



# Dennis-Yarmouth Regional School District

Administration Center

296 Station Avenue

South Yarmouth, Massachusetts 02664-1898

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## SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made this 30<sup>th</sup> day of July, 2019 by and among: (1) the Town of Yarmouth, a Massachusetts Municipal Corporation having a usual address of 1146 Route 28, Yarmouth, Massachusetts, acting by and through its Board of Selectmen ("Yarmouth"); (2) the Town of Dennis, a Massachusetts Municipal Corporation with a usual address of 685 Route 134, Dennis, Massachusetts, acting by and through its Board of Selectmen ("Dennis"); and (3) the Dennis-Yarmouth Regional School District, a duly constituted regional school district, with a principal address of 296 Station Avenue in Yarmouth, Massachusetts, acting by and through the Regional School Committee (the "District"). The above noted entities are each a "Party" and are collectively "Parties" to this Agreement.

WHEREAS, on or about February 5, 2019, Yarmouth filed a civil action in the Barnstable Superior Court (Docket No. 1972CV00059) against Dennis and the District seeking to enjoin the effectiveness of a certain December 4, 2018 district-wide vote that sought to approve the issuance of debt for the construction of one District school (the "Project") (said civil action is hereinafter referred to as the "Action");

WHEREAS, Dennis and the District both moved for Judgment on the Pleadings, seeking the dismissal of the Action.

WHEREAS, after a hearing on June 25, 2019, the Court entered judgment, dismissing the Action.

WHEREAS, on or about July 16, 2019, Yarmouth appealed the Court's judgment.

WHEREAS, the parties desire to resolve both the instant dispute underlying the Action as well as other disputes regarding the Regional Agreement that governs the operation of the District.

NOW THEREFORE, in consideration of the promises, terms and conditions stated herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Within seven (7) days from the execution of this Agreement, the Parties shall execute and file a Stipulation of Dismissal of the Action, as appealed, such dismissal to be with prejudice, with each party bearing its own costs and with all rights of appeal being waived, as to the specific dispute underlying the Action.

2. The Parties agree to the following terms of a proposed amendment to the District's Regional Agreement:

- a. With respect to the percentage split of the District's operating costs by and between Dennis and Yarmouth, the parties agree that: (i) the split for operating costs for the Commonwealth's designated minimum required contribution shall be in accordance with the statutory formula; and (ii) the split for all operational costs above the minimum required contribution shall be based upon percentage share of the five-year rolling average of *foundation enrollment*, beginning with Fiscal year 2016, for each town. For the purposes of this Agreement, the term *foundation enrollment* shall be in substantial conformance with the definition utilized by the Commonwealth's Department of Elementary and Secondary Education ("DESE").
- b. With respect to the percentage split of the District's capital costs and expenditures, the parties agree that: (i) the capital cost split for the Project that is the subject of the Action shall be as follows: Yarmouth shall bear 65% and Dennis shall bear 35%; (ii) the capital cost split for all other capital expenses and projects shall be in accordance with the current Regional Agreement, as may be otherwise amended.

3. The Parties agree to diligently work together to draft a concise, mutually agreeable amendment to the Regional Agreement, incorporating the above-described amendments, said draft to be agreed to by a vote of the District and each Town's Board of Selectmen no later than September 1, 2019.

4. Dennis and Yarmouth agree to schedule Special Town Meetings for the same day in October, 2019 at which Town Meetings the amendments to the Regional Agreement will be presented to the voters of the respective Town Meetings for approval. It is expressly agreed that the amendments will take effect only if approved by DESE and a majority vote of each Town Meeting.

5. The Boards of Selectmen for Yarmouth and Dennis and the District's School Committee and Superintendent all agree to affirmatively, expressly and diligently advocate in good faith for approval of said amendments to the Regional Agreement. Furthermore, the Boards of Selectmen for both Dennis and Yarmouth both affirmatively, expressly and diligently advocate in good faith for each Town's respective Finance Committee's approval of said amendments to the Regional Agreement. Notwithstanding such obligations, the parties acknowledge that nothing herein may be construed as a guarantee that such amendments will receive approval of either town's Town Meeting.

6. This Agreement is expressly contingent upon the Massachusetts School Building Authority's ("MSBA's") affirmative continued support of the Project at presently proposed reimbursement rates. The Stipulation of Dismissal of the Action shall be held in escrow pending MSBA's determination in this regard.

7. Excepting amendments to the Regional Agreement, as described above, this constitutes the entire agreement among the Parties concerning the resolution of matters described herein, and any prior discussions, agreements or understandings concerning these matters are

hereby superseded. It is expressly understood and agreed that this Agreement may not be altered, amended, modified, or otherwise changed in any respect, except by a writing duly executed by each of the Parties to this agreement.

8. Yarmouth, for itself and on behalf of all of its respective past, present and future Board of Selectmen, officers, employees, agents, servants, representatives, attorneys, beneficiaries, heirs, executors, administrators, successors, assigns, and all others claiming by, through, or under it, releases and forever discharges Dennis and the District and its past, present, and future Board of Selectman, School District Board members, officers, employees, agents, servants, representatives, attorneys, legal representatives, and assigns of any thereof of and from any and all claims, demands, obligations, actions, causes of action, rights, costs, losses of services, expenses, and compensation of any nature whatsoever, whether based on a statutory, contract, or other theory of recovery, whether known or unknown, arising out of, on account of, or in any way relating to any matter or thing which was or could have been the subject of Yarmouth's specific claims in the case of Town of Yarmouth v. Dennis-Yarmouth Regional School District and Town of Dennis, Barnstable Superior Court, C.A. No. 1972CV00059.

9. Nothing herein shall be construed to limit or prevent the Parties from negotiating, proposing and/or approving other amendments to the Regional Agreement, in the normal course.

10. This Agreement shall inure to the benefit of, and be binding upon, the Parties to this Agreement and their successors and assigns.

11. This Agreement, and any dispute arising out of, or relating to this agreement, shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, and may be enforced in equity, only in a Massachusetts court of competent jurisdiction.

12. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which shall be deemed one and the same instrument. Signature by facsimile or other reproduction sent by electronic mail shall be considered an original signature.

13. If any term or other provision of this Agreement is determined to be invalid, illegal, or incapable of being enforced by law or public policy, all other terms or provisions of this Agreement shall nevertheless remain in full force and effect.

14. Each Party to this Agreement represents and warrants to one another that:

a. The person executing this Agreement is duly authorized to enter into this agreement on behalf of that Party and that this Agreement binds that Party;

b. Such Party has read and understood this Agreement;

c. Such Party has entered into this Agreement voluntarily;

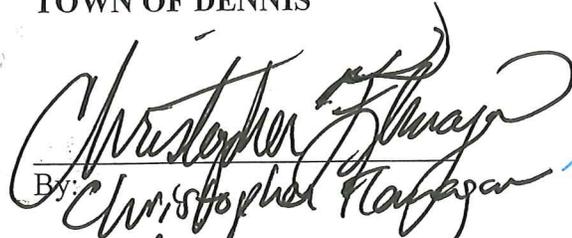
d. Such Party has entered into this Agreement for reasons of its own, and not based upon the representation of any person, except as expressly contained in this Agreement.

15. This Agreement shall be effective as of the last date that it is signed by all Parties.

16. The Parties agree that they will execute any other documents that may be reasonably required to carry out the spirit and intent of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as follows:

**TOWN OF DENNIS**

  
By: Christopher Flanagan  
Its: Chair  
Date: 7/25/17

**TOWN OF YARMOUTH**

  
By: MICHAEL F. STONE  
Its: CHAIRMAN  
Date: 7/30/17

**DENNIS-YARMOUTH REGIONAL  
SCHOOL DISTRICT**

  
By: Jeni A. Landers  
Its: Chair  
Date: 7/22/19