfer the management of the conditional gift to MaineCF. Following a decision by the municipal legislative body to transfer the gift to MaineCF, a municipality will need to ensure that there is perpetual compliance with the gift's conditions. A municipality would be able to ensure this result through the execution of a contract with MaineCF in which the municipality would agree to transfer the gift of money to MaineCF and MaineCF would agree to comply with all conditions placed on the fund.⁴

4. Potential Concerns Going Forward

Because conditional gifts to municipalities can vary to such a large degree, it will be important to ensure that, for each gift, the appropriate responsibilities are placed on the appropriate party in the contract between MaineCF and the municipality.

For example, while trusts are handled using a separate procedure, case law in Maine demonstrates the unlikelihood a court would allow a municipality to delegate "discretionary" duties it takes on when it accepts a conditional gift. In the case of In re Murray, 45 A.2d 636 (Me. 1946), a trustee impermissibly delegated its discretionary duties to the trust beneficiary. While it is unclear what the Law Court would decide with respect to the delegation of discretionary duties of a conditional gift to a municipality; under the reasoning of the Murray case, a gift with a condition requiring

⁴ Depending on the conditions of the gift, MaineCF may be required to transfer money back to the municipality prior to its expenditure. For example, if a conditional gift is intended to fund a scholarship for a local high school student from the municipality, MaineCF could ensure the scholarship is awarded to the correct individual, manage the money for the scholarship prior to its award, and then transfer the money for the scholarship to the municipality prior to its award. This way, the scholarship is issued by the municipality, as required by the gift conditions.

someone in the municipality to exercise discretion in the management of the gift, the municipality could not transfer this discretionary responsibility to MaineCF. For example, a scholarship that is to be awarded to an individual "of the City Council's choosing" would likely only be permissibly transferred to MaineCF if MaineCF agreed to manage the funds, but allow for the City Council to actually select the recipient.

CONCLUSION

In sum, Maine municipalities have a limited ability to transfer conditional gifts to MaineCF. The municipality would have to officially accept the conditional gift by following 30-A M.R.S.A. Section 5654. Then, the municipality would have to determine whether it would like to transfer responsibility for the management of that particular gift to the MaineCF. If it determines it should do so, because the municipality remains liable under the statute to comply with all conditions on the gift, a contract must be created between the municipality and MaineCF whereby MaineCF agrees to comply perpetually with the gift's conditions. Because of the wide range of potential conditional gifts that are offered to municipalities, it will be important for MaineCF and the municipalities in question to separately consider the legal implications of transferring each gift and to assign rights and responsibilities accordingly in a formal agreement.



AGENCY FUND AGREEMENT FOR MUNICIPALITIES

This Agreement is made as of the _____ day of _____, 2014, between the Town of Washburn, Maine, with a mailing address of 1287 Main Street, Washburn, Maine, 04786 ("Department"), and the Maine Community Foundation, a corporation organized under the nonprofit corporation law of Maine with its principal office located in Ellsworth, Maine ("Foundation");

WHEREAS, the parties to this Agreement have a common interest in the welfare of the Washburn, Maine community and in serving charitable and educational purposes for the benefit of the Washburn, Maine community;

WHEREAS, the Department holds the funds to be transferred to the Foundation for charitable purposes, as defined in the Internal Revenue Code and regulations there under, and the Foundation is a qualified charitable organization (as defined herein);

WHEREAS, one of the charitable purposes of the Foundation is to receive and administer funds for various charitable and educational purposes and for other charitable organizations in the Washburn community; and

WHEREAS, various interested persons have expressed a desire to establish a fund at the Foundation to provide a stream of current income to the Town of Washburn for the benefit of the Washburn Memorial Library held by Department and to provide long term protection of the assets in the fund, and Department is desirous of having such a fund.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Establishment of Fund. A fund shall be established on the books of Foundation which shall be known as the Washburn Memorial Library Fund ("Fund"). Foundation acknowledges receipt of the property listed in Schedule "A" attached hereto and made part hereof as the initial property of the Fund.
2. Property of the Fund. The Fund shall include the property received herewith, such property as may from time to time be transferred to Foundation by Department for inclusion in the Fund, such property as may from time to time be transferred from any other source for inclusion in the Fund and accepted by Foundation, and all undistributed income from the foregoing property. The Fund shall be the property of Foundation held by it in its corporate capacity and shall not be deemed a trust fund held by it in a trustee capacity. Foundation shall have the ultimate authority and control over all property in the Fund, and the income derived therefrom, in accordance with the Articles of Incorporation and Bylaws of Foundation (as they may be amended from time to time), and the terms of this Agreement applied in a manner not inconsistent with said Articles and Bylaws.

3. Designation of Purposes. The Fund shall be used for support of the Washburn Memorial Library and its affiliated agencies.
4. Distributions of Income. A percentage of the market value of the Fund (Spending Policy) shall be paid and distributed to Department at least annually, or more frequently as the Parties may from time to time agree.
5. Other Distributions. Distributions in excess of the Spending Policy of the Foundation may be made to the Town of Washburn in any year as determined by the Board of Directors of the Foundation. Recommendations for such distributions may be made from time to time to Foundation by a two-thirds vote of the governing board of the Town of Washburn. These recommendations from the Town of Washburn shall be solely advisory and not binding on Foundation, but approval of such distributions by the Foundation shall not be unreasonably withheld.
6. Variance.
 - (a) Foundation agrees that if its Board of Directors proposes to exercise the variance power¹ stated in the Articles of Incorporation as amended from time to time, the exercise of such power shall not be effective earlier than at least thirty (30) days after Foundation notifies Department in writing of (1) its intent to exercise such power and (2) the manner in which Foundation proposes to vary the purposes, uses or methods of administration of the Fund. During the notice period, Department may advise Foundation of its views regarding the proposed exercise of the power and take such other action as it deems appropriate. If Foundation becomes aware of any other action instituted or proposed by any person to vary the purposes, uses or method of administration of the Fund, it will promptly notify Department.
 - (b) If Foundation ceases to be a qualified charitable organization or if Foundation proposes to dissolve, the assets of the Fund shall, after payment or making provision for payment of any liabilities, properly chargeable to the Fund, be distributed to Department. If Department cannot certify that it will continue to use the Fund assets for the purposes set forth in Article 3 above, then said assets shall be distributed in such manner and to such organization or organizations in the Washburn, Maine community as satisfies the requirements of a qualified charitable organization and serves purposes similar to those of purposes of the Fund.

¹ Maine Community Foundation Articles of Incorporation, Article Second. The Board of Directors shall have the power to modify, consistent with State law including seeking approval of the appropriate court or Attorney General, any restriction or condition on the distribution of funds for any specified charitable purposes or to specified organizations if in the sole judgment of the Board (without the necessity of the approval of any participating trustee, custodian, or agent), **such restriction or condition becomes, in**

7. Definitions and Construction.

(a) As used in this Agreement

- (1) "Qualified charitable organization" means an organization described in §501(c) (3) of the Internal Revenue Code and which is other than a private foundation under §509(a) of the Internal Revenue Code.
- (2) References to any provision of the Internal Revenue Code shall be deemed references to the U.S. Internal Revenue Code of 1986 as the same may be amended from time to time and the corresponding provision of any future U.S. Internal Revenue Code.

(b) It is intended that the Fund shall be a component part of Foundation and that nothing in this Agreement shall affect the status of Foundation as an entity which is a qualified charitable organization. This Agreement shall be interpreted in a manner consistent with the foregoing intention and so as to conform to the requirements of the Internal Revenue Code and any regulations issued pursuant thereto applicable to the intended status of Foundation.

(c) This Agreement shall be governed and construed in accordance with Maine law.

IN WITNESS WHEREOF, each Party hereto has executed this Agreement by its duly authorized officers effective as of the day and year first above written.

AUTHORIZED SIGNATURE: _____

TITLE: _____

ACCEPTED: MAINE COMMUNITY FOUNDATION, INC.

BY: _____

TITLE: _____

SCHEDULE A

(List property transferred to community foundation to establish the fund)