

## CONTRACT FOR THE TRANSFER OF A CONSTRUCTION AND MAINTENANCE EASEMENT

**THIS CONTRACT FOR THE TRANSFER OF A CONSTRUCTION AND MAINTENANCE EASEMENT** ("Agreement") made and entered into as of this \_\_\_\_ day of January, 2020, by and between **Philip L. Farr**, with a mailing address of 1017 Coastal Road, Brooksville, ME 04617 ("Seller"), and the **State of Maine, acting by and through the Department of Environmental Protection**, with a mailing address of 17 State House Station, Augusta, ME 04333 ("Purchaser").

### WITNESSETH:

For valuable consideration received, the Seller and Purchaser hereto hereby covenant and agree as follows:

#### **Section 1. Conveyance of Easement.**

1.1 Seller agrees to transfer, and Purchaser agrees to accept those certain rights to a parcel of land located in Brooksville, Maine, owned by Seller by virtue of a Release Deed from Philip L. Farr, Shawn H. Duffy, and Kelly A. Sommer to Philip L. Farr, dated May 29, 2019 and recorded in the Hancock County Registry of Deeds in Book 6966, Page 269 more fully described in Exhibit A (the "Easement Rights").

1.2 Seller shall convey, and Purchaser shall accept these Easement Rights free and clear of any and all tax liens and executions or in conjunction with Subordination Agreements with lienholders.

#### **Section 2. Purchase Price and Terms.**

2.1 The purchase price for the Easement Rights is \$\_\_\_\_\_.

2.2 Notwithstanding Section 2.1 hereinabove, in the event that, as a result of its title or other work, the Purchaser determines that the Seller does not hold good clear record and marketable title and cannot convey the Easement Rights in accordance with the provisions of Section 1.2 and 4.1, or that the inspection of Seller's property pursuant to Section 6.1 was unsatisfactory, then the Purchaser shall so notify the Seller and the parties shall negotiate in good faith to establish an adjusted purchase price. If the parties are unable to reach an agreement upon such price within seven (7) days after such notice, then the Purchaser shall have the right to elect to terminate this Agreement within seven (7) days thereafter. In the event that the price is adjusted under this provision, then such adjusted price thereafter shall constitute the Purchase Price under this Agreement. If the Purchaser elects to terminate this Agreement, then upon notice thereof to the Seller this Agreement shall be null and void.

2.3 All monies payable under this Agreement, unless otherwise specified in this Agreement, shall be paid by checks drawn on any bank, savings bank, trust company, or savings and loan association, by wire transfer, or by electronic fund transfer, and having a banking office in the State of Maine, payable to the order of Seller.

### **Section 3. Condition of Title.**

3.1 At Closing, Seller shall convey the Easement Rights to Purchaser by means of a Construction and Maintenance Easement similar in form and substance to Exhibit A free and clear of all encumbrances and encroachments except:

- a. All land use (including environmental and wetlands), building and zoning codes and ordinances and other laws, ordinances, regulations, rules, orders, licenses or determinations of any federal, state, county, municipal or other governmental authority heretofore, now or hereafter enacted, made or issued by any such authority affecting the Subject Property, provided the Subject Property is not in violation of such laws;
- b. Any rights of the United States of America, the State of Maine or others under the laws of the United States or the State of Maine in the use and continuous flow of any brooks streams or other natural water courses or water bodies within, crossing or abutting the Subject Property, riparian rights, navigational servitudes and any rights of the State of Maine in and to the Great Ponds as that term is defined in 38 M.R.S.A. § 480-B(5).
- c. Such real estate taxes for the then current year as are not due and payable on the date of delivery of the Construction and Maintenance Easement;
- d. Any municipal assessment levied after the time of Closing, Seller agreeing to discharge in full any assessments against the Subject Property levied at or before the Closing, whether or not due and payable at the Closing; and
- e. Those encumbrances and survey matters as permitted and accepted by Purchaser.
- f. Any liens, provided lienholders execute a Subordination Agreement.

### **Section 4. Objections to Transaction.**

4.1 In the event that at or prior to Closing, Purchaser determines that any new title encumbrances have arisen with respect to all or any portion of the Seller's property, Purchaser, at its sole discretion, shall have the right to (i) waive any objections to such encumbrances and proceed to Closing with no adjustment to the Purchase Price or (ii) terminate this Agreement by written notice to Seller delivered on or before the Closing, and upon the delivery of such notice to the Seller, this Agreement shall be null and void.

**Section 5. Closing of Transaction.**

5.1 Except as otherwise provided in this Agreement, or unless mutually agreed to by the parties, the Closing described in Section 1.1 pursuant to this Agreement (the "Closing") shall take place on \_\_\_\_\_, 2020. Seller and Purchaser agree to deliver any and all required and/or customary documents and any and all funds necessary to the Closing on or before said date, as to which date time is of the essence. The Closing will be held in the office of Department of Environmental Protection, or at a place as shall be mutually agreed upon by the parties.

5.2 Seller further agrees to execute and deliver to Purchaser at the Closing such Affidavits and Certificates as are reasonably necessary, including without limitation a Certificate of Non-Foreign Status (as required by Internal Revenue Service regulations), an affidavit regarding underground storage tanks (as required by Maine Law), and, if Seller is a corporation, partnership or other legal entity, satisfactory evidence of authority to convey and good standing.

**Section 6. Inspection.**

6.1 Seller covenants that, between the date of this Agreement and the Closing, Seller shall allow Purchaser or Purchaser's representatives access to the Seller's property, and Purchaser or Purchaser's representatives shall have the right to perform water, soil, and engineering tests (including, without limitation, tests for water quality, hazardous wastes, toxic substances and for the existence of any underground tanks) on the property and to conduct boundary, resource and topographical surveys. Provided, however, that (a) such access does not interfere with the conduct of business, if any; (b) such persons enter onto the property at their own risk of loss and harm; and (c) the Purchaser shall restore the property in the event of any significant disturbance as a result of such work. In the event that Purchaser is not satisfied with the results of its tests, it may seek to terminate this Agreement in accordance with Section 2.2.

**Section 7. Remedies.**

7.1 In the event Purchaser fails to purchase and pay for, or the Seller fails to convey, the Easement Rights in accordance with the provisions of this Agreement, for any reason other than those reasons specified in this Agreement as giving rise to a right to terminate the transaction contemplated by this Agreement, or in the event of any other breach in the terms hereof, the non-breaching party may, at its option, bring an action against the breaching party for specific performance of this Agreement, and/or seek whatever other remedies may be available at law or in equity.

**Section 8. Adjustments, Prorations, and Closing Costs.**

8.1 The Seller agrees to pay all real estate property taxes assessed with respect to the property, which taxes are based upon an assessment date prior to the Closing Date and any penalties and interest. The Seller shall be totally responsible for any taxes, interests, costs and penalties due for prior years and agrees to pay all taxes due based upon the assessment date prior to the Closing Date. Seller shall provide evidence to Purchaser at Closing that all tax bills and betterments have been paid.

8.2 The recording fee for the Construction and Maintenance Easement and the recording fee for other documents, including a survey, will be paid by Purchaser.

8.3 A portion of the purchase price shall be withheld at the Closing by Purchaser if required by 36 M.R.S.A. § 5250-A.

8.4 Any penalty that may become due and payable at or after the Closing and may be imposed under 36 M.R.S.A. § 1101, et seq. ("Farm and Open Space Tax Law") or 36 M.R.S.A. § 581, et seq. ("Tree Growth Tax Law") as a result of the conveyance of the Easement Rights to Purchaser shall be paid for by Purchaser and such obligation shall survive the Closing and the delivery of the deed(s).

8.5 Pursuant to Section 1445 of the Internal Revenue Code, a withholding tax shall be withheld from the proceeds in accordance with that section at Closing and subsequently forwarded by the Purchaser to the Internal Revenue Service, unless the Seller is not a foreign person or corporation as defined under the Code. In the event Seller is not a foreign person or corporation as defined under the Code, Seller shall provide to the Purchaser a certificate by the Seller stating, under penalty of perjury, as of the date of transfer, that Seller is not a foreign person or corporation and that the transaction is not subject to the withholding tax.

8.6 If Subordination Agreements cannot be obtained, the Seller agrees to pay all outstanding encumbrances at Closing, including a tax lien in favor of the Maine Revenue Services recorded in the Hancock County Registry of Deeds in Book 6858, Page 799; a writ of execution in favor of Capital One Bank, Inc. recorded in the Hancock County Registry of Deeds in Book 4943, Page 19; and a writ of execution in favor of Portfolio Recovery Associates, LLC recorded in the Hancock County Registry of Deeds in Book 5269, Page 21.

## **Section 9. Representations by Seller.**

9.1 Seller hereby warrants and represents to Purchaser the matters contained in the following subparagraphs:

- a. Notices. Seller has not received any notices issued by any municipal or other public authority with regard to any work or improvements done or ordered by such authority to be done either before or after the date of this Agreement. Seller has no reason to believe that any such notice will be issued after the Agreement date.

- b. Title to the Property. Seller is the legal owner of the property in fee simple absolute.
- c. No Condemnation. To the best of Seller's knowledge, there are no condemnation proceedings pending with regard to any portion of the property and Seller does not know of or have reason to know of any proposed condemnation proceedings with regard to any portion of the property.
- d. Compliance with Land Use Laws. The Seller represents to the best of its knowledge that the property currently complies with all state and local land use laws, including without limitation zoning and building laws. The Seller represents to the best of its knowledge that there has been no illegal division of land which requires or which will require municipal subdivision approval. Seller shall take no action prior to the Closing to render the above statements untrue.
- e. Condition of Property. Seller represents and warrants that the property shall remain in the natural condition in which it is now until Closing.
- f. No Persons in Possession. Seller represents that the property is not subject to any lease or to any other possession or estate or to any option, right of refusal or agreement of sale other than this Agreement, and that no portion of the property shall be occupied by any person or entity under any oral or written lease, easement, license, other claim or Agreement or in any other manner at Closing.
- g. Broker's or Finders Fees. Seller and Buyer represent and warrant to each other that there is no claim for brokerage commissions or finder's fees incurred by reason of any action taken by that party with respect to this transaction. Each of the parties hereto will pay or discharge (a) any and all claims or liabilities for brokerage commissions or finder's fees incurred by reason of any action taken by that party with respect to this transaction, and (b) any and all claims and liabilities for brokerage commissions or finders fees arising from or through persons or entities claiming by or through that party with respect to this transaction.

## **Section 10. Purchaser's Contingencies.**

10.1 Notwithstanding anything in this Agreement to the contrary, the Purchaser's obligations under this Agreement are made subject to adequate funding from the State of Maine, acting by and through the Department of Environmental Protection and shall not create any obligation on behalf the Purchaser in excess of such funding. In the event that the amount of funding is such that the Purchaser is not able to perform its obligations under this Agreement of Sale, then the Purchaser shall have the right to terminate this Agreement of Sale by giving ten (10) days written notification thereof to the Seller. Purchaser agrees that this funding contingency shall be

objected to or waived on or before \_\_\_\_\_, 2020. In the event said contingency is objected to, the Purchaser may terminate this Agreement by written notice to the Seller delivered no later than \_\_\_\_\_, 2020, and this Agreement shall be null and void.

**Section 11. Other Conditions.**

11.1 Purchaser hereby acknowledges that the property hereunder, or each non-contiguous parcel thereof, has adequate frontage on a public way, other than a waterway, for the construction of a public access road, or is benefited by at least one easement of suitable width and scope for purposes of public access to the property from the nearest public way, other than a waterway.

11.2 This transaction may be subject to the approval by the Board of Environmental Protection. In the event said approval is required under Maine statute and the Board of Environmental Protection does not approve the transaction, the Purchaser may terminate this Contract by written notice to the Seller on or before \_\_\_\_\_, 2020.

**Section 12. Waiver.**

12.1 No provision of this Agreement may be waived, changed, or modified orally, but only by an agreement in writing signed by the party against whom the enforcement of any waiver, change, or modification is sought.

**Section 13. Notices.**

13.1 All notices, demands and other communications hereunder shall be in writing and shall be given either (i) by first class mail, postage prepaid, registered or certified, return receipt requested, to Seller at the address set forth below; (ii) by hand delivery to Seller's address set forth below; or (iii) by Fed Ex, or similar overnight express mail, prepaid, to Seller's address set forth below. All notices shall be deemed to have been duly given if postmarked prior to the expiration date and time specified herein (in the case of mailing) or upon delivery (if hand delivered) or when delivered to a Fed Ex (or similar overnight delivery service) courier or office at the time indicated on the proof of delivery (if sent by overnight delivery service).

Seller: Philip J. Farr  
1017 Coastal Road  
Brooksville, ME 04617

Purchaser: Department Environmental Protection  
Attn: Naji N. Akladiss  
17 State House Station  
Augusta, ME 04333

With a Copy to: Avery T. Day, Esq.  
 Stevens & Day, LLP  
 82 Winthrop Street  
 Augusta, ME 04330

Either party may change its address for purposes of this subparagraph by giving the other party notice of the new address in the manner described herein.

**Section 14. Public Announcements.**

14.1. Seller and Purchaser agree that this Agreement shall not be recorded. Seller and Purchaser further agree that there will be no press releases, public marketing materials, or announcements relating to this Agreement or prospective transaction(s) prior to Closing without the Purchaser's prior written approval.

**Section 15. Capacity.**

15.1 Subject to Sections 10.1 and 11.2, each party represents to the other that: Such party has full power and authority to perform its obligations hereunder and that any person or entity executing this Agreement by or on behalf of the representing party has the authority to act on behalf of and bind the representing party, and that any person or entity executing any closing documents by or on behalf of the representing party has been and will be duly authorized to act on behalf of the representing party, and that the performance of this Agreement will not be in violation of the representing party's charter or any law, ordinance, rule, regulation or order of any governmental body having jurisdiction, or the provisions of any agreements to which the representing party is a party or by the terms of which is bound and, at the Closing, each party shall furnish to the other party reasonably satisfactory evidence of such authority and approval.

**Section 16. Governing Law.**

16.1 This Agreement is made pursuant to and shall be governed by and construed in accordance with the laws of the State of Maine.

**Section 17. Expenses.**

17.1 Regardless of whether the transactions contemplated pursuant to this Agreement are consummated, each party hereto, unless this Agreement expressly provides otherwise, shall pay all costs and expenses incurred by it and incident to the preparation and performance of this Agreement, and matters relating thereto, and such costs and expenses shall not be reimbursable by the other party hereto.

**Section 18. Binding on Successors and Assigns.**

18.1 This Agreement shall be deemed a covenant running with the land and shall be binding upon the parties and upon their heirs, personal representatives, assigns and other successors in interest.

**Section 19. Entire Agreement and Survival.**

19.1 All understandings and agreements heretofore had between the parties hereto are merged into this Agreement. The covenants, agreements and representations made by the parties and contained in this Agreement shall survive the Closing.

**Section 20 Counterparts.**

20.1 This Agreement may be executed in several counterparts, each of which shall be deemed an original, all of which together shall constitute one and the same Agreement.

[Remainder of Page Intentionally Blank]



**IN WITNESS WHEREOF**, Seller and Purchaser have executed this Agreement as of the date first above written.

**SELLER:**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Philip J. Farr

Dated: \_\_\_\_\_, 2020

[Signatures Continue on Following Page]

PURCHASER:

Maine Department of Environmental Protection

\_\_\_\_\_  
Witness

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

Dated: \_\_\_\_\_, 2020

Preliminary Draft

**EXHIBIT A**

Preliminary Draft

THIS PAGE INTENTIONALLY LEFT BLANK