

Historical Archives Letter of Understanding

The following agreement is between the City of Portsmouth, a New Hampshire municipality with a principal place of business at 1 Junkins Avenue, Portsmouth, NH 03801 (“the City”), the Strawberry Banke Museum, a non-profit entity organized under the laws of the state of New Hampshire with a mailing address of 17 Hancock Street, Portsmouth, NH 03801 (“Strawberry Banke”), the Portsmouth Historical Society, a non-profit entity organized under the laws of the state of New Hampshire with a mailing address of 10 Middle Street, Portsmouth, NH 03801 (“the Historical Society”), and the Portsmouth Athenaeum, a non-profit entity organized under the laws of the state of New Hampshire with a mailing address of P.O. Box 366, Portsmouth, NH 03801 (“the Athenaeum”). The City, Strawberry Banke, the Historical Society, and the Athenaeum may collectively be referred to as “the Parties”.

WHEREAS, the Parties share a common interest in the preservation of archives relating to the history of Portsmouth for the purpose of educational and cultural benefit to both residents of the City and the many tourists and visitors from around the world;

WHEREAS, each of the Parties share a common purpose of preservation and public access;

WHEREAS, the continued storage of archives within each organization is greatly strained by lack of physical space with inability to expand as a result of financial and practical concerns;

WHEREAS, the Parties are limited in their ability to take on new archives for their collections and limited in their ability to allow public access to their archives;

WHEREAS, the lack of space and adequate facilities is great cause for concern for the possibility of future damage to many vulnerable archives;

WHEREAS, the Parties have come together in the Blue Ribbon Committee for Historical Archives with the purpose of collaborating on a public/private historical archive project that would provide a secure location for the combined use of the Parties;

WHEREAS, a primary purpose of this collaboration is storing the Parties and potentially other organizations and individuals archives in one location for ease of public access and enjoyment;

WHEREAS, the Parties have agreed to pursue the formation of a 501(c)(3) non-profit organization as the entity under which the historical archive will exist (“the Entity”);

WHEREAS, representatives of the Parties consulted with Hurwit & Associates, a law firm specializing in the nonprofit sector for legal assistance;

WHEREAS, the estimated creation of the non-profit entity would cost between \$6,000 and \$8,000 in legal fees and require filing with the Internal Revenue Service;

WHEREAS, beginning the process of non-profit formation would require a \$3,500 retainer to be paid to Hurwit & Associates and starting to draft and gather the necessary materials for formation (seen in Exhibit A).

NOW, THEREFORE, the parties agree as follows:

1. Each of the Parties shall seek funding for the creation and future success of the Entity.
2. Pursuant to the vote of the Archive Blue Ribbon Committee (the “Committee”) of July 22, 2024, the Entity shall initially be named the Center for Archival Research of Portsmouth (“CARP”).
3. Pursuant to the vote of the Committee of July 22, 2024, CARP’s Board of Directors shall have an initial composition of two (2) members appointed by each party, and an additional three (3) Board members who will be at-large members. The at-large members shall be designated through a process to be defined in CARP’s by-laws.
4. Each Party shall appoint its Board members by vote of each Party’s respective governing body no later than December 31, 2024. An earlier deadline may be established by vote of the Committee.
5. Representatives of the Parties shall contribute to the drafting of documents necessary for the formation of the Entity as laid out in Exhibit A, including but not limited to:
 - Drafting of bylaws
 - Drafting a legal purpose statement
 - Developing a governance structure for the Entity including board seat allocation
 - Defining activities for the Entity
 - Drafting a three-to-five-page narrative of purpose
6. Each of the Parties must decide in accordance with the drafted bylaws what individual(s) will represent their organization on the initial board of the Entity.
7. Each of the Parties must conduct conservation assessments.
8. The Parties will each actively contribute to any other necessary aspects of the non-profit formation process.
9. Additionally, as fiscal sponsor, the Athenaeum will be responsible for the financial management of funds secured by the Parties for the Entity and their administration.

10. The Parties agree that the Athenaeum will enter into a Fiscal Sponsorship Agreement which will outline the obligations and benefits associated with its role as fiscal sponsor.
11. This document is intended to supplement, and not to replace, the ongoing efforts of the Historical Archive Committee, the Portsmouth City Council, or any other existing agreement between any of the Parties.
12. This agreement shall commence on the date of mutual execution and continue until the successful incorporation of the Entity or termination of the agreement by any of the Parties.

For the City of Portsmouth

Karen Sawyer Conard, City Manager

Dated: _____

Pursuant to vote of the City Council

On: _____

For the Strawberry Banke Museum

Signature: _____

Dated: _____

Printed Name: _____

Position: _____

For the Portsmouth Historical Society

Signature: _____

Dated: _____

Printed Name: _____

Position: _____

For the Portsmouth Athenaeum

Signature: _____

Dated: _____

Printed Name: _____

Position: _____

FISCAL SPONSORSHIP AGREEMENT

This Agreement is made between the Portsmouth Athenaeum (*Fiscal Sponsor*) and The Center for Archival Research of Portsmouth (*Sponsored Organization*).

Purpose of Agreement

The Sponsored Organization has proposed that the Fiscal Sponsor sponsor a project (the "Project") to collect and receive funds to facilitate the incorporation and initial development of the Center for Archival Research of Portsmouth with the assistance of Hurwitt & Associates. The Center for Archival Research of Portsmouth is a nascent nonprofit entity dedicated to preservation of historical documents and artifacts and to the fostering of historical research of the history of Portsmouth, New Hampshire:

The Fiscal Sponsor has determined that sponsorship of the Project would be consistent with its goals and wishes to make arrangements with the Sponsored Organization for the implementation and operation of the Project.

1. The Fiscal Sponsor hereby agrees to sponsor the Project and to assume administrative, programmatic, financial, and legal responsibility for purposes of the requirements of funding organizations. The Sponsored Organization agrees to implement and operate the Project, in accordance with the terms of this agreement and with any requirements imposed by funding organizations.
2. The Project shall be operated in a manner consistent with the Fiscal Sponsor's tax-exempt status and as described in this agreement. No material changes in the purposes or activities of the Project shall be made without prior written permission of the Fiscal Sponsor and in accordance with any requirements imposed by funding organizations, nor shall the Sponsored Organization carry on activities or use funds in any way that jeopardizes the Fiscal Sponsor's tax-exempt status.
3. The Sponsored Organization shall not, and shall not permit the Project to, attempt to influence legislation or participate or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office or otherwise engage in the carrying on of propaganda (within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986).
4. The Sponsored Organization will provide all information and prepare all reports, including interim and final reports, required by funding organizations, with the Fiscal Sponsor's final approval.
5. On behalf of the Sponsored Organization, the Fiscal Sponsor will establish and operate for the use of the Project a designated account ("Account") segregated on the Fiscal Sponsor's books. All amounts deposited into a Project's Account will be used in its support, less administrative charges, if any, and subject to the conditions set forth below.
6. The Sponsored Organization designates _____ (*name*) to act as authorizing official. The authorizing official shall act as principal coordinator of the Project's daily business with the Fiscal Sponsor and shall have authority to sign disbursement requests. The sponsoring organization authorizing officials should have decision-making authority for the project and must be approved in advance by the fiscal sponsor.
7. The Fiscal Sponsor and Sponsored Organization will maintain all financial records relating to the Project according to generally accepted accounting principles, retain records as long as required by law, and make records available to auditors as required by law.
8. The Fiscal Sponsor and the Sponsored Organization will reflect the activities of the Project, to the extent required, on their state and federal government tax returns and financial reports. All deposits shall be

treated as gifts/non-gifts as appropriate and disbursements/payments made to or on behalf of the Sponsored Organization must be to accomplish the purposes of the Project. The Sponsored Organization will provide the Fiscal Sponsor with proper documentation to accomplish this, including furnishing the Fiscal Sponsor with the Sponsored Organization's Federal Employer Identification Number.

9. In consideration of the Fiscal Sponsor's agreement to sponsor the Project, and to cover the Fiscal Sponsor's expenses in connection with the Project as outlined above, the Project will pay the fees, charges, and expenses as outlined here. _____ (*x % or flat fee*)

10. This agreement will be subject to review six months from the date of the signed agreement, and will terminate if any of the following events occur:
 - a. The Fiscal Sponsor requests the Sponsored Organization to cease activities that it deems might jeopardize its tax-exempt status and the Project fails to comply within a period of ten (10) days;
 - b. The Sponsored Organization fails to perform or observe any other covenant of this agreement, and this failure remains unremedied fifteen (15) days after notice in writing;
 - c. Upon expiration of four weeks after either the Sponsored Organization or the Fiscal Sponsor has given written notice of its intent to terminate the agreement.

11. In the event this Agreement is terminated, the Fiscal Sponsor and Sponsored Organization will comply with any termination conditions imposed by funding organizations.

Accepted for the Fiscal Sponsor:

Signature:

Name:

Date:

For the Sponsored Organization:

Signature:

Name:

Date:

Hurwit & Associates Nonprofit Formation Process

A. Incorporation

1. Initial consultation with client to discuss the following:
 - Tax-exempt activities, requirements for qualification under Internal Revenue Code
 - Expected fundraising sources, budget projections (discuss Public Charity vs. Private Foundation status, implications for organization, potential donors)
 - Short-form 1023-EZ vs. long-form 1023
 - Governance topics including:
 - method of succession for board members (self-perpetuating vs. membership model)
 - special control provisions (e.g. permanent founding directors, special appointment powers)
 - board size, officer positions, *ex officio* positions
 - international / foreign representation & control considerations
 - Proposed name of organization and any associated trademark issues
 - Corporate vs. trust form, as appropriate
 - Legal nexus, recommendation for state of domicile
 - Fiscal year
2. Draft bylaws (including legal purpose statement), explanatory memo based upon initial consultation.
3. Review draft bylaws with client, edit bylaws as necessary until approved by board of directors.
4. Obtain data for incorporation or trust
 - Final name
 - Fiscal year
 - Names, addresses of initial board members
 - Officer names
 - Address
5. Prepare draft incorporation/trust document tailored to meet state requirements.
6. Review draft incorporation/trust document with client, edit as necessary, file incorporation papers upon approval of board of directors. Certified copy of certificate of incorporation is ordered at this time.

B. Tax Exemption

1. Prepare Power of Attorney to communicate with IRS on client's behalf (Form 2848); Obtain client signature.
2. Obtain EIN (Employer Identification Number) once corporation/trust formed.
3. Client opens bank account with EIN, certified copy of incorporation papers. Provide counsel, as necessary, regarding bank account, EIN.

4. Consultation with client regarding IRS Form 1023/1024:
 - Projected budgets – discuss general categories of income expense, balanced budget, general guidelines for compensation, informational nature of budget numbers
 - Narrative Statement of Activities – discuss IRS requirements, recommended approach, ties to budgetary numbers
5. Draft initial Form 1023/1024 and necessary attachments.
6. Review initial draft Form 1023/1024 with client, discuss specific portions of application including:
 - Business, personal relationships between directors, officers
 - Compensation arrangements, discretionary bonuses/non-fixed payments
 - Conflicts of Interest including any leases, loans or other agreements with officers/directors
 - Fundraising methods and jurisdictions
 - Grantmaking activities
 - Foreign activities
 - Political activities
 - Joint ventures
 - Intellectual property concerns
 - Real property donations and donations of other tangible goods
 - Close connections with other organizations
 - Required schedules (if any, most typically Schedule H for scholarship programs)
7. Finalize IRS Form 1023/1024, prepare for signature by organization representative.
8. Conduct final internal review of application to ensure accuracy.
9. Copy and File IRS Form 1023/1024 (full copy to client).
10. Respond to IRS examiner (as needed) for final approval of 501(c) status.

C. Further State Filings and Discussion

1. Obtain state income tax, sales tax exemptions as needed.
2. Complete charitable registration with Attorney General's office.
3. Discussion of post-exemption matters including:
 - a. Insurance and liability concerns (policies, statutory protections)
 - b. Review of private foundation vs. public charity status; public support
 - c. Corporate record keeping
 - d. Board resolutions
 - e. Initial and annual state and federal filings (charitable solicitation, employment, foreign corporate registration)
 - f. Leases, loans, affiliation, grant award agreements and other transactional matters
 - g. Organizational policies: expense reimbursement, whistleblower, document retention, executive compensation, and conflict of interest
 - h. Contractor, employment issues
 - i. Personnel policies, board manuals