

OPTION AGREEMENT

This Option Agreement is dated _____, 2017 (the “Effective Date”) and is by and between **PRISCILLA A. VANDERMAST** (the “Seller”), and the **TOWN OF FALMOUTH**, a Maine municipal corporation (the “Buyer”).

RECITALS

A. The addresses and telephone numbers of the parties to this Agreement are as follows. Telephone numbers are included for informational purposes only.

Seller:

Priscilla A. Vandermast
87 Hadlock Road
Falmouth, ME 04105
Phone: (207) 797-0232
Email: pvandermast@gmail.com

Buyer:

Town of Falmouth
271 Falmouth Road
Falmouth Maine 04105
Attn: Nathan Poore, Town Manager
Phone: 207-781-5253
Email: npoore@town.falmouth.me.us

Copies of any notice to Seller should also be sent to:

Email: _____

Copies of any notice to Buyer should also be sent to:

Drummond Woodsum
84 Marginal Way, Suite 600
Portland, ME 04101-2480
Attn: Lisa Magnacca, Esq.
Tel: (207) 253-0504
Email: Lmagnacca@dwmlaw.com

B. Seller is the fee owner of _____ acres of unimproved land adjacent to property of the Buyer, situated at or near Hadlock Road in Falmouth, Cumberland County, Maine, being shown on the survey dated August _____, 2017 by prepared by _____ for the Town of Falmouth, a reduced copy of which is attached as **Exhibit A** (collectively, and together with any and all improvements, fixtures, timber, minerals and/or water located thereon and any and all appurtenant rights thereto, the “Subject Property”).

C. Buyer is a municipal corporation that, from time to time, acquires real property to be used for public recreation, habitat protection, open space and other public purposes.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by all parties hereto, the parties hereby agree as follows:

1. **Option.** Seller grants to Buyer an exclusive and irrevocable option to purchase the Subject Property on the terms and conditions set forth in this Agreement (the “Option”).
2. **Term.** The Option shall be effective as of the Effective Date, and shall terminate at 5:00 p.m. Eastern Time **one (1) calendar year** following the Effective Date (the “Option Term”).

3. **Exercise; Purchase Price.** The purchase price of the Subject Property (the “Purchase Price”), if the Buyer elects to exercise its option, shall be the fair market value of the Subject Property as determined by an appraisal to be obtained at Buyer’s expense, as described in Section 6(c) of this Agreement.

4. **Option Consideration.** In consideration of the Option granted herein, Seller acknowledges receipt from the Buyer of the sum of One Dollar (\$1.00), which shall be credited toward the Purchase Price at the Closing, if any (“Option Consideration”).

5. **Closing.** If Buyer exercises its Option, the closing (the “Closing”) shall occur at the offices of Buyer’s attorney, Drummond Woodsum, 84 Marginal Way, Suite 600, Portland, Maine on such date and at such time as Buyer and Seller shall in good faith agree; provided, however, that said date shall occur no sooner than ten (10) days and no later than sixty (60) days after the date on which Buyer exercises this Option. At the Closing, and in addition to any other documents referred to in this Agreement to be delivered to Buyer at the Closing, Seller shall execute, acknowledge as necessary and deliver the following documents and such other documents as Buyer’s attorneys may reasonably require to complete the transaction contemplated herein:

(a) **Transfer Documents.** Seller shall execute, acknowledge and deliver to Buyer a warranty deed and a Real Estate Transfer Tax Declaration of Value, which deed shall convey good and marketable title to the Subject Property in accordance with the Standards of Title adopted by the Maine Bar Association, free and clear of all encumbrances except covenants, conditions, easements and restrictions of record which do not materially and adversely affect the Buyer’s proposed use of thereof. At Buyer’s option, Seller shall convey the Subject Property using a metes and bounds description based upon a current survey obtained by Buyer.

(b) **Title Affidavits.** Seller shall deliver to Buyer such customary certificates, affidavits or indemnity agreements as the title insurance company issuing the title insurance policy to Buyer on the Premises shall require in order to issue such policy and to omit therefrom all exceptions for unfiled mechanic’s, materialmen’s or similar liens and for parties in possession.

(c) **Non-foreign Person Affidavit.** If applicable, Seller shall deliver to Buyer such affidavits and certificates, in form and substance reasonably satisfactory to Buyer, as Buyer shall deem necessary to relieve Buyer of any obligation to deduct and withhold any portion of the purchase price pursuant to § 1445 of the Internal Revenue Code.

(d) **Maine Resident Affidavit.** If applicable, Seller shall deliver to Buyer such affidavits and certificates, in form and substance reasonably satisfactory to Buyer, as Buyer shall deem necessary to relieve Buyer of any obligation to deduct and withhold any portion of the purchase price pursuant to 36 M.R.S.A. § 5250-A.

(e) **Underground Oil Storage Tank Certification.** Seller shall deliver to Buyer a written notice, in form and substance reasonably satisfactory to Buyer, certifying either

(i) that to the best of Seller's knowledge, there is no underground oil storage facility located on the Premises, or (ii) pursuant to 38 M.R.S.A. § 563(6), if there is such a facility on the Premises, that the facility exists and shall disclose its registration number or numbers, the exact location of the facility, whether or not it has been abandoned in place, and that the facility is subject to regulation by the Maine Board of Environmental Protection.

6. **Contingencies.** In addition to such other conditions to closing as are set forth herein, Buyer's obligations hereunder are subject to the following contingencies, any of which, if not met within the time period specified, shall entitle Buyer to terminate this Agreement upon written notice to Seller of Buyer's intention to do so within the time period specified. Upon such termination, any Option Consideration paid shall be promptly returned to Buyer and the parties shall be relieved of all further obligations under this Agreement.

(a) Within **ten (10) days** of the Effective Date, Seller shall have delivered to Buyer copies of any surveys, title reports, test results or the like pertaining to the Subject Property in Seller's or Seller's agents' possession, including without limitation any materials pertaining to survey matters, boundary lines, zoning, title, or environmental matters.

(b) **Title.** Within **ninety (90) days** of the Effective Date, Buyer shall have conducted a title examination on the Subject Property and shall have provided notice to Seller of (i) any alleged title defects in the Premises; and (ii) any easements, conditions, encumbrances and restrictions that are unacceptable to Buyer because they have a material adverse effect on the Buyer's proposed use of the Premises (items (i) and (ii) being collectively referred to herein as "Unacceptable Encumbrances"). Thereafter, Seller shall have a reasonable period of time, not to exceed sixty (60) days from Seller's receipt of notice thereof, to cure any such title defect(s) or remove the Unacceptable Encumbrances to Buyer's satisfaction. In the event Seller is unable to do so, and unless the parties shall agree to an extension of the above time period, Buyer may elect to either (1) terminate this Agreement, in which case Seller shall return the Option Consideration paid to date, or (2) proceed with purchase of the Subject Property notwithstanding the title defect(s) or Unacceptable Encumbrances.

(c) **Appraisal.** The parties acknowledge that a preliminary appraisal was completed by Jane Owen Appraisals prior to the date hereof, at a cost of \$5,000, which shall be payable by Seller. Buyer may, at its sole cost and expense, obtain a complete appraisal (the "Buyer's Appraisal") which shall be promptly shared with Seller upon Buyer's receipt of the same. In the event Buyer exercises its option, the Purchase Price shall be the appraised value according to the Buyer's Appraisal; provided, however, that if such appraised value is less than \$270,000 the Seller may terminate this Agreement by providing written notice to Buyer with **10 days of the Seller's receipt of the appraisal**, in which case the Option Consideration shall be immediately refunded to Buyer in full. If the appraised value is greater than \$290,000 the Buyer may terminate this Agreement by providing written notice to Seller within **10 days of the Buyer's receipt of the appraisal**, in which case the Option Consideration shall be immediately refunded to the

Buyer in full. If neither party terminates this Agreement as described in this paragraph within such time period, this contingency shall be waived.

(d) Environmental Assessment. Buyer may, at its sole cost and expense, through its employees and agents, may enter upon the Subject Property for the purpose of accomplishing an environmental assessment of the soils and water on the Subject Property, which shall include the right to conduct a Phase I and/or Phase II Environmental Assessment of the Subject Property. If Buyer does not close on the acquisition of the Subject Property, Buyer shall be responsible for restoring any damage to the surface of the Subject Property resulting from such inspections or investigations. If the results are not satisfactory to Buyer in its sole discretion, Buyer may terminate this Agreement by giving Seller written notice of Buyer's intention to do so within **thirty (30) days** of receipt of such results by Buyer, in which case the Option Consideration shall be immediately refunded to Buyer in full. Upon such termination, the parties shall be relieved of all further obligations under this Agreement.

(e) Public Funding. Buyer's obligations under this Agreement are contingent upon Buyer obtaining from the State of Maine or federal government grants to support the Purchase Price, and upon the Falmouth Town Council voting to appropriate the any portion of the Purchase Price not secured by grants (collectively, the "Public Funding Contingencies"). If such financing is unavailable to Buyer, Buyer may terminate this Agreement by notice to the Seller of the same, at any time prior to exercising the Option in which case the Option Consideration shall be immediately refunded to the Buyer.

(f) Access. If the Buyer elects to exercise its Option, access to the Subject Property from Hadlock Road shall be over Winter's Way and over that portion of Tax Map R06, Lot 35 located at the end of Winter's Way. In the event such access to the Subject Property requires municipal approval of any kind, Buyer shall be responsible for obtaining the same at its sole cost and expense. If it is determined that the Subject Property cannot be accessed in such manner, Buyer and Seller may negotiate the terms of a 50' wide right of way over the Seller's retained land to provide such access to and from Hadlock Road.

7. Seller's Pre-Closing Covenants. Seller shall not, without the prior written consent of Buyer, after the Effective Date, (a) make, extend or permit any leases, contracts, mortgages or other liens or encumbrances affecting the Subject Property which will not be removed, released or terminated at closing, (b) take or permit any action that would change the use of, the topography of, or the ground cover of, the Subject Property, (c) cause or permit any dumping or depositing of any materials on the Subject Property, including, without limitation, garbage, construction debris or solid or liquid wastes of any kind; (d) cut or remove any timber or topsoil from the Subject Property, or permit any other party to do so; or (e) cause or permit any default beyond the applicable cure period under any mortgage or deed of trust covering the Subject Property, or cause or permit the foreclosure of any other lien affecting the Subject Property. Seller shall promptly cure, at Seller's sole cost and expense, each and every breach or default of any covenant set forth in this paragraph upon receipt of notice thereof by Buyer.

8. Seller's Representations. Seller makes the following representations and warranties:

(a) Seller has full power and authority to enter into this Agreement (and the persons signing this Agreement for Seller have full power and authority to sign for Seller and to bind it to this Agreement) and to transfer and convey all right, title and interest in and to the Subject Property in accordance with this Agreement.

(a) There is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the Subject Property or any portion thereof, or pending or threatened against Seller which could affect Seller's title to the Subject Property, or any portion thereof, affect the value of the Subject Property, or any portion thereof, or subject an owner of the Subject Property, or any portion thereof, to liability.

(b) There are no:

(i) Actual or impending public improvements or private rights which will result in the creation of any liens, encroachments or encumbrances upon the Subject Property or any portion thereof.

(ii) Uncured notices which have been served upon Seller from any governmental agency notifying Seller of any violations of law, ordinance, rule or regulation which would affect the Subject Property or any portion thereof.

(c) There is no lease, license, permit, option, right of first refusal or other agreement, other than easement of record, which affects the Subject Property or any portion thereof which will not be removed at closing.

(d) There is no condition at, on, under or related to the Subject Property presently or potentially posing a significant hazard to human health or the environment, whether or not in compliance with law, and there has been no production, use, treatment, storage, transportation, or disposal of any Hazardous Substance as defined and/or regulated under applicable federal, State and local laws and regulations related to human health and safety or the environment, on the Subject Property nor any release of any Hazardous Substance, pollutant or contaminant into, upon or over the Subject Property.

(e) Neither the grant nor the exercise of the Option will constitute a breach or default under any agreement to which Seller is bound or to which the Subject Property is subject.

(g) Seller is in compliance with all applicable laws, statutes, orders, rules, regulations and requirements promulgated by governmental or other authorities relating to the Subject Property.

(h) No work has been performed or is in progress at, and no materials have been furnished to, the Premises or any portion thereof which may give rise to mechanic's, materialmen's or other liens against the Premises or any portion thereof; and

- (i) To the best of Seller's knowledge the Subject Property is not subject to any encroachments, boundary line disputes, unrecorded rights or easements held by third parties, buried storage tanks or buried waste.

Each of the above representations and warranties is material and is relied upon by Buyer. Except insofar as Seller has advised Buyer in writing to the contrary, each of the above representations shall be deemed to have been made as of the Closing and shall survive the Closing. At the Closing, if Buyer so requests, Seller shall deliver to Buyer a certificate in a form reasonably satisfactory to Buyer's counsel stating that each of the above representations is true and correct as of the Closing. If before the Closing, Seller discovers any information or facts that would materially change the foregoing warranties and representations, Seller shall immediately give notice to Buyer of those facts and information. If any of the foregoing representations and warranties cease to be true before the Closing, Buyer may elect to terminate this Agreement, in which case Buyer shall be entitled to a refund of the Option Consideration.

9. Remedies Upon Default. In the event Seller defaults in the performance of any of Seller's obligations under this Agreement, Buyer may elect to pursue all available legal and equitable remedies including, but not limited to, specific performance and reasonable attorney's fees and costs. If Buyer shall default in the performance of any of its obligations hereunder, the Option Consideration shall be retained by Seller as Seller's sole remedy.

10. Condition of Subject Property. On the Closing date, Seller shall have removed from the Subject Property any personal property, or any trash or solid waste on the Subject Property and the Subject Property shall be in the same condition as it was on the Effective Date, reasonable wear and tear excepted. Buyer shall be entitled to conduct a final inspection of the Subject Property prior to the Closing to ensure compliance with the terms of this Agreement.

11. Risk of Loss. All risk of loss shall remain with Seller until closing. In the event the Subject Property is destroyed, damaged or becomes the subject of an eminent domain action after Buyer has exercised the Option and prior to closing, Buyer may terminate this Agreement by written notice to Seller.

12. Prorations and Fees. Current real property taxes on the Subject Property shall be prorated as of the date of Closing based upon the latest available tax bill. Seller shall be responsible for paying any additional taxes, penalties and interest, including but not limited to compensatory or roll back taxes, on the Subject Property arising from the termination of a preferential tax classification of the Subject Property payable as a result of the conveyance to Buyer. The State of Maine transfer tax shall be paid one-half by Buyer and one-half by Seller. Other fees and charges shall be allocated in accordance with the customary practice in Maine.

13. Notices. All notices and other communications hereunder must be in writing using the contact information provided on page 1, or such other contact information as the parties may subsequently furnish to the other party by like notice, and such notices shall only be deemed to have been given and effective as follows:

- (i) upon hand-delivery, so long as a receipt is obtained from the recipient; or

(ii) the business day actually delivered to the recipient, if sent by registered or certified mail or recognized overnight courier, postage prepaid; or

(iii) upon transmission, if sent by email prior to 5:00 p.m. on a business day (otherwise such notice shall be deemed given the next business day); provided, however, that if the sender receives an “undeliverable” or “out of office” or similar message indicating that the email was not immediately received by the recipient, or if the receiving party does not confirm receipt of such notice by telephone or email, such emailed notice shall be deemed ineffective and notice must be provided by one of the other methods permitted herein.

14. No Broker's Commission. Each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. In the event any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, the party on account of whose actions the claim is asserted will indemnify and hold the other party harmless from and against said claim and the provisions of this Section shall survive Closing or any earlier termination of this Agreement.

15. Binding on Successors. This Agreement shall be binding not only upon the parties but also upon their respective heirs, assigns and other successors in interest.

16. Additional Documents. Seller and Buyer agree to execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.

17. Entire Agreement; Modification. This Agreement constitutes the entire agreement between Buyer and Seller pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification, or amendment of this Agreement shall be binding and no waiver of any provision in this Agreement effective, unless executed in writing by all the parties.

18. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maine and any action brought to enforce this Agreement shall be brought in a federal or State court within Cumberland County, Maine.

19. Memorandum of Option. At the Buyer's request, the parties shall sign a Memorandum of Option in recordable form, to be recorded by Buyer. If such a Memorandum of Option is recorded and in the event Buyer does not exercise the Option within the term of this Agreement, Buyer shall, if requested to do so by Seller, record a document, which will eliminate any cloud on Seller's title to the Subject Property occasioned by the Memorandum.

20. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement.

21. Severability. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the remainder of this Agreement shall nonetheless be of full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the date first written above.

SELLER:

PRISCILLA A. VANDERMAST

BUYER:

TOWN OF FALMOUTH

By: _____
Nathan Poore
Its Town Manager

DRAFT

EXHIBIT A

[Insert copy of survey]

DRAFT