

Memorandum of Agreement

**Between the Town and the School District regarding the
Madeline Bennett Sewer Line**

This Agreement is made and entered into by and between the Town of Merrimack, 6 Baboosic Lake Road, Merrimack, N.H. (the “**Town**”) and the Merrimack School District, 36 McElwain Street, Merrimack, N.H. (“**School**”) (collectively, the “**Parties**”):

WHEREAS, a plan for the development of a certain tract of land located at Tax Map 5B, Lots 1-1, 2, 3, 5, 6, 7, 8, 9, 3-1 & 231 located in Merrimack, N.H. has been approved and is recorded in the Hillsborough County Registry of Deeds as Plan # 39114 (the “**Plan**”), and is known as the Chestnut Hill Subdivision (the “**Subdivision**”), and which current approval of the Plan requires connection to sewer at Madeline Bennet Lane;

WHEREAS, the developer of the Subdivision, Chestnut Hill Properties, LLC (“**Developer**”), has proposed to pay up to \$1,200,000 to the Town for the Town to perform the replacement of the sewer at Madeline Bennett Lane (“**Road**”), which sewer and a portion of the Road are currently owned by the School;

WHEREAS, the Town and the School agree that replacement of the Madeline Bennett Sewer and payment of such in part by the Developer is in the best interests of all Parties;

WHEREAS, the Merrimack School Board unanimously approved transfer of the Madeline Bennet Sewer to the Town at its meetings on August 26, 2019 and October 21, 2019.

NOW THEREFORE, in consideration of the promises, covenants and conditions herein, the Parties agree as follows:

1. The School shall grant to the Town a binding and lawful access and construction easement (“**Easement**”) for the purposes of the construction, installation and replacement of the Madeline Bennett Sewer and related infrastructure (“**Madeline Bennett Sewer Replacement Project**”). The Easement may be granted at any time after execution of this Agreement but in no case shall the School grant the Easement any later than 14 calendar days after payment of the \$1,200,000 from the Developer to the Town for the Madeline Bennett Sewer replacement. The Easement shall be prepared by the Town. If the Developer does not pay the \$1,200,000 to the Town by April 14, 2020 for the Madeline Bennett Sewer replacement, this Agreement shall be null and void.

2. Upon payment of the \$1,200,000 from the Developer and upon grant of the Easement from the School, the Town shall proceed with, and shall manage and control to completion, the replacement of the Madeline Bennett Sewer and the School shall not be responsible for any costs for the Madeline Bennett Sewer Replacement Project. The Town shall not be obligated to, and shall not, replace the Madeline Bennett Sewer if it does not receive the \$1,200,000 from the Developer or if it does not receive a binding and lawful Easement from the School.
 3. The Town's construction schedule for the Madeline Bennett Sewer project shall be coordinated with the School so as to avoid unreasonably interfering with the continued operations of the Merrimack Middle School during the project, including, but not limited to, accommodations for the School's student and staff transportation requirements and sewage disposal. Final details regarding the necessary accommodations may be arranged by the Parties after execution of this Agreement.
 4. Upon successful completion of the Madeline Bennett Sewer Replacement Project:
 - a. the School shall convey and transfer, and the Town shall accept, ownership and control of the Madeline Bennett Sewer;
 - b. the School shall convey and transfer, and the Town shall accept, Madeline Bennett Lane up to the circle at the intersection with Old Blood Road, as a Class V town-owned highway; and
 - c. the Town shall issue a full certificate of occupancy for the Merrimack Middle School.
2. **Waiver and Amendment.** Except as otherwise provided expressly herein, neither this Agreement nor any term herein may be changed, waived, or terminated except in writing signed by both Parties.
 3. **Public Document.** This Agreement is a public document subject to RSA 91-A.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed this ____ day of November, 2019.

WITNESS

MERRIMACK SCHOOL DISTRICT
By The Merrimack School Board

Signature

Shannon Barnes, Chair

Print Name

Cinda Guagliumi, Vice Chair

Andy Schneider

Naomi Schoenfeld

Brandi Nunez

SUPERINTENDENT OF SCHOOLS:

Dr. Mark McLaughlin

WITNESS

TOWN OF MERRIMACK
By the Merrimack Town Council

Signature

Thomas Koenig, Chair

Print Name

William Boyd, III, Vice Chair

Peter Albert

Nancy Harrington

Barbara Healey

Finlay Rothhaus

Lon Woods

TOWN MANAGER:

Eileen Cabanel

--END OF AGREEMENT--