

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is entered into between the State Board of Corrections (“SBOC”) and Somerset County (“Somerset”).

### I. Statement of Purpose

The purpose of this MOU is to create an interim agreement, pending the outcome of litigation, pursuant to which the SBOC will provide funds to Somerset and Somerset will house county inmates from outside Somerset at the Somerset County Jail (“SCJ”). The need for this MOU is the result of the following below-stated Background Facts.

### II. Background Facts

1. There is currently a dispute between the SBOC and Somerset regarding whether and to what extent a county may use federal boarder revenues to pay down county jail debt, the scope of the SBOC’s discretion to distribute monies from the State Board of Corrections Investment Fund (“Investment Fund”) program, and the SBOC’s decision not to distribute monies from the Investment Fund to Somerset for the third and fourth quarters of fiscal year 2013.
2. This dispute is the subject of two petitions for review filed by Somerset in the Superior Court, Somerset County (AP-13-04 and AP-13-07), which concern the SBOC’s decisions not to make certain Investment Fund distributions to Somerset for fiscal year 2013.
3. AP-13-04 has been appealed by the SBOC to the Maine Supreme Judicial Court (“the Law Court”).
4. AP-13-07 has been stayed by agreement of the parties pending the resolution of AP-13-04.
5. As a result of Somerset’s communicated intention to use federal inmate boarder revenues generated in fiscal year 2014 to pay down county jail debt, the SBOC has yet to approve a distribution from the Investment Fund to SCJ for fiscal year 2014.
6. As a result of the SBOC’s failure to approve a distribution from the Investment Fund to SCJ since the second quarter of fiscal year 2013, SCJ has refused to accept inmates from other jails within the coordinated correctional system.
7. The SCJ contains five inmate pods (Pods A, B, C, D, and E), only four of which are currently open. The maximum capacity of the four open pods is 186 inmates. The maximum capacity with five pods open is 226 inmates. These pods are currently configured to hold inmates as shown in the table below:

Pod	Status	Capacity	Sex	Classification(s)
A	Open	34	M	Max/AS/DS/72-hr
B	Closed	40	M	Min
C	Open	24	F	Max/Med/Min/AS/DS/72-hr
D	Open	64	M	Med/Min
E	Open	64	M	Med/Min
Total		226		

8. The average daily prisoner count during fiscal year 2014 has been 154. If brought back on line at full capacity the SCJ could hold additional inmates depending upon gender and classification.
9. The SBOC believes that the Investment Fund is projected to contain insufficient funds to cover the total projected deficits and shortfalls of all jails within the coordinated correctional system for fiscal year 2014.
10. The Law Court's decision in AP-13-04 may resolve the dispute and provide a sufficient enunciation of the applicable law to prevent such further disputes pertaining to county use of federal inmate boarder revenues and the scope of the SBOC's discretion to distribute monies from the Investment Fund.
11. Pending the resolution of the appeal of AP-13-04, it is the desire of the SBOC that the SCJ house inmates from other jails within the coordinated correctional system. Somerset is willing to provide housing to these out-of-county inmates provided that it receives additional funding from the SBOC.
12. Pending the resolution of the appeal of AP-13-04, it is also the desire of the SBOC that SCJ expand its current capacity and use the resulting open beds to house additional out-of-county inmates. Somerset is willing to do so provided that it receives sufficient funding from the SBOC to operate the SCJ at the increased capacity.

### III. Actions

1. Upon final execution of this MOU, the SBOC shall, subject to reservations described in Paragraph 7 below, take immediate steps to transfer funds to SCJ in the amount of \$256,919, which amount is equal to the amount that SCJ likely would have received as a distribution from the Investment Fund for the third quarter of 2014 had Somerset not allocated federal inmate boarder revenues to pay down county jail debt for fiscal year 2014 and operated the SJC at its fiscal year 2014 budgeted average daily prisoner count of 192.
2. Upon final execution of this MOU and receipt by SCJ of the funds described in the preceding paragraph, Somerset shall take immediate steps to make housing available in SCJ for thirty (30) county inmates housed by the Department of Corrections or in other

county jails within the coordinated correctional system, or brought into the system, as SCJ bed space and classification currently allows, with priority given to inmates from Franklin County.

3. After final execution of this MOU, the SBOC shall continue to request supplemental funding from the State of Maine, and upon the funding of that request, the SBOC shall, subject to reservations described in Paragraph 7 below, transfer funds to SCJ in the amount of \$234,225. Somerset shall then take immediate steps to begin the process of opening the fifth pod and operating the facility at its then current budgeted average daily prisoner count (192 for fiscal year 2014) in order to make additional beds available for inmates from other county jails within the coordinated correctional system that meet the necessary classification to be boarded at the SCJ.
4. Provided that Somerset continues to make housing available in SCJ for inmates from other counties within the coordinated correctional system or who enter the system and, if funded in accordance with Paragraph 3 above, continues to pursue the process of operating the SCJ at its then current budgeted average daily prisoner count, the SBOC shall, subject to reservations described in Paragraph 7 below, make a fiscal year 2014 fourth quarter distribution from the Investment Fund to the same extent and under the same criteria and restrictions that it makes fiscal year 2014 fourth quarter distributions to the other jails within the coordinated correctional system.
5. During the period up to when the Law Court issues a decision in the appeal of AP-13-04, and provided the parties continue to fulfill their duties under this MOU, the SBOC and Somerset shall continue to work in good faith to fulfill the primary objectives of this MOU: (a) SCJ providing housing to inmates from other county jails within the coordinated correctional system that meet the SCJ's current bed classification, and within the then current budgeted average daily prisoner count; and (b) the SBOC providing funding to SCJ, subject to reservations described in Paragraph 7 below, as may be available for the expense of operating the SCJ at the then current budgeted average daily prisoner count.
6. Both the SBOC and Somerset continue to maintain their respective legal positions in their dispute, and intend to comply with the applicable law as interpreted by the Law Court's eventual decision in AP-13-04.
7. Both the SBOC and Somerset acknowledge that the decision in AP-13-04 may result in a monetary liability from one party to the other for fiscal year 2013, and may affect the nature of the payments made pursuant to this MOU. It is the intent of both the SBOC and Somerset that payments made pursuant to this MOU are made under a reservation of rights by both parties to recalculate the funding paid or to be paid if the decision in AP-13-04 supports such a claim.

For: SOMERSET COUNTY

Dated: \_\_\_\_\_

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Philip Roy, Jr., County Commissioner

Dated: \_\_\_\_\_

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Robert Dunphy, County Commissioner

Dated: \_\_\_\_\_

\_\_\_\_\_  
Robin Frost, County Commissioner

Dated: \_\_\_\_\_

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Lynda Quinn, County Commissioner

Dated: \_\_\_\_\_

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Lloyd Trafton, County Commissioner

Dated: \_\_\_\_\_

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Barry Delong, County Sheriff

For: STATE BOARD OF CORRECTIONS

Dated: \_\_\_\_\_

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Mark Westrum, Chair  
State Board of Corrections