

WITHDRAWAL AGREEMENT

By and Between

Maine Regional School Unit No. 5 and the Town of Freeport Withdrawal Committee

This Agreement dated as of _____, 2014 is by and between Regional School Unit No. 5, a Maine regional school unit comprised of the municipalities of Freeport, Durham, and Pownal (hereinafter “RSU 5”, or the “RSU”) and the Town of Freeport Withdrawal Committee, a duly appointed municipal withdrawal committee representing the Town of Freeport) (hereinafter “Freeport” or the “Town”) organized in accordance with 20-A M.R.S. § 1466(4)(A).

1. **Purposes.** The purposes of this Agreement are:
 - A. To provide for the timely and orderly withdrawal of Freeport from RSU 5;
 - B. To provide educational continuity for all students residing in Freeport, Durham and Pownal;
 - C. To allocate RSU 5’s financial and contractual obligations, and its assets, between RSU 5 and the new administrative unit that includes, or consists solely of, Freeport, as of the effective date of Freeport’s withdrawal in a manner that fairly takes into account the continuing educational needs of students, the continuity of educational programs, and the costs of education;
 - D. To allow for future collaboration between RSU 5 and the New Freeport SAU on administrative, instructional, and extra-curricular functions; and

E. To minimize the disruption to RSU 5's educational programming and services, and to minimize any cost increases to taxpayers in the remaining municipalities of RSU 5 that may result from the withdrawal of Freeport.

2. **Withdrawal.** Pursuant to 20-A M.R.S. § 1466, the Town shall withdraw from RSU 5 in accordance with the terms of this Agreement as of June 30, 2015, and thereafter shall no longer be a member of the RSU 5 school administrative unit. As of July 1, 2015 (the "Effective Date"), the Town shall become a separate municipal school administrative unit that consists solely of Freeport. For purposes of this Agreement, the term "New Freeport SAU" shall mean the Town of Freeport municipal school unit or any other school administrative unit that Freeport may join, merge with, or otherwise be included in as a member.

3. **Continuity of Educational Services.** The Parties recognize that the RSU currently operates the following schools: In Freeport, Morse Street School (elementary grades pre-K through 2), Mast Landing (elementary grades 3 through 5), Freeport Middle School (elementary grades 6 through 8), and Freeport High School (secondary grades 9 through 12); in Durham, Durham Community School (elementary grades K through 8); in Pownal, Pownal Elementary School (elementary grades pre-K through 5). Freeport High School is the only secondary school within RSU 5. Durham Community School does not accommodate all Pownal middle school students.

A. Freeport students attending Freeport Schools

1. **Regular Education Students.**

Upon withdrawal from RSU 5, the New Freeport SAU will be responsible for providing educational services for pre-K to 12 students residing in Freeport who wish to attend New Freeport SAU schools in accordance with Maine law.

2. Special Education/504 Students.

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

B. RSU 5 Students Attending Freeport Schools

1. Enrollment During First Year After Withdrawal.

During the 2015-2016 school year, Freeport agrees to educate RSU 5 students who were previously enrolled in Freeport schools and any RSU 5 students who would have attended a Freeport school during the 2015-2016 school year if RSU 5 had not withdrawn. Enrollments shall be determined in accordance with applicable law and the procedures and policies in place immediately prior to the Effective Date.

The Parties acknowledge that the withdrawal of Freeport will create a unique situation because the statute contemplates that the municipalities of the former regional school unit will have capacity for students from the withdrawing municipality. In consequence, the statutory first year tuition rate is based upon the per pupil cost of the regional school unit as the receiving school unit. In this case, however, it is the withdrawing municipality, Freeport, that has capacity for middle and secondary students from the municipalities of the former regional school unit, RSU 5. In this situation, where the RSU is the sending school unit, the statutory first year tuition rate based on the per pupil cost of the sending unit regional school unit, RSU 5, does not apply. Furthermore, a per pupil cost for the receiving school unit, Freeport, does not exist. As a result, the tuition rate payable by RSU 5 to Freeport for RSU 5 students attending

Freeport schools in the 2015-2016 school year pursuant to the terms of this subsection shall be as follows. The tuition rate for elementary students shall be the state average per public elementary student cost for the previous year (for 2013-14, this rate was \$7,536.41) and the tuition rate for secondary students shall be the state average per public secondary student cost for the previous year as adjusted (for 2013-2014, this rate was \$9,209.92). The above rates shall not include a debt service factor.

Freeport will invoice RSU 5 for tuition on a semi-annual basis on or before October 15 and April 15, with a reconciliation after the Department of Education sets final tuition rates.

2. Enrollment Following First Year After Withdrawal.

The Parties recognize that after withdrawal by Freeport, the RSU will not have any secondary school. To avoid the need for state-subsidized school construction in RSU 5, for the ten-year period commencing one year after the Effective Date, the New Freeport SAU shall accept and enroll on a non-exclusive basis all RSU 5 resident secondary students who choose to attend a New Freeport SAU secondary school. The tuition for such students shall be calculated pursuant to 20-A M.R.S. § 5805(2) and shall not include a debt service factor.

The Parties recognize that after withdrawal by Freeport, RSU 5 will not have adequate space to enroll Pownal resident students in grades 6 – 8 in the Durham Community School. To avoid the need for state-subsidized school construction in RSU 5, for the ten-year period commencing one year after the Effective Date, the New Freeport SAU shall accept and enroll on a non-exclusive basis all Pownal resident grade 6 – 8 students who choose to attend a New Freeport SAU school. The tuition each year

for such students shall be the state average per public elementary student cost for the previous year (for 2013-14, this rate was \$7,536.41) or the rate calculated pursuant to 20-A M.R.S. § 5804(1), whichever is less, and shall not include a debt service factor.

3. Special Education/504 Students.

For students residing in RSU 5 and attending Freeport schools under this Agreement, the New Freeport SAU 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 the New Freeport SAU has an appropriate program to meet the terms of the IEP and applicable requirements of Maine law and regulations. Except for short term programming changes of not more than 10 school days, decisions about whether the New Freeport SAU can implement the terms of the IEP, and whether the New Freeport SAU has an appropriate program or placement for a student pursuant to the requirements of the IEP shall be made by the New Freeport SAU after a careful review of the IEP for the student. In no event shall the New Freeport SAU refuse to provide needed special education services as provided in the IEP for students residing in RSU 5 who are permitted to attend New Freeport SAU schools under this Agreement, except for student removals of not more than 10 school days or when the New Freeport SAU has determined that it cannot provide an appropriate program for that student. By this Agreement, the New Freeport SAU shall not be required to create a special education/504 program for RSU 5 resident students; however, the New Freeport SAU may not refuse to provide special education services for a RSU 5 resident student if the New Freeport SAU operates a program that would be appropriate for that student. In the event that the IEP Team is unable to reach consensus on issues that are the responsibility of the Team, RSU

5's representative at that Team meeting shall make the decisions on those issues, subject to the parent's due process rights in relation thereto. RSU 5's representative on the IEP Team shall be the RSU 5 Special Education Director or other individual designated by the Superintendent of RSU 5. New Freeport SAU personnel will work cooperatively with the RSU 5's representative, and, upon request will provide RSU 5's representative with access to any and all information contained in RSU 5 students' special education or 504 files. RSU 5's representative shall provide input to the New Freeport SAU's Special Education Director (or other administrative designee) on the proper implementation of the IEPs of RSU 5 special education students attending New Freeport SAU schools or perceived deficiencies in IEP implementation. The New Freeport SAU shall consider that input in good faith and shall respond in an appropriate manner consistent with the terms of this Agreement and applicable law.

4. Special Education/504 Costs.

The tuition rate calculations under 20-A MRS §§5804 and 5805 expressly exclude expenditures for special education. Therefore, 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), RSU 5 shall be responsible to pay the actual costs of special education and 504 services received by RSU 5 students attending New Freeport SAU schools, including special education transportation costs and costs for facilities modifications required to accommodate specific needs of RSU 5 students (thus excluding costs for facilities accessibility modifications required by laws of general applicability), to the extent that such costs are not included in the calculation of the tuition rate under 20-A M.R.S. §§ 5804 and 5805. For RSU 5 special education or 504 students who spend a portion of their school day in special education or 504

programs and a portion of their school day in general education programs, the tuition determined under Sections 3.B.1 and 3.B.2 above shall be prorated. For purposes of this subsection 4, special education shall include non-special education 504/ADA plans and services and special education costs shall include costs of non-special education 504/ADA plans and services and reasonable attorneys' fees incurred by the New Freeport SAU in connection with disputes over delivery of special education services and/or section 504/ADA plan services for individual RSU 5 students. The New Freeport SAU shall provide an itemized invoice to RSU 5 for such special education costs during the fiscal year in which the special education costs are incurred.

C. Freeport Students Attending RSU 5 Schools

1. Enrollment During First Year After Withdrawal.

During the 2015-2016 school year, RSU 5 agrees to educate Freeport students who were previously enrolled at one of the remaining RSU 5 schools and any Freeport students who would have attended one of the remaining RSU 5 schools during the 2015-2016 school year if Freeport had not withdrawn. Enrollments shall be determined in accordance with applicable law and the procedures and policies in place immediately prior to the Effective Date. This provision applies only to such elementary students, since RSU 5 will no longer operate a secondary school.

The tuition rate payable by the New Freeport SAU to RSU 5 for Freeport elementary students attending RSU 5 schools in the 2015-2016 school year pursuant to the terms of this subsection shall be as follows. The tuition rate for elementary students shall be the state average per public elementary student cost for the previous year (for 2013-14, this rate was \$7,536.41) and shall not include a debt service factor. RSU 5 will invoice the New Freeport SAU for tuition on a semi-annual basis on or before October 15 and April 15, with a reconciliation after the Department of Education sets final tuition rates.

2. Special Education/504 Students.

During the 2015-2016 school year, for students residing in Freeport attending RSU 5 schools, RSU 5 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 RSU 5 has an appropriate program to meet the terms of the IEP and applicable requirements of Maine law and regulations. Except for short term programming changes of not more than 10 school days, decisions about whether RSU 5 can implement the terms of the IEP, and whether RSU 5 has an appropriate program or placement for a student pursuant to the requirements of the IEP shall be made by RSU 5 after a careful review of the IEP for the student. In no event shall RSU 5 refuse to provide needed special education services as provided in the IEP for students residing in Freeport who are permitted to attend RSU 5 schools under this Agreement, except for student removals of not more than 10 school days or when RSU 5 has determined that RSU 5 cannot provide an appropriate program for that student. By this Agreement, RSU 5 shall not be required to create a special education/504 program for Freeport resident students; however, RSU 5 may not refuse to provide special education services for a Freeport resident student if RSU 5 operates a program that would be appropriate 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 New Freeport SAU's representative at that Team meeting shall make the decisions on those issues, subject to the parent's due process rights in relation thereto. The New Freeport SAU's representative on the IEP Team shall be the Freeport Special Education Director or other individual designated by the Superintendent of the New Freeport SAU. RSU 5 personnel will work cooperatively with the New Freeport SAU's representative, and, upon request will provide the New Freeport SAU's representative with access to all information contained in Freeport students' special education or

504 files. The New Freeport SAU's representative shall provide input to RSU 5's Special Education Director (or other administrative designee) on the proper implementation of the IEPs of Freeport special education students attending RSU 5 schools or perceived deficiencies in IEP implementation. RSU 5 shall consider that input in good faith and RSU 5 shall respond in an appropriate manner consistent with the terms of this Agreement and applicable law.

3. Special Education/504 Costs.

The tuition rate calculations under 20-A M.R.S. §§5804 and 5805 expressly exclude expenditures for special education. Therefore, 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 Freeport SAU, in addition to the tuition payments required under subsection 1 above, shall be responsible for the actual costs of special education and 504 services received by Freeport students attending RSU 5 schools, including special education transportation costs and costs for facilities modifications required to accommodate specific needs of Freeport students (thus excluding costs for facilities accessibility modifications required by laws of general applicability), to the extent that such costs are not included in the calculation of the tuition rate under 20-A M.R.S. §§5804 and 5805(1). For Freeport special education or 504 students who spend a portion of their school day in special education or 504 programs and a portion of their school day in general education programs, the tuition determined under Section 4.B.1 above shall be prorated. For purposes of this subsection 3, special education shall include non-special education 504/ADA plans and services and special education costs shall include costs of non-special education 504/ADA plans and services and reasonable attorneys' fees incurred by RSU 5 in connection with disputes over delivery of special education services and/or section 504/ADA plan services for individual Freeport students. The RSU shall provide an

itemized invoice to the New Freeport SAU for such special education costs during the fiscal year in which the special education costs are incurred.

D. Termination of Right. A student's right to be educated at schools as set forth in this Section 3 shall terminate if the student discontinues enrollment at a school for a continuous period of 90 calendar days between September 1 and June 15, whether by enrolling in another school administrative unit or private school, dropping out, or being expelled and not readmitted within 90 days. Notwithstanding the foregoing, a student's failure to attend a school for a continuous period of 90 days due to health reasons, out-of-district special education placement, or travel or study abroad shall not terminate a student's right to continue to attend a school under this Agreement. In addition, in other appropriate circumstances, the Superintendents may agree that a student's failure to attend school for a continuous period of 90 days shall not terminate the student's right to continue his or her education at a school under this Agreement.

4. Transportation. After the effective date of withdrawal, the New Freeport SAU shall be responsible for providing transportation for Freeport resident students to and from Freeport schools and for out of district placements in accordance with Maine law. RSU 5 shall be responsible for providing transportation to and from Freeport schools for RSU 5 resident students who attend New Freeport SAU schools. The New Freeport SAU shall be responsible for providing transportation to and from RSU 5 schools for Freeport resident students who attend RSU 5 schools. The Parties shall collaborate to reduce transportation costs between Freeport and RSU 5.

5. Need for School Construction. Withdrawal of Freeport from RSU 5 will not cause a need for state subsidized school construction within five years from the effective date of withdrawal. This limitation does not apply when a need for school construction existed prior to

the Effective Date or when a need for school construction would have arisen even if Freeport had not withdrawn.

6. Financial Commitments from Outstanding Bonds or Notes.

A. Debt and Lease Purchase Obligations That Existed When RSU 5 Was Formed.

Under Paragraph 6(A) of the RSU 5 reorganization plan (the “Reorganization Plan”), RSU 5 assumed liability to pay the bonds, notes and lease purchase agreements listed in Paragraph 6(A) of the Reorganization Plan and updated to reflect current outstanding obligations as follows (and corrected as to amount and issuer for the Durham Elementary school project debt which was issued by RSU 5 shortly after organization):

TABLE 1: Outstanding Debt Assumed/Issued by RSU 5

Issuer	Issue Date	Purpose	Original Principal Amount	Outstanding Principal on 7/1/2009	Outstanding Principal on 6/30/2015	Final Maturity Date
Freeport	2001	Central Office	\$	\$175,000	\$85,000	2022
Freeport	1990	Mast Landing (state portion)	\$5,607,000	\$825,000	\$0	2011
Freeport	2002	High School	\$4,491,000	\$3,365,000	\$1,755,000	2023
Freeport	2008	HS heating system	\$570,000	\$510,000	\$165,000	2017
Freeport	2008	HS Lighting	\$21,250	\$16,250	\$0	2012
RSU 5 (not Durham)	August 27, 2009	New Elem. School (state portion)	\$17,729,348 (not \$21,729,709)	Not yet issued	\$13,297,005	2029

Pursuant to 20-A M.R.S. § 1466(16)(A), whenever a municipality withdraws from a regional school unit having outstanding indebtedness, the regional school unit remains intact for the purpose of securing and retiring the indebtedness, however, a withdrawal agreement may provide for alternate means for retiring outstanding indebtedness.

As an alternate means for retiring the outstanding indebtedness assumed by RSU 5 under Paragraph 6(A) of the Reorganization Plan, after the date of withdrawal, (i) RSU 5, exclusive of the New Freeport SAU, will pay any remaining debt service on the outstanding bonds, notes, and lease purchase agreements assumed by RSU 5 under Paragraph 6(A) of the Reorganization Plan that are identified as having been issued originally by Durham, and as listed in **Table 1** above, as well as the Durham Elementary project debt issued by RSU 5 and set forth on Table 1 above; (ii) the New Freeport SAU will pay any remaining debt service on the outstanding bonds, notes, and lease purchase agreements assumed by RSU 5 under Paragraph 6(A) of the Reorganization Plan that are identified as having been issued originally by Freeport; and (iii) the New Freeport SAU will pay any remaining debt service on Non-RSU Debt Service payable by the RSU as fiscal agent under Section 6.B of the Reorganization Plan.

The Parties acknowledge that the members of RSU 5 have paid a portion of Freeport's local debts on the Freeport High School, and the Central Office that were assumed by RSU 5 as shown in Table 1 above. These payments of Freeport's debts represent funds that might otherwise have been invested in other capital needs of RSU 5's schools that have not been addressed. A decision by Freeport to withdraw after RSU 5 assumed its local debt represents a loss of those investments in long term capital assets. In consideration of RSU 5's agreement hereunder to Freeport's withdrawal and the transfer Freeport school properties back to Freeport after paying for such portion of local debt, the New Freeport SAU agrees to reimburse RSU 5 for those investments. The total debt service payments made by RSU 5 on such Freeport local debts shown in **Table 1** will be \$2,508,536.00 as of the Effective Date. On the Effective Date, the

New Freeport SAU shall reimburse RSU 5 the sum of \$853,404.00, an amount that equals 34.02% of that total.

B. Debt and Lease Purchase Obligations Issued by RSU 5 after its Formation. As of the date of this Agreement, RSU 5 had issued no other bonds, notes and lease purchase agreements with debt service remaining outstanding as of the Effective Date.

7. Adult Education and Community Recreation Programs.

The New Freeport SAU shall allow residents of RSU 5 to participate in Freeport Adult Education programs and community recreation programs at the same rates provided for Freeport residents.

8. Reimbursement for Excess Capital Improvements for Freeport Schools

The New Freeport SAU shall reimburse RSU 5 on the Effective Date for excess capital improvements for Freeport schools, as follows.

Through June 30, 2014, RSU 5 expended \$1,234,406 on capital improvement projects, of which amount \$0.00 (0%) was expended on Durham Community School, \$142,404 (11.5%) was expended on Pownal Elementary School, \$1,092,002 (88.5%) was expended on Freeport schools and the central office to be transferred to the New Freeport SAU under this Agreement. Durham and Pownal contributed 34.02% of the Freeport capital improvements, or \$371,449. Freeport contributed 65.98% of the Pownal capital improvements, or \$93,958.

In order to compensate RSU 5 for the remaining towns' capital improvement investments in Freeport's schools in excess of Freeport's contribution to the remaining towns' schools under the RSU 5 cost sharing formula, the New Freeport SAU shall pay RSU 5 the sum of \$277,541 on the Effective Date. Adjustments will be made to take into account any capital improvement, equipment, and technology investments undertaken in RSU 5 schools subsequent to the date of this Agreement and prior to the Effective Date to compensate RSU 5 for 34.02% of the costs at Freeport schools and to compensate the New Freeport SAU for 65.98% of the costs at RSU schools outside of the Town of Freeport.

9. Contractual Commitments and Liabilities.

A. Superintendent and Other Long-Term Employment Contracts. RSU 5 has a long term employment contract for its superintendent. That contract is expected to expire or terminate before the Effective Date, and Freeport shall have no responsibility for contributing to salary or benefits of an RSU 5 Superintendent after the Effective Date. RSU 5 also has long-term employment contracts for certain other administrative positions, as follows: Principals, Assistant Principals, Curriculum Director, Special Education Director, Assistant Special Education Director, Director of Finance and Human Resources, Director of School Nutrition, Director of Transportation and Facilities, Technology Director, Athletic Director, and Community Recreation and Adult Education Director. Following the Effective Date, RSU 5 will remain the employer under the Principal and Assistant Principal contracts that are provided for services at Pownal Elementary School and Durham Community School to the extent such contracts extend beyond the Effective Date. As of the Effective Date, the contracts for Principals and Assistant Principals serving Freeport schools shall be deemed assigned to and assumed by the New Freeport SAU to the extent such contracts extend beyond the Effective Date. The Parties

recognize that the remaining positions listed above as being filled with long term contracts provide services largely at New Freeport SAU. Accordingly, to the extent that these employment contracts extend beyond the Effective Date, they shall be deemed assigned to and assumed by the New Freeport SAU as of the Effective Date. Notwithstanding the foregoing, the New Freeport SAU shall not be responsible to assume any such long term individual employment contracts to the extent that they are entered into or extended after the date that voter approval of this Agreement is certified.

B. Copier Leases and Maintenance Agreements. The parties note that as of the date of this Agreement, RSU 5 had no copier lease agreements; its copier maintenance agreement(s) may be terminated for convenience; and its HVAC and elevator maintenance agreements are on a town by town or school by school basis.

As of the Effective Date, the New Freeport SAU will assume and be solely liable at its own expense for any copier leases and for any maintenance agreements located at or related to the New Freeport SAU Schools, including copier maintenance agreements, HVAC maintenance agreements, and elevator maintenance agreements. These agreements are listed in **Exhibit 1** attached hereto. This exhibit shall be updated immediately prior to the Effective Date by mutual agreement between RSU 5 and Freeport and attached hereto as Replacement **Exhibit 1**.

C. Other Contracts and Agreements. Effective upon the date of withdrawal, the New Freeport SAU will assume and be solely liable at its own expense for any other contracts or lease purchase agreements related to assets located at or serving schools or to be owned by the New Freeport SAU under the terms of this Agreement, including school buses and other vehicles transferred to the New Freeport SAU. These agreements are listed in **Exhibit 2** attached hereto.

This exhibit shall be updated immediately prior to the Effective Date by mutual agreement between RSU 5 and Freeport and attached hereto as Replacement **Exhibit 2**.

D. Audit. In the event that RSU 5 becomes the subject of a federal or state audit for the period from July 1, 2009 through June 30, 2015, when Freeport was a member of RSU 5, and as a result of such audit RSU 5 is subject to any payment obligation or withholding by federal or state authority, then the New Freeport SAU shall reimburse RSU 5 for 65.98% of the amount of such payment obligation or withholding including without limitation, any interest and penalties thereon, within thirty (30) days of any such payment by RSU 5 or any such withholding from RSU 5. If as a result of such audit RSU 5 receives any rebate, refund, credit or overpayment from any federal or state authority, then RSU 5 shall reimburse the New Freeport SAU for 65.98% of such rebate, refund, credit or overpayment within thirty (30) days of any such payment or credit to RSU 5.

E. Legal Claims. The Parties acknowledge that RSU 5 may be liable for future legal claims based on incidents arising between July 1, 2009 and June 30, 2015, when Freeport was a member of RSU 5. The New Freeport SAU shall be responsible for and agrees to pay 65.98% of RSU 5's costs, expenses, damages and other losses arising from such claims, including costs to defend any such claims, to the extent not paid by RSU 5's insurance or other sources. RSU 5 shall give written notice of such claims to the New Freeport SAU within 30 days of the date that RSU 5 receives notice of a claim. RSU 5 shall regularly update the New Freeport SAU regarding the status of such claims, and shall obtain advance written approval from the New Freeport SAU before entering into settlement of such claims, which approval shall not be unreasonably withheld or delayed.

F. Unfunded Pension Liabilities **NOTE: We recommend the parties consult their auditors for the possibility of unfunded pension liabilities increasing due to changes in accounting standards becoming effective, and for recommendations regarding allocation those liabilities, to the extent, if any, they deem advisable.**

10. **Financial Commitments for Bonds or Notes Issued During FY 2013-2014 and FY 2014-2015.**

If Freeport votes to approve this Agreement, during the period between the date that vote is certified and the Effective Date, the New Freeport SAU shall have the right to issue such bonds or notes or enter into lease purchase financing arrangements to make unexpected or emergency repairs or to make renovations or upgrades to Freeport school facilities to the extent it may be permitted under applicable provisions of law (including without limitation sections 5721, 5724(4) and 5772 of Title 30-A). If the New Freeport SAU issues a bond or note or enters into a lease purchase agreement for such repairs, renovations or upgrades, these obligations shall be issued in the name of the Town of Freeport and shall be the sole responsibility of the New Freeport SAU with no contribution from RSU 5. Until the Freeport schools are transferred to the New Freeport SAU, RSU 5 and Freeport shall reasonably cooperate to complete the financed repairs, renovations or upgrades to effect the same without unnecessarily interfering with the operation of the Freeport schools.

In addition, if Freeport votes to approve this Agreement, during the period between the date that vote is certified and the Effective Date, RSU 5 may issue bonds or notes or enter into lease purchase financing arrangements to upgrade facilities at RSU 5 schools that are not located in Freeport. Pursuant to 20-A M.R.S. § 1466(16), RSU 5 will remain intact for purposes of retiring and securing that indebtedness. As an alternate means of retiring such debt, RSU 5,

however, hereby agrees to assume, and at its own expense to pay, such obligations entirely from its own funds with no contribution or participation from the New Freeport SAU.

11. Fund Balances: Undesignated, Reserve, and Other Funds. Within thirty (30) days of its finalized FY 2014-2015 audit, which RSU 5 shall make reasonable efforts to finalize by January 1, 2016, RSU 5 shall pay the New Freeport SAU a 65.98% share of any undesignated fund balance as of June 30, 2015, net of (i) all encumbered funds, including sums required to pay RSU 5's 2014-2015 summer salaries and benefits obligations, and including sums related to retirement benefits payable to retiring staff members (ii) sums for all other items expensed in accordance with generally accepted accounting principles, and (iii) sums sufficient to cover deficits if any in the School Lunch Program fund. However, for purposes of determining the undesignated fund balance, amounts payable by the New Freeport SAU to RSU 5 under other provisions of this Agreement shall not be considered. The New Freeport SAU's share of the undesignated fund balance, so determined, is calculated based on the percentage of Freeport's FY 2014-2015 share of RSU 5 additional local funds (65.98%). In the event that RSU 5's finalized audit for FY 2014-2015, adjusted as described above, shows a negative undesignated fund balance as of June 30, 2015, the New Freeport SAU shall pay RSU 5 within thirty (30) days of the finalized audit the total of Freeport's share (65.98%) of the net negative undesignated fund balance as calculated above. In the event the School Lunch Program has a positive fund balance on June 30, 2015, it shall be shared as follows; [NOTE: parties must decide whether to share any school lunch fund balance on the basis of student count or 65.98%/34.02%, or on some other basis, depending on how revenues for this fund are received]

RSU 5 has no capital improvement funds except for the Durham Elementary Construction Fund, which shall not be shared with the New Freeport SAU. RSU 5 shall also transfer to the New

Freeport SAU 65.98% of the Community Education Football Agency Fund. RSU 5 shall also transfer to the New Freeport SAU the fund balance, if any, for each Agency Fund for Freeport School Activities shown on RSU 5's financial reports. The Parties recognize that Freeport never turned over its scholarship funds to RSU 5 in accordance with Paragraph 8(F) of the Reorganization Plan, and therefore RSU 5 has no obligation to return scholarship funds to the New Freeport SAU. Attached as Exhibit 3 is a list of Other Governmental Funds to be shared with or paid over to the New Freeport SAU, listing each fund by name, and listing the percentage of that fund balance that will be paid over to the New Freeport SAU. All fund balances shall be paid over within 30 days of the completion of final audit in accordance with generally accepted accounting principles. **NOTE: We request the FWC to prepare the exhibit for this section after reviewing the Non-Major Special Revenue funds in Exhibit 2-1 of RSU 5's Financial Report**

12. Collective Bargaining Agreements. The collective bargaining agreements listed below currently pertain to RSU 5 employees that will be employed by the New Freeport SAU following Freeport's withdrawal from RSU 5:

Employee Unit	Expires	Applies to
Coastal Education Association	August 30, 2015	Teachers and other certified professional educators
Educational Support Professional Unit	June 30, 2015	Bus Drivers, Custodians, Educational Technicians, Secretaries, Health and Nutrition Services

As of the Effective Date, the New Freeport SAU shall assume the RSU's existing collective bargaining agreements to the extent that they cover employees of RSU 5 who are assigned to New Freeport SAU schools at the end of the 2014-2015 school year on a full or part-time basis and who have a right to continued employment as of July 1, 2015. A list of

employees and positions to be assigned to New Freeport SAU schools is attached to this Agreement as **Exhibit 4**. This list shall be updated to June 30, 2015, by mutual agreement between RSU 5 and Freeport and the updated list shall be attached to this Agreement as Replacement **Exhibit 4**.

As of the Effective Date, the Freeport School Committee will extend representational rights to all of the bargaining units listed above for the purpose of negotiating future collective bargaining contracts. If, after a vote by Freeport to approve this Agreement is certified, RSU 5 is engaged in negotiations with any of the above bargaining units, the New Freeport SAU school board will assume responsibilities for those negotiations insofar as they pertain to employees of the New Freeport SAU for time periods after the Effective Date. If no new collective bargaining agreement has been reached between RSU 5 and any of the bargaining units above on the date of a vote by Freeport to withdraw, the New Freeport 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 static status quo as defined by applicable law under the expired agreement with respect to employees assigned to the New Freeport SAU until a successor agreement has been agreed upon.

13. Continuing Contract Rights under Section 13201. Freeport's withdrawal from RSU 5 will not affect the continuing contract rights of teachers under 20-A M.R.S. § 13201. On the Effective Date, all continuing contract teachers assigned to the Freeport schools, and having a right to continued employment as of July 1, 2015, shall become continuing contract teachers of the New Freeport SAU. On the Effective Date, all probationary teachers assigned to the Freeport schools who become employees of the New Freeport SAU and who have earned years of service with RSU 5 toward continuing contract status shall retain those years of service for purposes of

attaining continuing contract status with the New Freeport SAU. A list of continuing contract teachers and probationary teachers with their number of years of service toward continuing contract status, assigned to the Freeport schools is attached as **Exhibit 5**. This list shall be updated to June 30, 2015 by mutual agreement between RSU 5 and Freeport and the updated list shall be attached to this Agreement as Replacement **Exhibit 5**.

14. Disposition of Real and Personal Property. The New Freeport SAU shall be responsible for the cost, including any attorneys' fees, for all recording, registration and filing fees; and all transfer, re-titling, inspection and other taxes, fees or charges of any governmental authority to effectuate the transfer of any property pursuant to this Agreement. All transfers and assignments of property under this Agreement shall be without warranty or covenant of title of any kind, and subject to rights and interests of lessors, lessees, secured parties, and others, if any, whether or not recorded or filed of record.

A. Real Property. All real property and fixtures that the Town of Freeport deeded to RSU 5 upon creation of the RSU will be deeded back to the New Freeport SAU by quitclaim deed. The New Freeport SAU may require such deeds, assignments or other instruments of transfer as in its judgment are necessary to establish the New Freeport SAU's right, title and interest in such real property and fixtures.

B. School Buses and Vehicles. On the Effective Date, RSU 5 will transfer to the New Freeport SAU the school buses and vehicles listed on **Exhibit 6** to the New Freeport SAU. The school buses so listed represent the minimum number that RSU 5 will transfer. RSU 5 has determined that it will need a minimum of 5 buses for transportation within RSU 5 and between RSU 5 and Freeport. RSU 5 may also need as many as 2 additional buses for transportation to third party school administrative units for its secondary and Pownal middle school students,

depending upon other tuition contract arrangements it may develop on or before the Effective Date, which may include any of Brunswick, Yarmouth, MSAD 51 (Greeley), or other school units selected. RSU 5 shall determine such other needs in the exercise of its sole reasonable discretion, and shall transfer remaining buses, if any, to the New Freeport SAU on or before the Effective Date.

C. Other Tangible Personal Property. RSU 5 agrees that, excepting equipment purchased with Durham Elementary bond funds, any and all other non-cash, tangible personal property transferred by Freeport to the RSU upon creation of the RSU and currently in use, and all personal property located in or on the Freeport Schools, or used exclusively for Freeport school programs, as of the date of this Agreement, including moveable equipment, furnishings, textbooks and other curriculum materials, supplies and inventories, will become the property of the New Freeport SAU upon withdrawal. The New Freeport SAU may require such assignments, bills of sale or other instruments of transfer as in its judgment are necessary to establish the New Freeport SAU's right, title and interest in such personal property.

Notwithstanding the foregoing, RSU 5 shall not be required to transfer ownership or possession of its business records, student records, or employment records, whether in files or in electronic format, but the Parties shall reasonably cooperate to share and copy at the expense of the New Freeport SAU such records, to the extent reasonably necessary and permitted by applicable law.

D. Licenses and Software. As of the Effective Date, license agreements and software for the direct operation of New Freeport SAU schools and equipment and other tangible personal property transferred by this Agreement shall be assigned by RSU 5 to the New Freeport SAU to the extent permitted by the terms of the licensing or software agreements, and to the extent such transfer is permissible under the terms of such agreements without imposition of any additional

fee or cost to RSU 5 or any limitation or restriction on RSU 5's use of such license or software agreement in connection with RSU 5's other facilities, equipment and operations. For purposes of the preceding sentence, "direct operation" does not include RSU 5's software and licenses pertaining to its central office operations serving its schools, including without limitation its business records, student records and employment records. The New Freeport SAU shall be responsible for purchasing all of its central office licenses and software, including accounting software.

15. Transition of Administration and Governance. Prior to the Effective Date of withdrawal, Freeport shall elect a school committee. This school committee shall have the authority to take all actions necessary to prepare for the establishment of the New Freeport SAU, including but not limited to establishing a budget for the 2015-2016 school year.

Upon withdrawal, the administration and governance of education for students residing in Freeport will be transferred directly from RSU 5 to the New Freeport SAU. When the New Freeport SAU assumes control of Freeport's schools, the New Freeport SAU will hire or contract for a superintendent, business manager and all necessary central administrative office staff.

After a vote to approve this Agreement is certified, the voters of Freeport shall not participate in (i) approval of the RSU 5 budget for fiscal year 2015-2016 at either the RSU 5 budget meeting or the RSU 5 budget validation referendum, or (ii) approval of third party SAU tuition contracts.

After a vote to approve this Agreement is certified and prior to the Effective Date, RSU 5 may enter into tuition contracts with third party school administrative units for terms of up to ten (10) years for resident Durham secondary (grade 9-12) students and for resident Pownal middle

school and secondary (grade 6-12) students, as follows. RSU 5 may conduct a referendum vote in the Towns of Durham and Pownal, without participation of Freeport, to determine if the school board members from Pownal and Durham are authorized to enter into a tuition contract for a term of up to ten years. The RSU 5 board actions in connection with that referendum shall be without participation of its Freeport board members, who shall not participate in any aspect of that referendum vote, including calling the referendum, signing warrants or public hearing notices, decisions regarding preparation of election materials or the conduct of the election, and certifying the election result. If approved by a majority of voters voting at such referendum, the RSU 5 school board, without participation of its Freeport board members, is authorized to enter into tuition contracts pursuant to sections 2701-2704 of Title 20-A. As used herein, “without participation of its Freeport board members,” also means that the Freeport board membership shall not be counted for purposes of determining whether a quorum is present to conduct a meeting on any aspect of such election or tuition contract, or for purposes of determining whether a majority has voted in favor.

16. Dispute Resolution. Any dispute between the Parties arising out of or relating to this agreement shall be resolved in accordance with this paragraph. Either Party may give written notice of a dispute arising out of or related to this agreement to the other Party by certified mail, return receipt requested. The Parties to the dispute 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 ninety (90) days, the dispute shall be submitted to arbitration in accordance with the procedures of the Maine Uniform Arbitration Act, 14 MRS §5927 et seq.

17. Superintendents' Agreements. Nothing in this Withdrawal Agreement shall limit the use of Superintendents' Agreements with respect to students who reside in RSU 5 and the New Freeport SAU.

18. Third Party SAU School Tuition Contracts. Pursuant to Section 3 of this Agreement, the New Freeport SAU is the school of record for RSU 5 resident secondary students and for Pownal resident middle school students (grades 6-8) for a period of ten years following the first year after withdrawal. This tuition contract is on a non-exclusive basis, and nothing contained herein shall prevent RSU 5 from making other provision for the education of these or any other of its students.

19. Applicability to Successor School Administrative Units. Upon approval by the Maine Commissioner of Education and approval by the number of Freeport voters required for withdrawal pursuant to 20-A M.R.S. § 1466, this Agreement shall be binding upon the Town of Freeport, the New Freeport SAU and any successor school units that the New Freeport SAU or Freeport may join, merge with or otherwise be included in as a member, and on RSU 5 and its successor school units. Accordingly, the terms of this Agreement shall be incorporated by reference into any Reorganization Plan to which Freeport, the New Freeport SAU, or RSU 5, or their respective successor school administrative units, is or becomes a party.

20. 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 Freeport as required by 20-A M.R.S. § 1466(9). By approval of this withdrawal agreement, the Maine Commissioner of Education agrees on behalf of the Maine Department of Education that the Essential Program and Services allocations under 20-A M.R.S. Chapter 606-B for Freeport schools and Freeport resident students shall be assigned to the New Freeport SAU in accordance with the terms of this agreement.

21. Miscellaneous. This Agreement may not be assigned and shall be interpreted, governed, construed, and enforced in accordance with the laws of State of Maine, without regard to any of its conflict of laws principles.

This Agreement contains the entire agreement between the Parties in relation to its subject matter, and there are no other agreements or understandings, oral or otherwise, between the Parties at the time of execution of this Agreement.

Each Party represents that its signatories to this Agreement are duly authorized by that Party to execute this Agreement and in so doing to bind that Party to its terms.

The headings and subheadings of the sections and paragraphs of this Agreement are inserted for convenience of reference only and shall not control or affect the meaning or construction of any of the agreements, terms, covenants and conditions of this Agreement in any manner.

If any provision(s) of this Agreement is determined to be invalid or unenforceable in whole or in part for any reason, such provision(s) shall be severed and the Parties shall negotiate in good faith to amend this Agreement so as to effect the original intent of the Parties as closely as possible. The remaining provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect to the full extent permitted by law.

“Parties” as used in this Agreement shall mean RSU 5 and, as the context dictates, the Freeport Withdrawal Committee, or the New Freeport SAU.

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

TOWN OF FREEPORT WITHDRAWAL COMMITTEE:

Member from the RSU 5 School Board

Member and representative from Municipal Officers

Member at Large

Member of Petitioning Group

Signed at Freeport, this _____ day of _____, 2013.

REGIONAL SCHOOL UNIT NO. 5

Board Member

Board Member

Board Member

Board Member

Board Member

Board Member

Board Member

Board Member

Board Member

Board Member

Signed at _____, this _____ day of _____, 2013.

Approved as a Final Withdrawal Agreement under 20-A M.R.S. §1466(5)

Approved this _____ day of _____, 2014.

James Rier
Commissioner, Maine Department of Education

List of Exhibits:

Exhibit 1: Copier leases, copier maintenance agreements, HVAC maintenance agreements, and elevator maintenance agreements to be assigned and assumed (to be updated)

Exhibit 2: other contracts or lease purchase agreements to be assigned or assumed, related to assets located at or serving schools or to be owned by the New Freeport SAU under the terms of this Agreement, including school buses and other vehicles transferred (to be updated)

Exhibit 3: list of Other Governmental Funds and percentage to be paid to New Freeport SAU.

Exhibit 4: list of employees and positions to be assigned to New Freeport SAU schools (to be updated)

Exhibit 5: list of continuing contract teachers and probationary teachers with their number of years of service toward continuing contract status, assigned to the Freeport schools (to be updated)

Exhibit 6: vehicles and school buses to be transferred (other school buses may be transferred; see section 12.B)