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October 10, 2013

*Via Facsimile Only to (315) 866-4007*

Nicholas Macri, Esq.  
Village Attorney  
203 North Prospect  
Herkimer, New York 13350

*Re: Basloe Public Library Funding Proposal*

Dear Mr. Macri:

Thank you for your letter of September 24, 2013 and for our follow-up conversation on Tuesday. Although we appreciate the Village Board's willingness to discuss the funding necessary to keep the Library open until the new charter is granted and operations under the school district public library commence, as I indicated when we spoke, the revisions that the Village Board made to our proposal will not work to achieve that purpose.

As we discussed, I have received word from the Division of Library Development at the State Education Department ("DLD") that the Library's charter application has been approved by them for action at the meeting of the Regents on November 18<sup>th</sup> and 19<sup>th</sup>. We are still awaiting confirmation that the Regents' counsel has approved it for that meeting, but right now it looks good. DLD staff has also indicated that the Petition for Dissolution of the existing municipal library will not be considered until the December 2013 Regents meeting so it is likely that formal wind-down of the old library will occur roughly at the end of 2013

As we further discussed, the problem I see with the Village's counter-proposal is the inclusion of the phrase "or receipt of the school district tax levy whichever is sooner" to many of the provisions. The effect of this clause is, among other things, to insert the potential that the Village funding of the village public library (an entity to which it had previously committed funding of \$76,600 for the current fiscal cycle) could end before the school district public library has been chartered and become operational. This leaves a very real possibility that there would be no funding to continue the operations of the village public library and no entity legally able to use the school district tax levy (the village public library has not received voter approval to levy or use the school district tax levy). As such, the clause and potential havoc it could wreak seems

Nicholas Macri, Esq.  
*Re: Basloe Public Library Funding Proposal*  
October 10, 2013 – Page 2

directly counter to our clients' joint desire to keep library services in place for the people of Herkimer during this time of transition.

In addition, because DLD has now told us that the dissolution application will be considered one month after the charter application, it may not be possible to "wind down operations of the Village Public Library not more than 30 days after the date of the Regents' action granting a charter to the new school district public library or upon the library receiving funding under the school district tax levy whichever is sooner." Although I do not expect anyone to need 30 days beyond dissolution of the village public library, I believe we should plan to have the wind down done shortly after the dissolution action occurs – probably within seven days.

In the hope that we can finalize this matter, I am enclosing a brief Memorandum of Understanding that reflects the back-and-forth our client shave had, as well as the concerns outlined above. It is my hope that we can get this approved and executed by our respective clients this month.

Let me know if you need anything further to act on the MOU. Again, we appreciate your willingness to meet with us and discuss these issues.

Very truly yours,



Robert T. Schofield

Enclosure

cc: Frank J. Basloe Public Library Board of Trustees

**MEMORANDUM OF UNDERSTANDING**

THIS Agreement dated this \_\_\_\_ day of October, 2013 by the Village of Herkimer, a municipal corporation (the "Village"), and The Frank J. Basloe Library, a New York education corporation chartered as a village public library serving the Village (the "Library") (the Village and the Library hereinafter collectively as the Parties.

WHEREAS, the Village currently funds the Library with an annual appropriation of \$76,600; and

WHEREAS, the Library has filed an application to recharter as a school district public library serving the residents of the Herkimer C.S.D. and dissolve itself as a village public library, but the charter application will not be acted upon by the Regents of the University of the State of New York until their November 2013 meeting, at the earliest, and the dissolution petition will not be acted upon by the Regents of the University of the State of New York until their December 2013 meeting, at the earliest; and

WHEREAS, the Parties wish to maintain a funding mechanism to ensure that library services for the people of Herkimer are continued through this period of transition, but the Village wishes to limit its maximum contribution, after reimbursements, to the period of time said library services are provided by the village public library.

NOW TEREFORE it is understood and agreed as follows:

1. The Village will reduce its 2013 appropriation to the Library from \$76,600 to \$38,300.
2. The Library will apply the \$38,300 appropriation to its operations as a village public library through the date on which a charter is granted to the school district public library.
3. The Village will continue to allow the Library to draw monies necessary to continue its operations until the date of rechartering, with the understanding that any funds used by the Library in excess of \$38,300 constitute an interest free loan by the Village to the Library, which the school district public library will repay within 30 days of the date of rechartering.
4. The Library agrees to wind down operations of the village public library within seven days after the date of the Regents' action dissolving the village public library.
5. The Library's counsel will prepare a proposed form of lease between the Village and the Library and send that document to the Village Attorney for review.

FOR THE VILLAGE:

FOR THE LIBRARY:

\_\_\_\_\_  
Mark Ainsworth, Mayor

\_\_\_\_\_  
Michelle Andersen, Board President