

## WITHDRAWAL AGREEMENT

Between

**Town of Cherryfield Withdrawal Committee and Maine School Administrative District No. 37**

AGREEMENT made by and between the Town of Cherryfield ("Town" or "Cherryfield") Withdrawal Committee and Maine School Administrative District No. 37 ("District" or "SAD 37") according to 20-A M.R.S.A. § 1466 for the withdrawal of the Town of Cherryfield from Maine School Administrative District No. 37.

### 1. Purposes.

The purposes of this Agreement are:

- 1) To provide for the timely and orderly withdrawal of Cherryfield from SAD 37;
- 2) To provide educational continuity for all students residing in Cherryfield and, insofar as the educational programs provided within the Town of Cherryfield serve students from SAD 37 communities, to provide educational continuity for those students; and
- 3) To allocate SAD 37's financial and contractual obligations, and its assets, between SAD 37 and the new school administrative unit that includes, or is comprised of, Cherryfield (hereinafter the "New Cherryfield SAU"), as of the effective date of Cherryfield's withdrawal in a manner that fairly takes into account the continuing educational needs of students and the continuity of educational programs.

For purposes of this Agreement the term "New Cherryfield SAU" shall mean the Town of Cherryfield municipal school unit or any school administrative unit that includes Cherryfield as a member during the term of this Agreement.

### 2. Withdrawal.

Pursuant to 20-A M.R.S. § 1466, the Town of Cherryfield shall withdraw from SAD 37 in accordance with the terms of this Agreement as of June 30, 2013, and thereafter shall no longer be a member of the SAD 37 school administrative unit. As of July 1, 2013, Cherryfield shall become a separate municipal school administrative unit comprised solely of Cherryfield unless Cherryfield joins, merges with or otherwise is included in another school administrative unit.

### 3. Continuity of Educational Services.

The New Cherryfield SAU will provide continuity of educational services to all students residing in Cherryfield and SAD 37 students attending Cherryfield schools as follows:

- A. Cherryfield students in grades K-8 attending schools located within the Town of Cherryfield during the 2012-13 school year

Cherryfield students attending Cherryfield Elementary School during the 2012-2013 school year will continue to receive the educational services they previously received at the schools located within the Town of Cherryfield in order to provide optimal instructional and curricular continuity. These services include the core curriculum, auxiliary and specialized services such as special education and gifted/talented, co-curricular, and after-school programming for pre-K through grade 8 provided through the Cherryfield Elementary School.

**B. Cherryfield students attending SAD 37 schools outside the Town of Cherryfield**

For the first year after withdrawal (July 1, 2013 through June 30, 2014), all students residing in Cherryfield may attend the school they would have attended if Cherryfield had not withdrawn from SAD 37 in accordance with 20-A MRSA § 1466(4)(A)(1). On or about June 30, 2013, the superintendent of SAD 37 and the School Board of the New Cherryfield SAU shall confer with each other and shall jointly certify the list of students attending Narraguagus High School to the Clerk of the Town of Cherryfield.

Following the first year after withdrawal, SAD 37 agrees to accept Cherryfield students as tuition students, and the New Cherryfield SAU agrees that at least eighty percent (80%) of secondary students residing in Cherryfield who attend school at public expense shall attend the District's Narraguagus High School for grades 9 through 12.

The costs of educating Cherryfield students attending SAD 37 schools, exclusive of students receiving special education services, will be allocated as follows: SAD 37 will bill the New Cherryfield SAU on a bi-annual basis payable on or before December 15 and May 15, with a reconciliation after the Department of Education sets final tuition rates, as applicable, at a tuition rate determined under Section 5804 for students in grades K-8, and under Section 5805, subsection 1 for students in grades 9-12, during the fiscal year in which these costs are incurred.

Under 20-A M.R.S. Chapter 606-B, the Essential Programs and Services Funding Act, the New Cherryfield SAU will receive the State education subsidy allocations for Cherryfield students attending SAD 37 schools on a tuition basis.

**C. Cherryfield Special Education Students attending Cherryfield Schools**

The New Cherryfield SAU will provide for continuity of programming for all special education students residing within the Town of Cherryfield attending Cherryfield schools. The New Cherryfield SAU assumes all responsibilities for decisions related to special education for these students.

**D. Cherryfield Special Education Students Attending SAD 37 Schools**

1. During the 2013-2014 school year, for all students residing in Cherryfield attending SAD 37 schools, SAD 37 shall provide all special education and related special education services required by the IEP prepared by each student's IEP Team to the extent that SAD 37

has an appropriate program to meet the terms of the IEP and applicable requirements of Maine law and regulations.

2. For years after 2013-2014, SAD 37 shall provide for students in grades 9-12 all special education services required by the IEP prepared by the student's IEP Team to the extent that SAD 37 has an appropriate program to meet the terms of the IEP and applicable requirements of Maine law and regulations. After June 30, 2014, the New Cherryfield SAU shall provide all educational services including without limitation special education services to all students in grades K-8 who reside in Cherryfield, provided that SAD 37 at its sole discretion may accept special education students from Cherryfield in grades K-8 if SAD 37 has an appropriate program or placement for such students pursuant to the requirements of the applicable IEP.

3. Except for short term programming changes of not more than ten (10) school days, decisions about whether SAD 37 can implement the terms of the IEP, and whether SAD 37 has an appropriate program or placement for a student pursuant to the requirements of the IEP shall be made by SAD 37 after a careful review of the IEP for the student. In no event shall SAD 37 refuse to provide needed special education services as provided in the IEP for students residing in Cherryfield who are permitted to attend SAD 37 schools under this Agreement, except for student removals of not more than ten (10) school days or when SAD 37 has determined that SAD 37 cannot provide an appropriate program or placement for that student. In the event that the IEP Team is unable to reach consensus on issues that are the responsibility of the Team, the SAD 37 Special Education Director shall make the decisions on those issues, subject to the parent's due process rights in relation thereto. The Cherryfield SAU's representative on the IEP team shall be the Cherryfield Special Education Director or other individual designated by the Superintendent of the Cherryfield SAU. SAD 37 personnel will work cooperatively with the Cherryfield SAU's representative, and, upon request will provide the Cherryfield SAU's representative with all information regarding classroom observations, student performance, academic achievement testing and functional behavior assessment components of the student evaluation process. The Cherryfield SAU's representative shall provide input to SAD 37's Special Education Director (or other administrative designee) on the proper implementation of the IEPs of Cherryfield special education students attending SAD 37 schools or perceived deficiencies in IEP implementation. SAD 37 shall consider that input in good faith and SAD 37 shall respond in an appropriate manner consistent with the terms of this Agreement. In accordance with Chapter 101 of the Rules of the Maine Department of Education, Maine Unified Special Education Regulation, Section IV(4)(A) and (B), the New Cherryfield SAU shall be responsible for all costs of special education for special education students residing in Cherryfield attending SAD 37 schools after July 1, 2013. The New Cherryfield SAU shall pay SAD 37 for all special education costs of any such student including without limitation as follows:

(1) the New Cherryfield SAU shall pay SAD 37 for the actual costs of special education for New Cherryfield SAU students enrolled in SAD 37 schools, including special education transportation costs, costs for facilities modifications required to accommodate the students, and attorneys' fees incurred by SAD 37 in connection with disputes with third parties over delivery of special education services for individual Cherryfield students, to the extent that

such costs are not included in the calculation of the tuition rate under 20-A MRS §§5804 and 5805(1); and

(2) the new Cherryfield SAU shall pay SAD 37 the costs of any non-special education 504/ADA plans and services for individual Cherryfield students, including section 504/ADA transportation costs, costs for facilities modifications required to accommodate the students, and attorneys' fees incurred by SAD 37 in connection with disputes with third parties over delivery of section 504/ADA plan services for individual Cherryfield students, to the extent such costs are not included in other payments under this Agreement. For example, if SAD 37 incurs costs for non-special education 504/ADA plans and services for individual Cherryfield students, and those costs are not within the scope of tuition or special education costs that the New Cherryfield SAU pays to SAD 37, the New Cherryfield SAU will be responsible for such costs.

The District shall bill the New Cherryfield SAU for such special education and 504/ADA costs during the fiscal year in which those costs are incurred. The District shall not be responsible for costs of Cherryfield special education students who attend programs outside of SAD 37.

#### **4. Need for School Construction**

Cherryfield's withdrawal will not create the need for state subsidized school construction in the New Cherryfield SAU or SAD 37 within five (5) years from the date of withdrawal.

#### **5. Transportation Services.**

The New Cherryfield SAU will provide transportation services for Cherryfield students to and from school to the extent required by Maine law, and SAD 37 shall not be responsible for such transportation. The New Cherryfield SAU will not discontinue transportation for Cherryfield secondary students to and from Narraguagus High School unless SAD 37 discontinues transportation of its own secondary students to and from Narraguagus High School.

#### **6. Administration of the New Administrative Unit.**

The New Cherryfield SAU will contract for the services of a superintendent and appropriate other system administration and clerical support. Following withdrawal, the New Cherryfield SAU will also pursue cooperative agreements and an alternative District arrangement with neighboring communities and existing SAUs, including SAD 37, to provide efficient and effective management, instructional coordination and improvement, special education, adult education, and other leadership and administrative capacity deemed valuable to the education of its resident students.

#### **7. Distribution of Financial Commitments from Outstanding Bonds, Notes, Lease Purchase Agreements and Other Contractual Obligations.**

The obligations of SAD 37 for outstanding bonds or notes and lease purchase obligations will be handled as follows:

**A. Lease Purchase Agreements and Contracts Issued by SAD 37 After its Formation.**

(1) Contracts and Agreements. The New Cherryfield SAU agrees to assume and be solely liable for and at its own expense to pay any amounts due under any contracts and agreements related to assets at Cherryfield's school facilities. These contracts and agreements are listed at Exhibit 1;

(2) The New Cherryfield SAU agrees to assume copier and other office equipment leases and service contracts and payments which come due after June 30, 2013 related to the machines located at the New Cherryfield SAU premises. These leases and service contracts are listed at Exhibit 2.

**B. Contractual Obligations for Administrative Staff.** During the first year after withdrawal, the New Cherryfield SAU will contribute to the existing administrative staff contracts entered into by the District Board while Cherryfield was part of SAD 37. These contracts are listed in Exhibit 3. The New Cherryfield SAU agrees to pay 14.38% of the salary and benefits for contracts listed in Exhibit 3 while such contracts remain in effect. Cherryfield will not have any responsibility for these contracts after June 30, 2014.

**C. Legal Expenses and Costs.** Notwithstanding the provisions of paragraph 14.2, Dispute Resolution, the substantially prevailing party in any action involving a claim that either party has breached its obligations under this Paragraph 7 shall be entitled to recover its costs and legal expenses, including reasonable attorney's fees.

**D.** The parties acknowledge that as of the date of this agreement SAD 37 is liable for accumulated sick leave costs to certain retiring teachers pursuant to Article XV(D) of the Comprehensive Agreement between SAD 37 and the SAD 37 Teachers Association. The New Cherryfield SAU agrees that it is responsible for 14.38% of the amount due to such teachers, provided that the New Cherryfield SAU shall not be responsible for 14.38% of the accumulated sick leave costs due to teachers currently employed full-time in Cherryfield who become full-time employees of the New Cherryfield SAU after withdrawal. For those teachers who become full-time employees of the New Cherryfield SAU, SAD 37 shall be responsible for 85.62 % of the amount of accumulated sick leave costs due to these teachers. The parties agree that on or before January 1, 2014, the New Cherryfield SAU will pay to SAD 37 the 14.38% of the accumulated sick leave amount calculated as of June 30, 2013, the effective date of withdrawal, subject to the reduction for teachers who become full-time employees of the New Cherryfield SAU as described herein if applicable. A list of these accumulated sick leave costs calculated as of December 31, 2012 is attached as Exhibit 4. This list will be updated prior to the beginning of the new contract year by SAD 37, and the updated list shall be attached to this Agreement as Replacement Exhibit 4. After July 1, 2013, the New Cherryfield SAU agrees that it will be responsible for accumulated sick leave costs for teachers employed by the New Cherryfield SAU upon retirement and SAD 37 will be responsible for accumulated sick leave costs for teachers employed by SAD 37 upon retirement.

**8. Financial Commitments for Bonds or Notes Issued During FY 2012-2013.**

During FY 2012-2013 SAD 37 may issue bonds or notes or enter into lease purchase financing arrangements to upgrade facilities at the District's schools and for other purposes. If Cherryfield withdraws from SAD 37 as of June 30, 2013, under 20-A M.R.S. §1466(16) the District will remain

intact for purposes of retiring and securing that indebtedness. To the extent that such indebtedness is related to real or personal property located at school facilities located in Cherryfield, the New Cherryfield SAU hereby agrees to assume, and at its own expense to pay, such indebtedness entirely from funds of the New Cherryfield SAU with no contribution or participation by SAD 37. Except to the extent that any indebtedness or lease purchase obligations issued during FY 2012-2013 relate to school facilities or personal property at school facilities in Cherryfield, as an alternate means for retiring this indebtedness under 20-A M.R.S. §1466(16), SAD 37, exclusive of the New Cherryfield SAU, hereby agrees to pay such indebtedness from funds of SAD 37 exclusive of the New Cherryfield SAU. By this agreement, any referendum vote to incur debt for the purpose of construction or renovation projects at SAD 37 schools in municipalities other than Cherryfield during FY 2012-2013 will be held solely in municipalities in SAD 37 not including the Town of Cherryfield, even if such a decision is made prior to Cherryfield's proposed withdrawal date of June 30, 2013. Similarly, should Cherryfield wish to conduct a referendum during FY 2012-2013 on the issuance of bonds for construction or renovation projects at Cherryfield schools, that referendum will be held only in Cherryfield, at the expense of the Town of Cherryfield, and will only impact the indebtedness of the Town.

**9. Financial Commitment for District Superintendent.**

SAD 37 has signed a contract with the Superintendent of Schools for a term that runs through June 30, 2016. For the remaining years of this contract following the June 30, 2013 withdrawal date, the New Cherryfield SAU agrees to pay SAD 37 \$16,600 toward the Superintendent's salary and benefits for each year that the contract remains in effect. In the event that the current Superintendent's employment contract is terminated before June 30, 2016, the New Cherryfield SAU's responsibility for contributing to the cost of the employment contract will terminate, and the annual payment by Cherryfield for the year that the contract is terminated will be prorated based on the number of days worked by the Superintendent in the final contract year up to the date of termination as well as any days of severance pay that SAD 37 may pay to the Superintendent after termination of his employment. The New Cherryfield SAU will not have any responsibility to contribute to the cost of the Superintendent's contract after June 30, 2016.

**10. Continuation of Collective Bargaining Agreements.**

One collective bargaining agreement (CBA) currently pertains to SAD 37 employees that will be employed by the New Cherryfield SAU following Cherryfield's withdrawal as follows:

Employee Unit	Term	Applies to	Notes
M.S.A.D. No. 37 Teacher Association		All SAD 37 certified teachers (except for tutors, adult education teachers, summer school teachers and teachers employed for less than six (6) months)	

The District is required to bargain in good faith and successor agreements to the collective bargaining agreement may be negotiated prior to July 1, 2013. Following Cherryfield's withdrawal, the New Cherryfield SAU shall assume the District's existing collective bargaining agreements to the extent that they cover employees of SAD 37 assigned full-time to Cherryfield schools at the end of the 2012-2013 school year and who have a right to continued employment as of July 1, 2013. A list of employees and positions assigned full-time to Cherryfield schools is attached to this Agreement as **Exhibit 5**. This list shall be updated to June 30, 2013 by SAD 37 and the updated list shall be attached to this Agreement as **Replacement Exhibit 5**.

Following Cherryfield's withdrawal, the Cherryfield School Board will extend representational rights to the bargaining unit listed above for the purpose of negotiating future collective bargaining contracts. If, on the date of withdrawal, SAD 37 is engaged in negotiations with the above bargaining unit, the New Cherryfield SAU school board will assume responsibilities for those negotiations insofar as they pertain to employees of the New Cherryfield SAU. If no new collective bargaining agreement has been reached between SAD 37 and any of the bargaining units above on the date of withdrawal, the New Cherryfield SAU school board will honor the terms of any existing collective bargaining agreements that remain in effect past their termination date and will honor the status quo with respect to employees assigned full-time to the New Cherryfield SAU.

For employees who are employed by SAD 37 but are assigned for part of the workday or workweek to the Cherryfield Elementary School, SAD 37 shall have sole discretion as to those employees' work assignments. If the New Cherryfield SAU determines that the work assignment determined by SAD 37 does not meet its needs, the New Cherryfield SAU may elect not to accept such assignment and may contract on its own for the applicable service. SAD 37 shall provide notice to the New Cherryfield SAU by April 1 of the proposed assignment of such employees for the following school year, and the New Cherryfield SAU shall provide notice to SAD 37 by May 1 of any decision not to accept such assignment. After July 1, 2013, if any employees of SAD 37 continue to be assigned for part of the workday or workweek to Cherryfield, Cherryfield will pay for its proportional share of the costs of those employees. For example, if a music teacher employed by SAD 37 works for four (4) days per week in SAD 37 schools and one day per week in the Cherryfield Elementary School, Cherryfield shall pay to SAD 37 1/5 of this teacher's salary and benefits plus an additional administrative service charge of 5% of this amount to cover administrative costs incurred by SAD 37 for payroll processing and other costs. Employees who are employed by SAD 37 but who are assigned for part of the workday or workweek to the Cherryfield Elementary School are listed on Exhibit 6 attached.

#### **11. Continuing Contract Rights under Section 13201.**

The withdrawal of Cherryfield will not affect the continuation of continuing contract rights under Section 13201. On June 30, 2013, the effective date of withdrawal, all continuing contract teachers assigned to the Cherryfield schools shall become continuing contract teachers of the New Cherryfield SAU. On June 30, 2013, the effective date of withdrawal, all probationary teachers assigned to the Cherryfield Schools who become employees of the New Cherryfield SAU and who have earned years of service with SAD 37 toward continuing contract status shall retain those years of service for purposes of attaining continuing contract status with the New Cherryfield SAU. A list of continuing contract teachers and probationary teachers with their number of years of service toward continuing

contract status, assigned to the Cherryfield schools is attached as **Exhibit 7**. This list shall be updated to June 30, 2013 by SAD 37 and the updated list shall be attached to this Agreement as **Replacement Exhibit 7**.

## **12. Disposition of Real and Personal Property and Other Monetary Assets.**

A. Real Property and Fixtures. Title to the real property upon which the Cherryfield Elementary School is located is currently vested in SAD 37 by virtue of two deeds from the Town of Cherryfield recorded in the Washington County Registry of Deeds in Book \_\_\_\_, Page \_\_\_\_ and Book \_\_\_\_, Page \_\_\_\_ (see attached **Exhibit 8**). Subject to approval of this Agreement by the voters of the Town of Cherryfield, following the date of Cherryfield withdrawal, SAD 37 shall convey all of the real property described in these deeds to the New Cherryfield SAU by quitclaim deed subject to the terms of this Agreement.

B. Personal Property. Any and all personal property located at the Cherryfield Elementary School properties or used exclusively for Cherryfield school programs, including movable equipment, furnishings, textbooks and other curriculum materials, supplies and inventories shall become property of the New Cherryfield SAU on the date of withdrawal. The New Cherryfield SAU may require such assignments, bills of sale or other instruments of transfer as in its judgment is necessary to establish the New Cherryfield SAU's right, title and interest in such personal property.

The New Cherryfield SAU shall reimburse SAD 37 for excess major technology and equipment expenditures in Cherryfield schools as follows:

C. Scholarship Funds. Scholarships intended for Cherryfield students will be turned over to the New Cherryfield SAU. These scholarship accounts are listed on **Exhibit 9**.

## **13. Transition of Administration and Governance.**

If this Agreement is approved by the Commissioner of Education and the voters of Cherryfield, the administration and governance of education for Cherryfield students will be transferred directly from SAD 37 to the New Cherryfield SAU as of July 1, 2013, except as provided herein with respect to Cherryfield students attending SAD 37 schools as tuition students.

In the event of a positive vote to withdraw from SAD 37 by the Town of Cherryfield, the Cherryfield Board of Education will, as soon as possible, hold an election to form the Cherryfield School Board according to state law.

As soon as is practicable, the Cherryfield School Board will contract for administrative services to put in place policies and practices necessary to support educational services to Cherryfield resident students, including the development of a budget, the transfer of employment contracts, and the continuous provision of necessary services. Where possible and reasonable, cooperative agreements and other forms of collaboration with neighboring SAUs may be considered.

If this withdrawal agreement is approved by the Commissioner of Education and the withdrawal of Cherryfield as of June 30, 2013 is approved by the voters of Cherryfield, the voters of Cherryfield shall not participate in the approval of the SAD 37 budget for the fiscal year 2013-2014 at either the budget meeting or the budget validation referendum, and shall not vote on whether to continue the budget validation process in SAD 37.

#### 14. Procedural elements

**1. Superintendents' Agreements.** Nothing in this Withdrawal Agreement shall limit the availability or use of Superintendents' Agreements with respect to any student who is not an Enrolled Student under this Agreement.

**2. Dispute Resolution.** Any dispute between Cherryfield, the New Cherryfield SAU and SAD 37 (hereinafter individually a "Party" or collectively, the "Parties") arising out of or relating to this Agreement shall be resolved in accordance with this paragraph. Any Party may give written notice of a dispute arising out of or related to this Agreement to another Party or Parties in person or by certified mail, return receipt requested. The Parties to the dispute (hereinafter the "Affected Parties") shall attempt to resolve the matter through informal communication or negotiation for a period of thirty (30) days from the date of receipt of notice by the last Party to receive notice. If the dispute has not been resolved within thirty (30) days, any Party may serve written notice on the other Affected Parties of a request for mediation. The mediation shall be conducted in Maine by a mediator mutually agreeable to the Affected Parties, shall not exceed one full day or two half days in length, and shall be completed within ninety (90) days from the date of receipt of notice of a request for mediation by the last Affected Party to receive notice. If the Affected Parties are unable to agree on a mediator within thirty (30) days, or to resolve the dispute through mediation within 90 days, the dispute shall be submitted to arbitration in accordance with the procedures of the Maine Uniform Arbitration Act, 14 M.R.S.A. §5927 et seq.

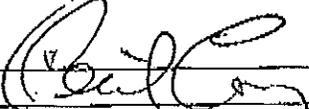
**3. Applicability to Successor School Administrative Units.** Upon approval by the Maine Commissioner of Education and approval by a majority vote of the Town of Cherryfield, this Agreement shall be binding upon the Town of Cherryfield, the New Cherryfield SAU, and any successor school administrative units that Cherryfield may join, merge with or otherwise be included in as a member during the term of this agreement, and on SAD 37 and its successor school administrative units. Accordingly, the terms of this Agreement shall be incorporated by reference into any Reorganization Plan to which Cherryfield, the New Cherryfield SAU, or SAD 37, or their respective successor school administrative units, is or becomes a party.

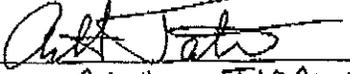
**4. Termination.** This Agreement shall remain in effect until such time as it may be terminated by mutual written agreement of the governing bodies of SAD 37 and the New Cherryfield SAU with the prior written approval of the Commissioner of the Maine Department of Education.

**5. State and Local Approval.** This Agreement is subject to approval by the Maine Commissioner of Education as required by 20-A M.R.S. § 1466(4)(B) and approval by a majority vote at a referendum conducted in Cherryfield as required by 20-A M.R.S. § 1466(9).

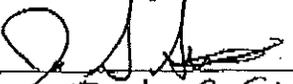
Signed at Cherryfield, this 8 day of APRIL, 2013

The Withdrawal Committee of the Town of Cherryfield:

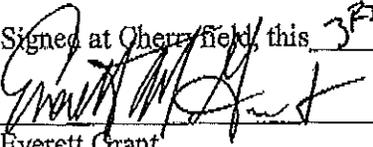
Name:   
Member from the SAD 37 Board of Directors

Name:   
Member and representative from Municipal Officers (Member of the Board of Selectmen)

Name: \_\_\_\_\_  
Member at Large

Name:   
Member of Petitioning Group

Signed at Cherryfield, this 3<sup>RD</sup> day of APRIL, 2012.

  
Everett Grant  
Chair, SAD 37 Board of Directors

Signed at Augusta, this 9<sup>th</sup> day April, 2012.

Approved as a Final Withdrawal Agreement under Title 20-A MRS §1466(5)

  
Stephen L. Bowen  
Maine Commissioner of Education