

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made as of this \_\_\_\_ day of August, 2019 (the “Effective Date”) by and between the **TOWN OF FALMOUTH** (the “Town”) and the **FALMOUTH SCHOOL DEPARTMENT** (the “School Department”), each a “Party” and collectively, the “Parties.”

### RECITALS

WHEREAS, the Town owns certain real property located at or near 74 Woodville Road, in the current numbering thereof, in the Town of Falmouth, County of Cumberland and State of Maine (the “School Property”); and

WHEREAS, the School Property is currently used for school purposes and is under the custody and care of, and controlled by, the School Department; and

WHEREAS, the Town is under contract to buy property adjacent to the School Property that is owned by Catherine M. Libby, Trustee of the David G. Merrill Revocable Trust (the “Merrill Property”); and

WHEREAS, the Town intends to use the Merrill Property for school purposes; and

WHEREAS, the Merrill Property is in the vicinity of, but not adjacent to, Woodville Road; and

WHEREAS, the Town will require vehicular access to the Merrill Property from Woodville Road over the School Property; and

WHEREAS, two proposed locations of the access way to the Merrill Property over the School Property from Woodville Road and are depicted on the plan that is attached hereto as Exhibit A, the proposed locations being labeled thereon as the “North Access Way” and the “South Access Way”; and

WHEREAS, a portion of each of the North Access Way and the South Access Way is encumbered by an easement given to Central Maine Power Company (“CMP”), which easement is recorded in the Cumberland County Registry of Deeds in Book 15471, Page 246 (the “CMP Easement”); and

WHEREAS, the Town’s use of either the North Access Way or the South Access Way may necessitate coordination with or the consent of CMP; and

WHEREAS, the Parties wish to document their agreement as to potential future vehicular access across the School Property to and from the Merrill Property over either the North Access Way or the South Access Way; and

NOW THEREFORE, in consideration of the mutual promises and covenants provided for herein, and other consideration paid, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree and acknowledge as follows:

### **AGREEMENT**

1. The above set forth recitals are incorporated by reference and made a part hereof.
2. For a period of five (5) years from the date on which the Town acquires the Merrill Property (as the same may be extended, the “Development Period”), neither the Town nor its successors or assigns shall have the right to use either Access Way or the Merrill Property for non-school purposes.
3. At either Party’s request, the Development Period shall be extended for an additional five (5) years. The Parties shall document such first extension of the Development Period (the “First Extension”) in a form reasonably satisfactory to the Parties and their counsel.
4. Prior to the expiration of the First Extension and at the School Department’s request, the Town shall extend the Development Period for an additional five (5) years, provided that the School Department is able to demonstrate to the Town’s reasonable satisfaction that reasonable progress is being made in the design and construction of significant school related development on the Merrill Property. The Parties shall document such extension of the Development Period in a form reasonably satisfactory to the Parties and their counsel.
5. In the event that the Merrill Property is not used for school purposes by the end of the Development Period, as the same may be extended, the Town or its successors and assigns shall have the right to use the Merrill Property for any and all purposes without School District Consent. Furthermore, the Town or its successors or assigns shall have a permanent right to use either the North Access Way or the South Access Way for vehicular access to the Merrill Property, which shall include the right to construct a road

within the Selected Access Way, as the same is defined hereinafter, and to install lighting, signage, sidewalks, culverts, drainage and other appurtenances as may be necessary for the Town's or its successor's intended use of the Merrill Property and to comply with all applicable laws, regulations and ordinances. On the basis of feasibility studies, and acknowledging the School District's strong preference for use of the North Access Way, the Town or its successors or assigns shall determine which of the Access Ways is most appropriate and cost effective to provide access to the Merrill Property, which shall be referred to hereinafter as the "Selected Access Way".

6. The Town's rights hereunder shall be appurtenant to the Merrill Property and shall be transferable at the Town's sole option to the Town's successors, assigns, lessees, any party using or owning the Merrill Property with the Town's permission, including the general public. In the event of the Town's sale or transfer of the Merrill Property to a third-party, the School District shall execute and deliver an easement conveying the rights as are hereinabove described in recordable form that is reasonably satisfactory to the Town and its transferee.
7. Should the location of the Selected Access Way necessitate coordination with or the consent of CMP or movement of the CMP Easement, the Town and the School Department shall cooperate with one another to obtain the necessary cooperation and consent from CMP.
8. In the event that the Merrill Property is used for school purposes by the end of the Development Period, as the same may be extended, except as otherwise provided hereinafter, this MOU will terminate.
9. In the event that the School Department does use the Merrill Property for school purposes within the Development Period but then later determines that it no longer needs the property for school related uses, the Parties shall work cooperatively to ensure that the Merrill Property has vehicular access to Woodville Road. The obligations of this Section 8 shall survive termination of this MOU.

10. It is the intention of the Parties that the Access Ways shall be disregarded and treated as part of the School Property for the purposes of design and site plan review of school-related uses of the Property.
11. The Parties agree that this MOU shall not be recorded, but at the Town's request at any time, the Parties shall execute a Memorandum hereof to be recorded at the Town's expense in the Cumberland County Registry of Deeds.
12. Miscellaneous.
  - a. This MOU shall be binding upon and shall inure to the benefit of the Town, the School Department, and their respective successors in interest and assigns.
  - b. It is understood and agreed that all understandings, MOUs, warranties or representations, either oral or in writing, heretofore between the Parties hereto are merged into this MOU, which alone fully and completely expresses the Parties' MOU with respect to the transactions covered hereby. This MOU may not be modified in any manner except by an instrument in writing signed by both Parties.
  - c. This MOU may be executed in counterparts, each of which when executed and delivered shall be of the same binding effect as an original. If any one or more of the provisions of this MOU shall be held invalid, illegal or unenforceable in any respect, such provision shall not affect any other provision hereof, and this MOU shall be construed as if such provision had never been contained herein.
  - d. This MOU shall be governed by and interpreted in accordance with the laws of the State of Maine.

*[signature page follows]*

IN WITNESS WHEREOF, the Parties hereto have signed their names and executed this MOU as of the Effective Date.

WITNESS:

\_\_\_\_\_

**TOWN OF FALMOUTH**

By: \_\_\_\_\_

Name:

Its:

WITNESS:

\_\_\_\_\_

**FALMOUTH SCHOOL DEPARTMENT**

By: \_\_\_\_\_

Name:

Its:

**EXHIBIT A**