

AGREEMENT

This Agreement, made and entered into the 7th day of May, 2009 by and between the Town of Fairhaven, a Massachusetts municipal corporation, 40 Centre Street, Fairhaven, Massachusetts, by and through its Board of Selectmen, hereinafter referred to as "Town" and the Whitfield-Manjiro Friendship Society, Inc., a Massachusetts Non-Profit Corporation, with a principal office at 45 Centre Street, Fairhaven, Massachusetts, hereinafter referred to as "WMFS".

WHEREAS, the undersigned, recognize the vital role that knowledge of history plays in the current and future success of our citizens; and

WHEREAS, since 1987, WMFS (formerly known as the Fairhaven/New Bedford--Tosashimizu Sister City Committee, Inc.) has promoted a sister-city relationship with the city of Tosashimizu, Kochi Prefecture, Japan, and has perpetuated the story of John Manjiro and Captain William Whitfield, whose historical friendship serves an invaluable role in fostering good relations between the peoples of Japan and of the United States; and

WHEREAS, the Town anticipates receiving a gift of the title to Captain Whitfield's house as a token of friendship and gratitude from the Japanese people; and

WHEREAS, the Town of Fairhaven wishes to designate WMFS (and WMFS accepts the opportunity) to operate and maintain Captain Whitfield's house as a museum and educational center in honor of the historical friendship between John Manjiro and Captain Whitfield, and to help foster the continuing good relations between the peoples of Japan and of the United States;

WHEREAS, this Agreement is exempt from the provisions of G.L. c. 30B as a contract, which is funded by proceeds derived from a gift to a Town.

NOW, THEREFOR, in consideration of the mutual covenants and conditions set forth below, the Town and WMFS agree as follows:

1. **General:**

WMFS shall operate and maintain Captain Whitfield's house (which consists of the land and buildings thereon located at 11 Cherry Street, Fairhaven, Massachusetts and shown as Lot 37 of Fairhaven Assessors Map 13) as a museum and educational center in honor of the historical friendship between John Manjiro and Captain Whitfield, in a manner that complies with all applicable State laws, and provisions of the Town Code, now in force, or which may hereinafter be in force.

2. **Maintenance: Alteration:**

WMFS shall at all times, and at its own expense, keep the Captain Whitfield house in such good order, condition, and repair as it was at the time of the commencement of this Agreement. WMFS may make material alterations, additions, or improvements to the Captain Whitfield house to preserve and maintain the house in furtherance of its use as an historic house, with the prior written consent of the Board of Selectmen.

3. **Structural Maintenance:**

The Town is responsible for the upkeep and repair or replacement of the major structural elements of the house such as the roof, siding, exterior paint, gutters, sidewalks and paths, electrical, plumbing and mechanical systems, and , fire suppression systems, if any. The Town is not obligated and does not intend to provide any other support, either financial or operational, to WMFS at any time.

In the event of the failure, or major disrepair, of any structural element of the house, the Board of Selectmen, in its sole discretion, may determine to discontinue the use of the Captain Whitfield house, and may suspend or terminate this Agreement, including the obligations of the Town under this paragraph 3, for such period of time as the Board determines.

4. **Costs of Operation:**

WMFS is responsible for all costs associated with the operation of the museum and activity center, including but not limited to, all wages and taxes and other benefits as necessary for hired staff or volunteers, minor maintenance work or damage repairs,

installation and reoccurring costs of phone, internet, and other office equipment. WMFS shall furnish general maintenance and trash removal from the Captain Whitfield house and grounds. WMFS shall pay the cost of any special security services for the house or scheduled events.

5. **Insurance:**

WMFS shall, during the term of this Agreement, keep in full force and effect a policy of liability and property damage insurance with respect to the Captain Whitfield house and grounds. The limits of liability shall not be less than \$500,000 per person and \$2,000,000 per accident. The property damage limit shall not be less than \$2,000,000. The policy shall name WMFS as insured and the Town as additional insured, and shall contain a clause to the effect that the insured will not cancel or change the insurance without first giving the Town sixty (60) days prior written notice. A copy of the policy or certificate of insurance shall be delivered to the Town annually, and in the case of renewal, shall be delivered prior to the end of the term of the current policy.

6. **Indemnify:**

WMFS shall indemnify and at all times save and hold harmless the Town and its officers, attorneys, employees, and agents from and against any and all claims, demands, suits, actions, liabilities, damages, penalties, judgments, and costs and expenses, including without limitation the costs and expenses of litigation, of or by anyone that in any way is caused by, arises out of, or is occasioned by the performance, operations, conduct, negligence, acts, or omissions of WMFS, or any of its agents or employees, or that occurs in, on, or about the Captain Whitfield house and grounds during the term of this Agreement

7. **Surrender:**

At the expiration of the term of this Agreement, WMFS shall surrender the Captain Whitfield house and grounds in good condition, reasonable wear and tear excepted. WMFS shall surrender all keys for the Captain Whitfield house to the Town.

8. **Term, Renewal:**

The term of this Agreement shall begin on May 7, and continue for one (1) year, and shall thereafter renew automatically for successive one (1) year terms, unless either party, acting in its sole and absolute discretion, notifies the other in writing no less than ninety (90) days prior to the end of the then current term of its intention to terminate the agreement, in which case the agreement shall not renew at the end of that term.

9. **Termination:**

In the event that WMFS shall cease to exist as an organization, or shall enter bankruptcy, or be declared insolvent, or liquidate all or substantially all of its assets, or shall significantly reduce its services or accessibility to Town residents during the term of this Agreement, or in the event WMFS shall fail to comply with the provisions herein, then and in that event the Town may terminate this Agreement upon ten (10) days written notice.

10. **Governing Law**

The laws of the Commonwealth of Massachusetts shall govern this Agreement in all aspects, including execution, interpretation, performance, and enforcement.

11. **Venue:**

All disputes under this Agreement shall be brought in the trial court for Bristol County.

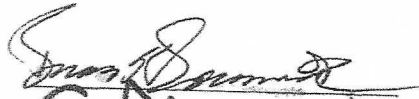
12. **Third Party Enforcement**


This Agreement is not intended to be a third party beneficiary contract, and none of the obligations set forth herein are enforceable by any person other than the parties hereto.

IN WITNESS WHEREOF, the parties hereto cause this Agreement to be executed in their respective names, this 7th day of May, 2009.

Town of Fairhaven,
by its Board of Selectmen,

The Whitfield-Manjiro Friendship Society, Inc.
by its Chairman _____


James Bennett, Sr.
Town of Fairhaven


Gerald P. Rooney