

# **Withdrawal Agreement**

**Between**

**City of Saco Withdrawal Committee and RSU 23**

**August 1, 2013**

**SEP 12 2013**

# Withdrawal Agreement

City of Saco Withdrawal Committee and RSU 23 - continued

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# Withdrawal Agreement

## City of Saco Withdrawal Committee and RSU 23 - continued

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This Agreement dated July 25, 2013, by and between RSU 23, a Maine regional school unit comprised of the municipalities of Dayton, Old Orchard, and Saco (hereinafter "RSU 23") and the City of Saco Withdrawal Committee, a duly appointed municipal withdrawal committee for the City of Saco (hereinafter "Saco" or the "City") organized in accordance with 20-A MRS §1466(4) (A) .

### A. PURPOSES

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The purposes of this Agreement are:

- 1) To provide for the timely and orderly withdrawal of Saco from RSU 23, and thereby re-establish Saco community control over education decisions;
- 2) To provide educational continuity for those students residing in Saco who wish to continue their education with RSU 23 as provided in Section C, Right to Continued Enrollment, and to provide similar continuity for any RSU 23 students who may attend Saco MSAU schools as set forth herein;
- 3) To assure and maintain the best possible education of Saco students;
- 4) To allocate RSU 23's financial and contractual obligations, and its assets, between RSU 23 and the new Saco Municipal School Administrative Unit (the "Saco MSAU"), in a manner that assures the continuing educational needs of Saco and RSU 23 students, and maintains the continuity of educational programs, while mindful of the goal of avoiding sudden or excessive increases in property taxes; and
- 5) In recognition of investments made within schools, to provide fair and equitable compensation between RSU 23 and the Saco MSAU for investments in equipment, technology, and facilities such that no party has received an undue financial windfall, or financial disadvantage, and assuring each can move forward on a sound financial footing if a withdrawal occurs.

### B. WITHDRAWAL

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Pursuant to 20-A MRS §1466, the City shall withdraw from RSU 23 in accordance with the terms of this Agreement effective as of June 30, 2014 and, thereafter shall no longer be a member of the RSU 23 school administrative unit. As of July 1, 2014, the City of Saco shall become a separate municipal school administrative unit comprised solely of the City of Saco, unless and until such time as the City joins or merges or becomes part of another school administrative unit during the term of this Agreement.

### C. RIGHT TO CONTINUED ENROLLMENT

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1. Saco Students Attending RSU 23 Schools 2014-2015:

# Withdrawal Agreement

## City of Saco Withdrawal Committee and RSU 23 - continued

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During the first year after withdrawal (July 1, 2014 to June 30, 2015) students residing in Saco may attend the RSU 23 schools that they would have attended if Saco had not withdrawn from RSU 23 pursuant to the terms set forth in 20-A MRS Section 1466(4)(A)(1). The Superintendent of RSU 23 and the Superintendent of the Saco MSAU (hereinafter the "Superintendents") shall confer with each other and shall develop a list of those K-12 students residing in Saco who have enrolled in an RSU 23 school outside the City of Saco for the 2014-2015 school year. On or before October 15, 2014, the Superintendents shall jointly certify a list of those students who reside in Saco who were enrolled in and were attending RSU 23 schools outside the City of Saco for such school year as of October 1, 2014. That list shall be used for the purposes of determining those students who may continue, after June 30, 2015, to enjoy the choice to attend the RSU 23 school they could have attended if Saco had not withdrawn as set forth below.

### 2. Saco Students Attending RSU 23 Schools After June 30, 2015:

Those students alone on the list described in Section C-1 above who were enrolled in RSU 23 schools outside of Saco as of October 1, 2014, shall have the choice, at the election of their parent or guardian each year, to be educated at the RSU 23 school they could have attended if Saco had not withdrawn from RSU 23 until they have completed grade 12, subject to the additional terms set forth in Section E regarding state allocation and tuition.

### 3. RSU 23 Students Attending Saco Schools 2014-2015:

For the school year July 1, 2014 to June 30, 2015, RSU 23 students residing in Old Orchard Beach may attend a Saco MSAU school that they would have attended if Saco had not withdrawn from RSU 23 pursuant to the terms set forth in 20-A MRS Section 1466(4)(A)(1). The Superintendent of RSU 23 and the Superintendent of the Saco MSAU (hereinafter the "Superintendents") shall confer with each other and shall develop a list of those K-8 students residing in Old Orchard Beach who have enrolled in a Saco MSAU school for the 2014-2015 school year. On or before October 15, 2014, the Superintendents shall jointly certify a list of those students who reside in Old Orchard Beach who were enrolled in and were attending schools of the Saco MSAU for such school year as of October 1, 2014. That list shall be used for the purposes of determining those students who may, after June 30, 2015, have the choice, at the election of their parent or guardian each year, to attend a Saco MSAU School that they could have attended if Saco had not withdrawn from RSU 23 until they have completed grade 8 as set forth below.

### 4. RSU 23 Students Attending Saco Schools After June 30, 2015:

# Withdrawal Agreement

## City of Saco Withdrawal Committee and RSU 23 - continued

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Those students alone who are on the list described in Section C-3 above who were enrolled in a Saco MSAU school as of October 1, 2014, shall have the choice, at the election of their parent or guardian each year, to be educated at a Saco MSAU school they could have attended if Saco had not withdrawn from RSU 23 until they have completed grade 8, subject to the additional terms set forth in Section E regarding state allocation and tuition.

### 5. Termination of Right to Continue:

A student's right to continue to be educated at an RSU 23 or a Saco MSAU school shall, however, terminate if the student discontinues his or her enrollment at such school for a continuous period of 90 calendar days during a school year 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 such 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 such schools under this Agreement. In addition, in other appropriate circumstances, the Superintendents may agree that a student's failure to attend such school programs for a continuous period of 90 days shall not terminate the student's right to continue his or her education at the schools of the other school administrative unit under this Agreement.

### 6. Additional Parental Choice:

Nothing in this Agreement shall be construed to prohibit students residing in the City of Saco or Old Orchard Beach from attending any other school of the family's choosing (public, private or parochial) if a Superintendent's Agreement is in place with the receiving school unit, or if the parents or guardian of the student have made other suitable arrangements for the payment of the student's tuition. Nothing in this Withdrawal Agreement is intended to bar the use of such Superintendent's Agreements in the customary course. Nothing in this Agreement shall be construed to prohibit the Saco MSAU or RSU 23 from offering educational services and programming to non-resident students from other school administrative units such as the Town of Dayton on a tuition/fee for service basis after July 1, 2014 or when a Superintendent's Agreement is in place for such student.

## **D. CONTINUITY OF EDUCATIONAL PROGRAM**

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### 1. The Saco MSAU Assumes Responsibility for Educational Services:

Commencing July 1, 2014, the Saco MSAU shall take responsibility for educating resident children in Grades K-8, directly and in the same manner as prior to the formation of RSU 23 using the same schools and the same school facilities as existed immediately prior to the withdrawal. See **Exhibit 9**. Education of resident students in grades 9-12 shall be provided for

# Withdrawal Agreement

## City of Saco Withdrawal Committee and RSU 23 - continued

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10 years under a contract with Thornton Academy, as had been done prior to the formation of RSU 23. A ten year contract for educational services between Thornton Academy and the City of Saco/Saco Withdrawal Committee providing for the education of all Saco resident students is attached hereto as **Exhibit 1**. An agreement between RSU 23 and Thornton Academy governing relations moving forward if Saco does vote to withdraw from RSU 23 is attached hereto as **Exhibit 2**. Notwithstanding that Thornton Academy has committed to an initial 10 year undertaking, the Saco MSAU fully expects that Thornton Academy will educate Saco secondary students for generations to come, maintaining a school-community tradition that has lasted over 150 years.

### 2. Special Education/ 504 Plan Students:

If, for any reason, there is an elementary education student whose educational needs cannot be met by the Saco MSAU through its own schools, or a secondary education student whose educational needs cannot be met through Thornton Academy, the Saco MSAU will provide alternate arrangements for the education of that student, at its cost, and in cooperation with the parents or guardian of the student.

### 3. Tuition Credit/Deficit between RSU 23 and Thornton Academy:

The parties are aware that a credit or deficit may be due or owing Thornton Academy at the end of June 30, 2014. Each recognizes that it is impossible, due to unpredictable changes in the state authorized maximum allowable tuition and the uncertainty surrounding the annual rate of inflation, to exactly determine what the credit or deficit will be for any given year. Under RSU 23's cost sharing formula for additional local funds for FY 2013-2014, Saco, Dayton and Old Orchard Beach will each have contributed or be responsible for, their respective shares of any such credit or deficit as of July 1, 2014. If Saco withdraws from RSU 23, and Dayton does not withdraw, the Saco MSAU shall pay RSU 23 for Dayton and Old Orchard Beach's shares of any such credit, and all the credit thereafter shall be applied by Thornton Academy against the Saco MSAU tuition obligation for 2014-2015; and if, however, there is a deficit, then RSU 23 shall pay Old Orchard Beach and Dayton's shares of any such deficit. In that case, RSU 23 shall make such payment to the Saco MSAU within 45 days of the completion of RSU 23's audit for FY 2013-2014.

If both Saco and Dayton withdraw from RSU 23, the Saco MSAU shall pay to RSU 23 Saco's proportionate share of any credit attributable to Old Orchard Beach, such proportionate share being calculated by dividing the amount attributable to Old Orchard Beach between Dayton and Saco on the basis of Saco and Dayton's respective dollar contributions to additional local funds for FY 2013-2014; and if there is a deficit, RSU 23 shall pay to the Saco MSAU and Dayton SAU, their respective proportionate shares of the deficit attributable to Old Orchard Beach, such proportionate shares being calculated by dividing the deficit attributable to Old Orchard Beach

# Withdrawal Agreement

## City of Saco Withdrawal Committee and RSU 23 - continued

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between Dayton and Saco in the same matter as a credit.

### 4. Existing Contract between RSU 23 and Thornton Academy:

Notwithstanding the provisions of paragraph I.3.B. of this Agreement, in the event of Saco's withdrawal from RSU 23 as of June 30, 2014, Thornton Academy and RSU 23 shall release each other from the existing tuition contract between them with respect to FY 2014-2015 and from any and all claims and liabilities arising or incurred under that contract prior to July 1, 2014 related to Saco resident students, including claims for tuition and other costs. Subject to the provisions of the two preceding paragraphs of this section D. 3 concerning tuition credits and deficits, the Saco MSAU shall assume any and all claims and liabilities arising or incurred under the tuition contract between RSU 23 and Thornton Academy prior to July 1, 2014 related to Saco resident students, but not as to any other RSU 23 students. Except as provided in the two preceding paragraphs of this Section D. 3 concerning tuition credits and deficits, the Saco MSAU and Thornton Academy shall look solely to each other with respect to such claims and liabilities.

5. Continuation of Joint Adult Education Program. If Saco withdraws from RSU 23, the School Boards of RSU 23 and the Saco MSAU will negotiate with respect to an agreement for continuation of the joint adult education programs between RSU 23 and the Saco MSAU along the lines of the adult education agreement that existed between the School Boards of Saco and Old Orchard Beach prior to the formation of RSU 23, and that has continued under the auspices of RSU 23 since the RSU was formed.

## E. STATE ALLOCATION AND TUITION

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### 1. Tuition for School Year 2014-2015:

Tuition to be Paid: In accordance with 20-A MRS §1466(4)(A)(1), during the 2014-2015 school year, the Saco MSAU shall pay tuition to RSU 23 for students residing in Saco who are eligible under section C of this Agreement and who elect to enroll in RSU 23 schools outside the City of Saco. In accordance with 20-A MRS §1466(4)(A)(1), the tuition rate for students in grades K-8 shall be determined under 20-A MRS Section 5804 and for students in grades 9-12 it shall be determined in accordance with 20-A MRS §5805, except that during the 2014-2015 school year the tuition rate shall not be subject to the state per pupil average limitation in Section 5805 (2).

### 2. Tuition/State Allocation for School Years after June 30, 2015:

The Saco MSAU will be entitled to and will receive the State education subsidy allocations under 20-A MRS Chapter 606-B, the Essential Programs and Services Funding Act for all Saco students including those who attend an RSU 23 School after June 30, 2015 pursuant to Section C-2 above. No Superintendents' Agreement shall be required for any such students, and the

# Withdrawal Agreement

## City of Saco Withdrawal Committee and RSU 23 - continued

Parties herein agree that the Saco MSAU shall pay RSU 23 as tuition for each such student one half of the per pupil allocation received by the Saco MSAU for such student, excluding special education and debt service allocations. The formula employed for calculating the additional state subsidy received by the Saco MSAU for students attending RSU 23 schools shall be based on the State of Maine Department of Education Form ED 279, State Calculation for Funding Public Education (preK-12) report as follows:

- Step 1: Saco MSAU total allocation [ED 279, Section 5, Line A]
- Step 2: Minus Saco MSAU total debt service allocation [ED 279, Section 3.C]
- Step 3: Minus Saco MSAU Special Education Allocation [ED 279, Section 3.A.3]
- Step 4: Divide by Saco MSAU average calendar year subsidizable pupils [ED 279, Section 4.A]
- Step 5: Divide by 2
- Step 6: Saco MSAU tuition payment per pupil

Using the ED 279 for RSU 23 for FY 2013-2014 as an example, the formula would have worked as follows for FY 2013-2014:

- Step 1: \$38,329,775
- Step 2: - \$444,164  
\$37,885,661
- Step 3: -\$6,207,326  
\$31,678,285
- Step 4: ÷ by Saco MSAU average calendar year subsidizable pupils = 7,865.50
- Step 5: ÷ by 2
- Step 6: \$3,932.75 = Saco MSAU tuition payment per pupil

Using this computation formula, the tuition to be paid to RSU 23 by the Saco MSAU, no matter how many Saco resident pupils attend for any year after FY 2014-2015, shall be capped at the Saco MSAU tuition payment per pupil as calculated for that year (under the formula set forth above) multiplied by 30, but if less than 30 Saco resident pupils in any given year are attending an RSU 23 school then the total tuition shall be the number of pupils attending times the tuition

# Withdrawal Agreement

## City of Saco Withdrawal Committee and RSU 23 - continued

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payment described above, it being the parties' intention that the 30 figure serve as a ceiling only on total tuition cost. The Saco MSAU shall also be responsible for paying RSU 23 for the special education/504/ADA costs of such students in accordance with Section F below. RSU 23 will be entitled to and will receive the State education subsidy allocations under 20-A MRS Chapter 606-B, the Essential Programs and Services Funding Act for all Old Orchard Beach students, including those who attend a Saco MSAU School after June 30, 2015 pursuant to Section C-4 above. No Superintendent's Agreement shall be required for any such students, and the Parties herein agree that RSU 23 shall pay the Saco MSAU the same tuition for each Old Orchard Beach student attending a Saco MSAU School that the Saco MSAU is paying for Saco students attending RSU 23 schools during that year. RSU 23 shall also pay the Saco MSAU for the special education/504/ADA costs of such students in accordance with Section F below.

### 3. Thornton Academy Tuition Payments upon Withdrawal:

Provided Saco votes to withdraw from RSU 23, the Saco MSAU shall directly pay Thornton Academy for the cost of educating secondary students from the City of Saco attending Thornton Academy during the 2014-2015 school year, and those years beyond, all as set out in an Agreement executed by Thornton Academy, and attached hereto as **Exhibit 1**.

## F. SPECIAL EDUCATION

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### 1. Special Education Costs:

The Parties agree for that for those Saco and RSU 23 special education /504 students attending the other's schools the costs for their education shall be determined and handled as set forth below:

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 23 or the Saco MSAU, whichever is the sending school, in addition to any tuition payments required under Section E of this Agreement, shall be responsible for the actual costs of special education for Saco resident students opting to attend an RSU 23 school or Old Orchard Beach resident students opting to attend a Saco MSAU school including special education transportation costs and costs for facilities modifications required to accommodate the students. For purposes of this Section F, special education shall include non-special education 504/ADA plans and services and reasonable attorneys' fees incurred by RSU 23, or, in the case of RSU 23 students, incurred by the Saco MSAU, in connection with disputes over delivery of special education services and/or section 504/ADA plan services for individual students. The receiving SAU shall provide an itemized invoice to the sending SAU for such special

# Withdrawal Agreement

## City of Saco Withdrawal Committee and RSU 23 - continued

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education costs during the fiscal year in which the special education costs are incurred. If any dispute arises as to the costs of that special education, it shall be resolved pursuant to Section R herein below.

If an IEP plan or special education services, including adaptive services/facilities pursuant to Section 504 of the Rehabilitation Act of 1973, requires alterations or additions to either RSU 23 or the Saco MSAU's physical plant, facilities, or special equipment that cost \$2,500 or less per year, the costs shall be paid by the sending unit; if such costs are of a material nature (material meaning more than \$2,500) such costs shall be paid by the sending unit unless the alteration, addition or equipment provides a general benefit to the receiving unit in which case the costs shall be equitably apportioned. In such case, the Parties shall meet and confer, before any work commences, as to a fair allocation of the costs for such alterations additions or equipment. If the Parties are unable to resolve the matter by negotiation, it shall be resolved through the Dispute Resolution Process in Section R.

RSU 23 and the Saco MSAU, whichever is the receiving school as the case may be, shall provide to the sending school a monthly itemized invoice for special education costs which invoice shall be paid within 30 days unless there is a dispute or discrepancy.

### 2. Saco Special Education/504 Students Attending Saco Schools.

The Saco MSAU will provide for continuity of programming for all special education students residing within the City of Saco attending Saco schools and Thornton Academy. The Saco MSAU will assume all responsibilities for decisions related to special education for these students. Saco and/or Thornton Academy shall provide all special education and 504 services to Saco students required by each student's IEP/504 Team in accordance with applicable requirements of Maine law and regulations. If the student's IEP/504 Plan requires placement in a school outside of Saco, all tuition and additional special education/504 costs will be paid by the Saco MSAU for this purpose. The Saco Director of Special Services shall be responsible for representing all Saco students who qualify for special education/504 services, for supervising the IEP/504 Team processes, and for supervising the student evaluation process for Saco students.

### 3. Saco Special Education/504 Students Attending RSU 23 Schools.

For students residing in Saco that attend RSU 23 schools pursuant to Section C above, RSU 23 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 23 has an appropriate program to meet the terms of the IEP and applicable requirements of Maine law and regulations. Decisions about whether RSU 23 can implement the terms of the IEP, and whether RSU 23 has an appropriate program or placement for a student pursuant to the requirements of the IEP shall be made by RSU 23 after a careful review of the IEP for the student. In no event shall RSU 23

# Withdrawal Agreement

## City of Saco Withdrawal Committee and RSU 23 - continued

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refuse to provide needed special education services as provided in the IEP for students residing in Saco who are permitted to attend RSU 23 schools under this Agreement, except for student removals of not more than 10 cumulative school days in the school year, when the student has been properly expelled or suspended, or when RSU 23 has determined that RSU 23 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 Saco MSAU'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 23 personnel will work cooperatively with the Saco MSAU's representative, and, upon request will provide the Saco MSAU's representative with all information regarding classroom observations, student performance, academic achievement testing and functional behavior assessment components of the student evaluation process. The Saco MSAU's representative shall provide input to RSU 23's Special Education Director (or other administrative designee) on the proper implementation of the IEPs of Saco special education students attending RSU 23 schools or perceived deficiencies in IEP implementation. RSU 23 shall consider that input in good faith and RSU 23 shall respond in an appropriate manner consistent with the terms of this Agreement.

#### 4. RSU 23 Special Education/504 Students Attending Saco Schools.

For Old Orchard Beach students that attend Saco MSAU schools pursuant to Section C above, the Saco MSAU 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 Saco MSAU has an appropriate program to meet the terms of the IEP and applicable requirements of Maine law and regulations. Decisions about whether the Saco MSAU can implement the terms of the IEP, and whether the Saco MSAU has an appropriate program or placement for a student pursuant to the requirements of the IEP shall be made by the Saco MSAU after a careful review of the IEP for the student. In no event shall the Saco MSAU refuse to provide needed special education services as provided in the IEP for such students who are permitted to attend the Saco MSAU schools under this Agreement, except for student removals of not more than 10 cumulative school days in the school year, when the student has been properly expelled or suspended, or when the Saco MSAU has determined that the Saco MSAU 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 RSU 23'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 Saco MSAU personnel will work cooperatively with RSU 23's representative, and, upon request will provide the RSU 23's representative with all information regarding classroom observations, student performance, academic achievement testing and functional behavior assessment components of the student evaluation process. The RSU 23 representative shall provide input to the Saco MSAU Special Education Director (or other administrative designee) on the proper implementation of the IEPs of RSU 23's special education students attending the Saco MSAU schools or perceived deficiencies in IEP

# Withdrawal Agreement

## City of Saco Withdrawal Committee and RSU 23 - continued

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implementation. The Saco MSAU shall consider that input in good faith and the Saco MSAU shall respond in an appropriate manner consistent with the terms of this Agreement.

### G. TRANSPORTATION

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#### 1. Saco Students in Saco Schools or attending RSU 23 Schools:

Upon withdrawal, the Saco MSAU shall be responsible for and shall provide transportation for those students residing in the City of Saco who attend any Saco school. For those students who attend an RSU 23 school for the 2014-2015 school year, the Saco MSAU shall provide for transportation of those students from either Saco Middle School or Burns School to the RSU 23 school they are attending. The Saco MSAU shall also provide these same students transportation at the end of the school day from their respective RSU 23 schools to either Burns School or Saco Middle School within such time frame that they can make their connecting Saco buses leaving for their homes or after care. For all such transported students, RSU 23 shall assure that such students have completed their school day within sufficient time to meet their connecting bus from the Saco MSAU, and both parties will cooperate upon the scheduling of such transportation. After the 2014-2015 school year, neither RSU 23 nor the Saco MSAU shall be responsible for providing transportation to Saco resident students attending any RSU 23 schools.

#### 2. RSU Students attending Saco MSAU Schools:

Upon withdrawal, RSU 23 shall be responsible for and shall provide transportation for RSU 23 students residing in Old Orchard Beach who attend an RSU 23 school. For those RSU 23 students residing in Old Orchard Beach who attend a Saco MSAU school for the 2014-2015 school year, RSU 23 shall provide for transportation of those students from an RSU 23 school to the Saco MSAU school they are attending. RSU 23 shall provide these same students transportation at the end of the school day from their respective schools to an RSU 23 school within such time frame that they can make their connecting RSU 23 buses or be dropped at home or aftercare. For all such transported students, the Saco MSAU shall assure that such students have completed their school day within sufficient time to meet their connecting bus from RSU 23, and both parties will cooperate upon the scheduling of such transportation. After the 2014-2015 school year, neither RSU 23 nor the Saco MSAU shall be responsible for providing transportation to RSU 23 students attending a Saco MSAU school, except as noted below.

### H. NEED FOR SCHOOL CONSTRUCTION

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The withdrawal of Saco from RSU 23 will not create a need for new school construction in Saco

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## City of Saco Withdrawal Committee and RSU 23 - continued

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within five years of the effective date of withdrawal (July 1, 2014) The Saco Withdrawal Committee believes Saco's existing school buildings can and will provide more than sufficient space for educating all children affected hereunder. This belief has been supported by an analysis prepared by Planning Decisions, Inc.

As of July 1, 2014, RSU 23 shall release any and all rights of use in and to the below listed school facilities within the City of Saco that it has in, or now holds under, a certain "Use Agreement" dated March 17, 2008:

- 1) Young School
- 2) Fairfield School
- 3) Burns School
- 4) Saco Middle School

In addition, the Withdrawal Committee expects that additional school facilities found at 90 Beach Street (Administration Office), 80 Common Street (Adult and Transition Education facilities), and 11 Cutts Avenue/City Hall Annex (IT Services) will also be re-purposed for Saco MSAU use subject to additional discussion with the City of Saco.

Saco MSAU expects to continue storing buses transferred hereunder at the City of Saco DPW property found at 351 North Street which is not a school facility per se, but which has been used by RSU 23 under permission from the City of Saco.

At the time RSU 23 vacates 90 Beach Street, the Saco MSAU shall pay RSU 23 a single one-time payment of \$40,000.00 to offset the cost of moving RSU 23's personnel and equipment, as well as costs to secure and fit up new office space, payment to be made by the Saco MSAU within 45 days of June 30, 2014. In addition, RSU 23 may remove and take certain equipment and material from the Central Office at 90 Beach Street on June 30, 2014 for its future use (See **Exhibit 10**, 90 Beach Street Property Distribution List), with all other property and furnishing to remain on site.

## **I. FINANCIAL COMMITMENTS FROM OUTSTANDING BONDS, NOTES AND OTHER FINANCIAL OBLIGATIONS OR CREDITS**

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A list of RSU 23's Financial Commitments for Outstanding Bonds, Notes, Term Contracts, and Lease Purchase Agreements (Financial Obligations") is attached to this Agreement as **Exhibit 6**. This list will be updated to June 30, 2014. The existing financial obligations of RSU 23 will be handled as follows:

# Withdrawal Agreement

## City of Saco Withdrawal Committee and RSU 23 - continued

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### 1. RSU Debt and Lease Purchase Obligations at Formation:

Under Paragraph 6 (A) and (B) of the RSU 23 reorganization plan (the "Reorganization Plan"), RSU 23 assumed liability to pay the bonds, notes and lease purchase agreements listed in Exhibit 6A/6B of that plan. Under paragraph 6A, RSU 23 did assume the local-only-portion of the bonds, notes and lease purchase agreements in Exhibit 6A&B and 6A-1 of that plan. The Bond included in Exhibit 6A of the reorganization plan was refinanced by the issuance of a Refunding Bond by RSU 23. That refunding is addressed below in paragraph 2. The lease purchase agreements listed in Exhibit 6A of the Reorganization Plan and turned over to the RSU on July 1, 2009, have been paid in full.

### 2. RSU Debt incurred after the Formation. The parties agree that the financial obligations incurred after formation of RSU 23 will be paid as follows:

A. Saco Schools Re-Funding Bond. As of June 30, 2014, RSU 23 will owe a principal balance of \$2,360,000 and \$233,787.50 in interest for bonds issued by RSU 23 for school renovations and improvements in Saco schools ("the Saco School Indebtedness"). Under 20-A MRS §1466(16)(A) when a municipality withdraws from a regional school unit having outstanding indebtedness, the RSU remains intact for the purpose of retiring and securing that indebtedness, provided that the withdrawal agreement may provide for alternate means for retiring the outstanding indebtedness. As an alternate means of repaying the Saco School Indebtedness, the Saco MSAU will pay RSU 23 all of the debt service payments on this obligation, including principal and interest 45 days prior to RSU 23's due dates. The Parties estimate this will be an annual payment of \$295,000.00 plus interest. To issue this obligation on a tax-exempt basis, RSU 23 made certain certifications and representations with respect to compliance with provisions of the Internal Revenue Code of 1986, as amended (the "Code"). These certifications and representations in part ensure the bond holder that the financial obligation retains its tax-exempt status. Following Saco's withdrawal, the Saco MSAU shall be responsible for continued compliance with any such certifications and representations with respect to the financial obligations, the proceeds of the financial obligations, and the financed property. By this Agreement, the Saco MSAU shall be fully bound by the terms of all of the certifications and representations made by RSU 23 in connection with the issuance of these obligations, and RSU 23 will be bound to use all payments made by the Saco MSAU solely towards the payment of the Saco School Indebtedness.

B. Dayton Consolidated School Revolving Renovation Fund Loan. As of June 30, 2014, RSU 23 will owe a balance on a State of Maine revolving renovation fund loan for improvements made to the Dayton Consolidated School. The principal payments due on

# Withdrawal Agreement

## City of Saco Withdrawal Committee and RSU 23 - continued

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the Dayton Consolidated School revolving renovation fund loan after July 1, 2014 will total \$18,887 in principal with no interest charged. Under 20-A MRS §1466 (16)(A), when a municipality withdraws from a regional school unit having outstanding indebtedness, the RSU remains intact for the purpose of retiring and securing that indebtedness, provided that the withdrawal agreement may provide for alternate means for retiring the outstanding indebtedness. The Parties agree that as an alternate means of retiring RSU 23's revolving renovation fund loan for the Dayton Consolidated School, the Dayton SAU will be obligated to pay all of the debt service on this obligation due after June 30, 2014 if the Town of Dayton votes to withdraw from RSU 23, but if Dayton does not vote to withdraw and Saco does vote to withdraw, then RSU 23, excluding the Saco MSAU and the City of Saco, will pay all of the debt service on this financial obligation.

- C. Loranger Middle School Revolving Renovation Loan. As of June 30, 2014, RSU 23 will owe a balance on a State of Maine revolving renovation fund loan for improvements to the Loranger Middle School in Old Orchard Beach. The principal payments due on the Loranger Middle School revolving renovation fund loan after July 1, 2014 will total \$141,003.51 with no interest charged. Under 20-A MRS §1466 (16)(A), when a municipality withdraws from a regional school unit having outstanding indebtedness, the RSU remains intact for the purpose of retiring and securing that indebtedness, provided that the withdrawal agreement may provide for alternate means for retiring the outstanding indebtedness. The Parties agree that as an alternate means of retiring RSU 23's revolving renovation fund loan for the Loranger Middle School, RSU 23, excluding the Saco MSAU and the City of Saco, will pay all of the debt service on this obligation due after June 30, 2014.
- D. Photocopier Lease Purchase Obligations. RSU 23 acquired a lease on 47 copiers in May 2010 in the amount of \$337,821.70. The acquisition was financed through a five-year lease/purchase agreement with MST Government Leasing LLC. The RSU will owe remaining lease/purchase payments, including principal and interest, totaling \$125,594.10 as of June 30, 2014 on these 47 units. The Parties agree that the Saco MSAU will retain ownership of the 27 copier units in its school facilities. RSU 23 will retain control and ownership of the remaining 20 copiers. These 27 units (26 units in school buildings, 1 unit in the central office at 90 Beach Street) of the total 47 units represent 57.45% (27 of 47 units) of the original assets. The parties agree that as an alternative method of paying this obligation under 20-A MRS Section 1466 (16) (A) on July 1, 2014 the Saco MSAU shall pay RSU 23 \$72,153.81 (57.45% of \$125,594.10) of the then current outstanding principal owed by RSU 23 to MST Governmental Leasing LLC or directly to RSU 23. RSU 23 covenants to solely use such funds from the Saco MSAU to pay MST Government Leasing, LLC.

# Withdrawal Agreement

## City of Saco Withdrawal Committee and RSU 23 - continued

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E. School Bus Lease Purchases. A list of buses and vehicles to be assigned to RSU 23 and to the Saco MSAU respectively, as of the date of withdrawal, is attached to this agreement as **Exhibit 5**. On September 12, 2011, RSU 23 entered into lease purchase agreements with Gorham Savings Leasing Group LLC to acquire two new school buses. As of June 30, 2014, the remaining amount due for each of these two buses under these lease purchase agreements will be \$40,171.23, payable in three annual installments of \$13,390.41. On July 1, 2014, Bus #1 as shown on **Exhibit 5** attached hereto will be transferred to the Saco MSAU and Bus #49 as shown on **Exhibit 5** will be retained by RSU 23. As an alternate means of retiring the remaining indebtedness for Bus #1, after July 1, 2014, the Saco MSAU will pay RSU 23 the sum of \$40,171.23, in three annual installments of \$13,390.41, payable not less than forty five (45) days prior to RSU 23's due date for each such installment, and RSU 23 will use those funds to make payments to Gorham Savings Leasing Group LLC. As an alternate means of retiring the remaining indebtedness on Bus #49, RSU 23, exclusive of the Saco MSAU, will make payments totaling \$40,171.23 to Gorham Savings Leasing Group LLC. In addition, the parties agree that the Saco MSAU will also receive any State of Maine re-imbursement credit received by RSU 23 from the State of Maine for the purchase of buses which have been transferred to the Saco MSAU, less any corresponding amount due to the Town of Dayton from such re-imbursement in the event that the Town of Dayton withdraws from RSU 23, such amount to be transferred by RSU 23 to the Town of Dayton if Dayton withdraws from RSU 23.

On June 13, 2013, RSU 23 awarded a lease purchase financing to Gorham Savings Group LLC to acquire one new school bus (Bus #34). As of June 30, 2014, the remaining amount due for this bus lease shall be \$76,932.00 payable in four equal annual installment payments of \$19,233.00. This Bus is scheduled to be transferred to the ownership of the Saco MSAU. As an alternate method of retiring this indebtedness for Bus 34, the Saco MSAU will pay RSU 23 the remaining 4 annual installments of \$19,233.00 not less than 45 days before the due date of the RSU under the lease agreement for each such payment. RSU 23 will apply the Saco MSAU payment to the lease obligation. The Parties also agree that any credit for re-imbursements received by RSU 23 for said Bus shall be allocated to the Saco MSAU, except re-imbursement attributable to and for the first annual payment made by the RSU 23 on the lease this coming October 2013 which reimbursement shall be pro-rated between RSU 23, the Saco MSAU, and if Dayton withdraws, the Dayton SAU, based upon the respective additional local funds percentages for FY 2013-2014. This obligation shall not be subject to the provisions of Section J of this Agreement.

F. Vary Technologies Printer Service Agreement. The Parties have employed Vary Technologies for maintenance of printers and copiers. The existing contract renews on a year to year (July 1 to June 30) basis, unless RSU 23 provides a 90 day Notice of termination. The RSU will provide notice of cancellation of the contract (not later than

# Withdrawal Agreement

## City of Saco Withdrawal Committee and RSU 23 - continued

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March 31, 2014) should the City of Saco vote favorably to withdraw from RSU 23.

- G. Telephone System Lease Purchase Obligation. RSU 23 has entered into a lease purchase agreement with Gorham Savings Leasing Group LLC for the acquisition of a telephone system at Saco Middle School. Under the terms of this lease purchase agreement, RSU 23 is obligated to make five annual payments of \$3,353 each due on April 15 of each year commencing April 15, 2013. RSU 23 shall be responsible for the debt service payments due on April 15, 2013 and April 15, 2014 provided that following the date of withdrawal, the Saco MSAU shall reimburse RSU 23 for 55.49% of those lease purchase payments. As an alternate means of retiring the remaining indebtedness after the date of withdrawal, the Saco MSAU will pay RSU 23 the sum of \$10,059 in three annual installments of \$3,353 not less than forty-five (45) days prior to RSU 23's April 15 due date for each such installment and RSU 23 will use those funds to make the required payments to Gorham Savings Leasing Group LLC. To issue such obligations on a tax advantaged (tax exempt or tax credit) basis, RSU 23 made certain certifications and representations with respect to compliance with provisions of the Internal Revenue Code of 1986, as amended (the "Code"). These certifications and representations were made, in part, to ensure that the financial obligations retain their tax advantaged status. Following Saco's withdrawal, the Saco MSAU shall be responsible for continued compliance with any such certifications and representations with respect to the financial obligations, the proceeds of the financial obligations, and the financed property. By this Agreement, the Saco MSAU shall be fully bound by all of the terms and representations made by RSU 23 in connection with the issuance of such financial obligations. To the extent any government department or agency (state or federal) reimburses any portion of the costs of such telephone system, the reimbursement provided shall inure to the benefit of the Saco MSAU.
- H. Portable Classroom Lease Purchase Obligation. As of the date of this Agreement, RSU 23 will have entered into a lease purchase agreement with Gorham Savings Leasing Group LLC for the acquisition of two portable classrooms – one located at the Fairfield School and one located at the Young School, both in Saco. Under the terms of this lease purchase, RSU 23 will be obligated to make five annual payments of \$20,571 due on August 15 of each year commencing August 15, 2013. RSU 23 shall be responsible for the payment due on August 15, 2013, provided that following the date of withdrawal, the Saco MSAU shall reimburse RSU 23 for 55.49% of that lease purchase payment. As an alternate means of retiring the remaining indebtedness after the date of withdrawal, the Saco MSAU will pay RSU 23 the sum of \$82,284 in four annual installments of \$20,571, not less than forty five (45) days prior to RSU 23's August 15 due date for each such installment and RSU 23 will use those funds to make the required payments to Gorham Savings Leasing Group. To issue such obligations on a tax advantaged (tax exempt or tax credit) basis, RSU 23 may make certain certifications and representations with respect

# Withdrawal Agreement

## City of Saco Withdrawal Committee and RSU 23 - continued

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to compliance with provisions of the Internal Revenue Code of 1986, as amended (the "Code"). These certifications and representations, in part, will ensure that the financial obligations retain their tax advantaged status. Following Saco's withdrawal, the Saco MSAU shall be responsible for continued compliance with any such certifications and representations with respect to the financial obligations, the proceeds of the financial obligations, and the financed property. By this Agreement, the Saco MSAU shall be fully bound by all of the terms and representations made by RSU 23 in connection with the issuance of such financial obligations. To the extent any government department or agency (state or federal) reimburses any portion of the costs of such portable classrooms, the credits provided shall inure to the benefit of the Saco MSAU.

- I. RSU 23 and the Saco MSAU shall cooperate with each other in good faith, including by the sharing of information and records, so that the financial obligations and benefits described above may be satisfied as set forth herein.

### 3. Other Obligations/Credits:

- A. Legacy Contracts. The RSU has negotiated contract extensions for certain personnel of RSU 23 which contract extensions have terms that run beyond the proposed date of withdrawal (June 30, 2014). These legacy contracts constitute "other obligations" of the existing RSU that will extend past the date of proposed withdrawal by the Saco MSAU. The Saco MSAU will accept liability for those contracts only to the extent such individuals are to be employed by the Saco MSAU as of July 1, 2014, all as further detailed below in Section M
- B. Un-asserted Claims, Federal Recapture/Audit. The Parties acknowledge that possible future contingent liabilities and obligations ("claims") may arise that relate to and/or reach back to a time when Saco was a member of RSU 23. These potential claims may include, but are not necessarily limited to, un-asserted legal claims, and claims for re-imbursement to state and federal agencies for program funds. The Saco MSAU, RSU 23, and if Dayton withdraws, the Dayton SAU shall be responsible for all such claims to the extent not otherwise covered by insurance coverage. The Parties agree that any such claims, including but not limited to damages, audit fees, and costs to defend, that are not covered by insurance shall be divided and apportioned between RSU 23, the Saco MSAU and if Dayton withdraws, the Dayton SAU as follows: 1) the Saco MSAU be responsible for and shall pay that percentage of the claim equal to its "additional local share" for the subject year of the activity/action generating the claim; and 2) the RSU 23 shall be responsible for and shall pay the remaining percentage balance of the claim, provided that if Dayton also withdraws from RSU 23 (and as part of such withdrawal assumes a proportionate share of such claim), then in such case RSU 23 shall only be responsible for the portion of the claim attributable to Old Orchard Beach. Any credits recovered back shall be distributed and

# Withdrawal Agreement

## City of Saco Withdrawal Committee and RSU 23 - continued

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applied between RSU 23, the Saco MSAU and, if Dayton withdraws from RSU 23, the Dayton SAU, in the same fashion as any claims. The Parties covenant they will cooperate in good faith in the defense of any such claim.

- C. Undesignated Fund Balance Deficit. It is anticipated that there will be a deficit in the Undesignated Fund Balance which deficit will not be retired by June 30, 2014. This financial obligation is expressly addressed in Section L below.
- D. Bookkeeping Fees, Interest, and Other Costs. RSU 23 and the Saco MSAU, and if Dayton withdraws, the Dayton SAU, shall each be responsible for their respective shares of the cost of RSU 23's audit for FY 2013-2014 based on their respective percentages of additional local funds for that fiscal year. The Saco MSAU shall pay RSU 23 its share of the cost of the FY 2013-2014 audit within forty-five (45) days of completion of the final audit for FY 2014-2015. RSU 23 may charge the Saco MSAU a reasonable fee, not to exceed \$1,000.00 per year, as an offset against costs for bookkeeping and other administrative services associated with the payment of the Saco MSAU's share of any debt service or other financial obligations under this agreement and may charge interest at the rate of twelve percent (12%) annual interest, compounded monthly, on any payments due hereinabove that are not made by the Saco MSAU when due, as well as any reasonable costs to collect such obligation, provided the Saco MSAU may have a 15 day grace period before any interest charges accrue. Notwithstanding the preceding, the Saco MSAU shall not be liable for any typical annual costs associated with and incurred as part of the annual audit performed for or on behalf of the RSU for any fiscal year subsequent to FY 2013-2014.
- E. Fiscal Agent. To the extent that RSU 23 makes debt service and lease purchase payments on behalf of the Saco MSAU for its share of debt service and lease purchase obligations under this Agreement, RSU 23 shall make such payments on behalf of the Saco MSAU as its fiscal agent and such sums to be paid on behalf of the Saco MSAU shall not be required to be included in the school budget of RSU 23.
- F. Special Revenue Funds/Accounts: RSU 23 will disclose all Special Revenue Funds, Segregated and Trust Accounts held by it (or by its member schools) on June 30, 2014. To the extent any of those funds are specifically held for the benefit of one school in Saco or its students then those funds shall be transferred to the care and control of the Saco MSAU. So, for example purposes only, if lunch funds held for students' benefit are attributable to a single school then those funds/accounts shall be turned over to that school via the Saco MSAU.
- G. Effective upon the date of withdrawal, the Saco MSAU will assume and be solely liable at its own expense for any other contracts or lease purchase agreements related to assets

# Withdrawal Agreement

## City of Saco Withdrawal Committee and RSU 23 - continued

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located at Saco schools or to be owned by the Saco MSAU under the terms of this Agreement, including school buses and other vehicles transferred to the Saco MSAU.

### **J. NEW FINANCIAL COMMITMENTS PRIOR TO WITHDRAWAL**

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#### GENERAL PRINCIPLES:

First: The Parties acknowledge that neither knows at this time whether and if the City of Saco will vote to withdraw from RSU 23 and, each acknowledges that neither knows whether or if an emergency situation may arise which may require prompt action by the RSU. However, each also agrees that the unnecessary creation of new binding financial obligations that involve the issuance of debt or lease purchase financing, in advance of a withdrawal, could potentially create added confusion and complicate the unwinding process between the Parties should a favorable vote to withdraw occur.

Second: For this reason, the Parties agree during FY 2013-2014, the RSU shall not enter into new financial obligations that involve the issuance of debt or lease purchase financing, other than TRANS due on or before June 30, 2014, unless a two-thirds weighted vote of the full then current membership of the board of directors (excluding any vacancies) determines that there is an emergency warranting an immediate response by the RSU.

Third: Any financial obligations that involve the issuance of debt or lease purchase financing issued during FY 2013-2014 shall also be subject to the conditions set forth below.

#### 1. Financial Commitments Requiring Voter Approval.

- A. Voter Approval on or before the Date of the Vote on Withdrawal. On or before the date that Saco votes on withdrawal from RSU 23, the RSU 23 Board may conduct a referendum on the issuance of new financial obligations. If the financial obligations relate to real or personal property located at or serving Saco schools, the referendum shall not be conducted unless a majority of the RSU board members from Saco vote in favor of calling the referendum. Any referendum conducted on or before the date of Saco's vote on withdrawal will be held in all of the member municipalities of RSU 23 in accordance with the general laws. If the RSU 23 voters approve the issuance of the financial obligations, and if Saco votes to withdraw from RSU 23, the RSU 23 board shall be authorized to issue the financial obligations, but if the financial obligations relate to real or personal property located at or serving school facilities in Saco, the RSU board shall be authorized to issue the financial obligations only prior to the effective date of withdrawal.

# Withdrawal Agreement

## City of Saco Withdrawal Committee and RSU 23 - continued

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- B. Voter Approval after the Date of the Vote on Withdrawal and Prior to the Effective Date of Withdrawal. If Saco votes to withdraw from RSU 23, after the date of that vote and prior to the effective date of withdrawal, the RSU 23 Board may conduct a referendum on the issuance of new financial obligations. If the financial obligations requiring voter approval relate to real or personal property located at or serving Saco schools, a referendum shall not be called unless a majority of RSU 23 Board Members from Saco vote in favor of calling for the referendum. If the financial obligations requiring voter approval relate to real or personal property located at or serving Old Orchard Beach Schools, a referendum shall not be called unless a majority of RSU 23 Board Members from Old Orchard Beach vote in favor of calling for the referendum. If the financial obligations requiring voter approval relate to real or personal property at or serving Dayton Schools, a referendum shall not be called unless the RSU 23 Board Member from Dayton votes in favor of calling the referendum.
2. Financial Commitments Not Requiring Voter Approval.
- A. Board Approval on or before the Date of the Vote on Withdrawal. On or before the date that Saco votes on withdrawal from RSU 23, the RSU 23 Board may approve the issuance of new financial obligations, not requiring voter approval under applicable law. If the financial obligations relate to real or personal property located at or serving Saco schools, the financial obligations shall not be issued unless a majority of the RSU board members from Saco vote in favor of their issuance in which case the RSU board shall be authorized to issue the financial obligations only prior to the effective date of withdrawal, provided that this limitation shall not be construed to apply to TRANS due on or before June 30, 2014.
- B. Board Approval after the Date of the Vote on Withdrawal and Prior to the Effective Date of Withdrawal. If Saco votes to withdraw from RSU 23, after the date of that vote, and prior to the effective date of withdrawal, the RSU 23 Board may approve the issuance of new financial obligations, not requiring voter approval under applicable law. If the financial obligations relate to real or personal property located at or serving Saco schools, the financial obligations shall not be issued unless a majority of the RSU board members from Saco vote in favor of their issuance and the RSU board shall be authorized to issue the financial obligations only prior to the effective date of withdrawal, provided that this limitation shall not be construed to apply to TRANS due on or before June 30, 2014.
3. Issuance, Payment and Reimbursement.
- A. Financial Commitments Related to Saco Schools. If any financial obligations approved under paragraphs 1 and 2 above relate to real or personal property located at or serving Saco schools, the RSU board shall be authorized to issue the financial obligations in the

# Withdrawal Agreement

## City of Saco Withdrawal Committee and RSU 23 - continued

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name of the RSU. If the RSU board issues the financial obligations prior to the effective date of withdrawal, the RSU shall be responsible for debt service payments due on or before the effective date of withdrawal, provided however, that the Saco MSAU shall reimburse RSU 23 for Dayton and Old Orchard Beach's percentages (55.49%) of any such debt service paid for by RSU 23. As of the effective date of withdrawal, under 20-A MRS §1466(16) the RSU will remain intact for purposes of retiring and securing that indebtedness, but the withdrawal agreement may provide an alternate means for retiring that indebtedness. As an alternate means of retiring that indebtedness, the Saco MSAU shall assume and shall pay all of the remaining debt service on these financial obligations on or before the applicable due dates with no contribution or participation by RSU 23. To issue such debt on a tax advantaged (tax exempt or tax credit) basis, RSU 23 may make certain certifications and representations with respect to compliance with provisions of the Internal Revenue Code of 1986, as amended (the "Code"). These certifications and representations, in part, will ensure the bondholders that the financial obligations retain their tax advantaged status. Following Saco's withdrawal, the Saco MSAU shall be responsible for continued compliance with any such certifications and representations with respect to the financial obligations, the proceeds of the financial obligations, and the financed property. By this Agreement, the Saco MSAU shall be fully bound by all of the terms and representations made by RSU 23 in connection with the issuance of the financial obligations. The authority of the RSU board to issue the financial obligations shall terminate if the RSU board has not issued the financial obligations prior to the effective date of withdrawal.

B. Financial Commitments Not Related to Saco Schools. If any financial obligations approved under paragraphs 1 and 2 above relate to real or personal property located at or serving schools other than Saco schools, or if said financial obligations are TRANs due on or before June 30, 2014, the RSU board shall be authorized to issue the financial obligations in the name of the RSU. If the RSU board issues the financial obligations prior to the effective date of withdrawal, the RSU shall be responsible for debt service payments due on or before the effective date of withdrawal, provided however, that for financial obligations other than TRANs due on or before June 30, 2014, following the date of withdrawal RSU 23 shall reimburse the Saco MSAU for Saco's percentage of any such debt service (44.51%) paid by RSU 23 prior to withdrawal. As of the effective date of withdrawal, under 20-A MRS §1466(16) the RSU will remain intact for purposes of retiring and securing that indebtedness, but the withdrawal agreement may provide an alternate means for retiring that indebtedness. As an alternate means of retiring that indebtedness, RSU 23, excluding the Saco MSAU and the City of Saco, shall pay all of the remaining debt service on these financial obligations on or before the applicable due dates with no contribution or participation by the Saco MSAU or the City of Saco. The authority of the RSU board to issue the financial obligations shall continue after the effective date of withdrawal, in which case the Saco MSAU shall have no contribution or participation in the payment of the financial obligations.4. Current Operating Costs for FY 2013-2014. Notwithstanding the preceding, to the extent such

# Withdrawal Agreement

## City of Saco Withdrawal Committee and RSU 23 - continued

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indebtedness is for current operating expenses, and not incurred for an emergency, during FY 2013-2014, the obligation shall be a general obligation of RSU 23 payable from ad valorem taxation in all of its member municipalities, including the City of Saco.

### **K. DISTRIBUTION OF FINANCIAL COMMITMENT TO SUPERINTENDENT**

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The current Superintendent of RSU 23 Schools holds a contract that expires on June 30, 2014. If that contract expires, there will not be any unmet debt/obligation between RSU 23 and the Saco MSAU regarding the Superintendent extending past the June 30, 2014 withdrawal date. If a favorable vote to withdraw occurs, there is adequate time between November 2013 and June 30, 2014 for the Saco MSAU to negotiate for Superintendent services.

If RSU 23 after the date of execution of this Agreement extends the Superintendent's contract beyond its current June 30, 2014 termination date, the Parties agree that should Saco vote to withdraw, neither the City of Saco nor the Saco MSAU shall bear any financial responsibility or obligation as to the terms and conditions of such Superintendent's contract for any period after the effective date of withdrawal, the Parties intending that RSU 23 shall be solely and wholly responsible for any burdens, costs or obligations arising from such Superintendent's Agreement following Saco's withdrawal.

### **L. UNDESIGNATED FUND BALANCE/SCHOOL BUDGET 2014-2015**

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**UNDESIGNATED FUND BALANCE:** The parties agree that as of June 30, 2014 there is likely to be a deficit within the RSU 23 Undesignated Fund Balance, currently estimated at approximately \$85,000. Saco's proportion of any balance or deficit in the undesignated fund balance will be 44.51% based on Saco's five year average percentage of additional local funds in RSU 23. Commencing January 15, 2014, and at monthly intervals thereafter, RSU 23 shall provide the City of Saco and the acting school board of the Saco MSAU with the RSU's updated best estimate of the projected deficit in the RSU's undesignated fund balance as of June 30, 2014. On or before June 15, 2014, the RSU shall notify the City of Saco and the school board of the Saco MSAU of the RSU's final updated best estimate of the RSU's projected deficit in the RSU's undesignated fund balance as of June 30, 2014, which shall include summer salaries and payroll taxes for work performed prior to June 30, 2014. On or before July 15, 2014, the Saco MSAU shall pay RSU 23, Saco's share of RSU 23's final updated best estimate of RSU 23's projected deficit in undesignated fund balance as of June 30, 2014 based on Saco's five year average percentage of additional local funds (44.51%). The final audit of RSU 23 for FY 2013-2014 shall include a final reconciliation of any amounts due from RSU 23 to the Saco MSAU or

# Withdrawal Agreement

## City of Saco Withdrawal Committee and RSU 23 - continued

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from the Saco MSAU to RSU 23, taking into account any payments made by the Saco MSAU to cover RSU 23's final updated estimate of its projected deficit as of June 30, 2014. If the final audit demonstrates that RSU 23 had an undesignated fund deficit as of June 30, 2014, the Saco MSAU shall pay to RSU 23 its share of any such undesignated fund deficit not later than 45 days after the delivery of the final audit for 2013-2014 school year. If the final audit demonstrates that RSU 23 had a positive undesignated fund balance as of June 30, 2014, RSU 23 shall pay the Saco MSAU its share of any such positive undesignated fund balance not later than 45 days after the delivery of the final audit for the 2013-2014 school year, taking into account any payments made by the Saco MSAU to cover RSU 23's final updated estimate of its projected deficit as of June 30, 2014.

**SUMMER SALARIES AND PAYROLL TAXES:** RSU 23 shall pay the summer salaries and payroll taxes for teachers to be assigned to the Saco MSAU as listed on **Exhibit 3** as updated to June 30, 2014 that were earned prior to July 1, 2014 and would normally be paid by RSU 23 in July and August 2014. The Saco MSAU shall pay the insurance benefits for such teachers starting July 1, 2014.

**2014-2015 BUDGET:** The Withdrawal Committee anticipates that the Saco MSAU will prepare a 2014-2015 School Year Budget in the winter 2013/spring 2014 if a favorable vote to withdraw occurs in November 2013. The Withdrawal Committee believes this is sufficient time to create a budget, and to submit it for consideration by the City of Saco as part of its annual budget review process in Spring 2014. For purposes of taxing real property, the City of Saco shall set its financial tax levy for July 1, 2014 based upon the Saco MSAU budget.

## **M. TEACHER AND STAFF RETENTION/COLLECTIVE BARGAINING**

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It is the goal of the Saco MSAU to minimize educational disruption to all its students as Saco transitions from RSU 23 governance to Saco MSAU governance, and to minimize administrative and employee disruption as well. The Saco MSAU will therefore retain existing teachers and staff directly serving Saco school facilities, and such additional administrative and support staff not currently based in a Saco School, as set forth below. In addition, the Saco MSAU Transition Board shall, upon its creation but not later than December 1, 2013 commence discussions with the Superintendent of RSU 23 as to the retention of employees working within RSU 23 but not expressly within a school building including bus drivers and the so-called Central Office personnel.

- A. **General Principles.** The Saco MSAU shall retain as employees all administrators, teachers and support staff working in a Saco School facility as of June 30, 2014. These RSU 23 employees shall become employees of the Saco MSAU as of July 1, 2014. Those RSU 23 employees who become employees of the Saco MSAU as of July 1, 2014 shall be solely

# Withdrawal Agreement

## City of Saco Withdrawal Committee and RSU 23 - continued

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the financial responsibility of the Saco MSAU. Employees who remain RSU 23 employees as of July 1, 2014 shall be solely the financial responsibility of RSU 23.

- B. Express Categories. For purposes of further clarifying the general intentions of the parties as expressed above, and for purposes of also clarifying the status of RSU 23 employees who are not directly working in a Saco School facility as of June 30, 2014, the following expressly stated categories of individuals shall be subject to the following conditions:
1. RSU 23 EMPLOYEES WORKING SOLELY IN A SACO SCHOOL FACILITY FULL TIME OR PART TIME UNDER COLLECTIVE BARGAINING AGREEMENTS: To accomplish the above goal, Saco MSAU will honor all existing labor agreements negotiated between RSU 23 and its teaching and administrative staff working full time or part time in Saco School facilities through the term of those agreements, including any Legacy Contracts whose terms expire after June 30, 2014. The Saco MSAU shall accept responsibility for collective bargaining with all such employees as of July 1, 2014. Upon the completion of any applicable labor agreement, responsibility for the re-negotiation of any respective contract shall be the responsibility of, and undertaken by the Saco MSAU. The Saco MSAU shall only be responsible for such contracts to the extent the individual covered there under is assigned to Saco Schools as of July 1, 2014 as discussed above.
  2. RSU 23 EMPLOYEES WORKING IN BOTH SACO SCHOOLS AND IN AN RSU 23 SCHOOL ON A SPLIT/SHARED BASIS UNDER A COLLECTIVE BARGAINING AGREEMENT: The Saco MSAU and RSU 23 will honor all existing labor agreements for teaching and administrative staff working and assigned part time in and to Saco Schools (See Exhibit 3 & 4) beyond July 1, 2014, provided, however, that a proper accounting of costs between RSU 23 and the SACO MSAU is completed each year such contracts remain in effect, with each party bearing its financial burden for such employees work and benefits proportionate to the time that such employee spends in each school system. Such employees shall remain employees of the Saco MSAU for all purposes, provided that RSU 23 may notify the Saco MSAU at any time that the services of a particular employee are no longer required by RSU 23 in which case the responsibility of RSU 23 for that employee's salary and benefits shall terminate. At the expiration of the terms of these labor agreements, subject employees shall be eligible for hire by the Saco MSAU in their same positions and shall enjoy a priority over any other applicants if the Saco MSAU should choose to post the position for hire, but no guarantee of employment is extended herein.

The following is a guide outlining the known categories of employees who work for RSU 23 under a collective bargaining agreement, including when their current term of contract expires, and the

# Withdrawal Agreement

## City of Saco Withdrawal Committee and RSU 23 - continued

current status of their contracts. The collective bargaining agreements listed below currently pertain to RSU 23 employees that will be employed by the Saco MSAU following Saco's withdrawal from RSU 23:

Employee Unit	Term	Applies to	Expiration Date
Secretaries and Ed Techs	2012/13 – 2014/15	Ed Techs and School Secretaries	June 30, 2015
Custodians and Transportation	2013/14 – 2014/15	All Custodians and Transportation staff	June 30, 2015
Teachers	2011/12 – 2013/14	All teachers and professional staff	August 30, 2014
Principals	2012/13 – 2014/15	All school principals and assistant principals	June 30, 2015

The collective bargaining agreements listed above that are in effect on the effective date of withdrawal and that expire after the effective date of withdrawal shall, to the extent they cover employment positions that will be included in the Saco MSAU, be assigned to and assumed by the Saco MSAU as of the effective date of withdrawal. If withdrawal is approved by the voters of Saco, the RSU 23 board shall have no further authority to bargain with respect to these employment positions to be assigned to the Saco MSAU for any period following the effective date of withdrawal. If any collective bargaining agreement covering employment positions to be assigned to the Saco MSAU has expired and no successor agreement has been executed as of the effective date of withdrawal, Saco MSAU shall maintain the static status quo, as defined by applicable law, existing under the expired agreement with regard to employment positions assigned to the Saco MSAU. Employees occupying employment positions that are included in existing bargaining units and are assigned to Saco MSAU shall continue to be represented by the bargaining agents representing them before the effective date of withdrawal. A list of employees and positions to be assigned to Saco schools is attached to this Agreement as **Exhibit 3**. This list shall be updated to June 30, 2014 by RSU 23 and the updated list shall be attached to this Agreement as Replacement **Exhibit 3** except that in no event shall any person be added to the list who was not assigned to and employed in Saco schools during the 2013-2014 school year

1. ALL OTHER RSU 23 EMPLOYEES WORKING IN A SACO SCHOOL FACILITY: All other RSU 23 Employees who are serving in Saco School Facilities as of June 30, 2014, but who are not otherwise covered by a collective bargaining agreement, shall become employees of the Saco MSAU as of July 1, 2014.
2. BUS DRIVERS. Those Bus Drivers serving Saco Bus routes as of June 30, 2014 shall

# Withdrawal Agreement

## City of Saco Withdrawal Committee and RSU 23 - continued

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become employees of the Saco MSAU as of July 1, 2014. All remaining Bus Drivers shall remain employees of RSU 23.

3. CENTRAL OFFICE TEAM EXCLUDING THE SUPERINTENDENT. If a successful vote to withdraw occurs in November 2013, the Saco MSAU Transition Board and RSU 23 Superintendent shall meet, discuss and confer not later than December 1, 2013 as to their respective staffing needs, and they shall decide, not later than March 1, 2014, as to which individuals employed as part of the Central Office Team (See **Exhibit 4**) shall be offered employment by the Saco MSAU on July 1, 2014, and which shall be offered employment by RSU 23. If both RSU 23 and the Saco MSAU wish to retain a particular employee and an agreement cannot be reached as to which entity shall offer employment to that respective individual, then both RSU 23 and the Saco MSAU may extend offers of employment to that person not later than April 1, 2014, who may then decide which offer to accept, and each Party shall respect and honor that decision. For all such individuals, to the extent they have and are working under contracts of employment or otherwise some form of labor agreement, all such agreements shall be honored as if no separation/withdrawal had occurred except as to which Party shall make payment of obligations upon separation. Each Party covenants to work in good faith to find placement for all Central Office personnel, but neither is obligated to retain all personnel either.

## **N. TEACHER'S CONTINUING CONTRACT RIGHTS UNDER SECTION 13201**

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As noted above in Section M, the Saco MSAU shall retain all existing contract teachers serving Saco Schools full time, and it intends to fully honor the terms of all such existing teacher contracts, mindful of 20-A MRS Section 13201, and just as if those contracts remained in place with RSU 23.

On June 30, 2014, the effective date of withdrawal, all continuing contract teachers then assigned by RSU 23 on a full-time or part time basis to Saco schools, and having a right to continued employment as of July 1, 2014, shall become continuing contract teachers of the Saco MSAU (**Exhibit 3: Saco School Employees**).

On June 30, 2014, all full time probationary teachers of RSU 23 then assigned to Saco schools on a full time or part time basis who have earned years of service with RSU 23 toward continuing contract status, and having a right to continued employment as of July 1, 2014, shall retain those years of service for purposes of continuing contract status with the Saco MSAU.

A list of existing continuing full time and part time teachers under contract with RSU 23 and probationary teachers under contract with RSU 23 per 20-A MRS Section 13201, is attached

# Withdrawal Agreement

## City of Saco Withdrawal Committee and RSU 23 - continued

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hereto as (Exhibit 3).

No part of this agreement is intended to interfere with, alter, enlarge or limit any continuing contract teacher's rights under 20-A MRS Section 13201. Nothing herein is intended to interfere with, alter, limit, convert or enlarge rights or conditions affecting probationary teachers working for RSU 23. Rather, the parties want to assure the perpetuation of those rights under Section 13201 during the transition period, and thereafter.

### **O. DISTRIBUTION OF REAL AND PERSONAL PROPERTY**

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**REAL PROPERTY:** Control of the real property located in Saco will return to Saco as discussed above in Section H, such control to pass over to Saco on July 1, 2014. RSU 23 herein relinquishes all claim of right or interest in the school facilities located within the City of Saco, and it shall provide such documents as are reasonably necessary to establish the transfer of right, title and interest in any applicable real property.

**PERSONAL PROPERTY:** The personal property contents found within the Saco school facilities, including but not limited to books, papers, desks, tables, lighting, office supplies, copiers, cooking equipment, recreation equipment, art supplies, music supplies, music equipment, communications equipment, technology equipment, furnishings, facility upgrades, and Special Education materials shall all transfer to the control and ownership of the Saco MSAU on July 1, 2014. RSU 23 covenants in good faith not to transfer out to other RSU facilities such personal property assets, nor waste, or deplete such assets, in advance of the July 1, 2014 turn-over. The Saco MSAU may reasonably require those documents, assignments, bills of sale or other instruments as reasonably necessary to evidence the transfer of interests detailed herein. As for personal property and effects found in the Central Office and similar RSU facilities (meaning non-school buildings) the City of Saco Finance Director and the RSU 23 Business Manager shall inventory tangible personal property in such facilities. That equipment shall generally be split as determined by the decision of the Business Manager and the Finance Director, except in cases where an item or items of equipment are used primarily by an employee whose position is assigned by this Agreement to RSU 23, such as the equipment in an employee's office, in which case the inventory shall allocate that equipment to RSU 23, and RSU shall remove that equipment by June 30, 2014.

**BUSES:** When Saco joined RSU 23, ownership of school buses and vehicles were transferred from the Saco School Department to RSU 23. These buses will be returned to Saco on July 1, 2014, and they are identified on **Exhibit 5**. In addition, buses were purchased by RSU 23 during the course of years, and of those, certain additional buses shall also be turned over to the Saco MSAU (See also **Exhibit 5**). RSU 23 will sign, execute and deliver such materials and documents as reasonably necessary to transfer the vehicle titles of all said buses listed on

# Withdrawal Agreement

## City of Saco Withdrawal Committee and RSU 23 - continued

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Exhibit 5 effective July 1, 2014.

### **P. TRANSITION OF ADMINISTRATION AND GOVERNANCE**

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ADMINISTRATION: It is the intent of the Saco Withdrawal Committee that a vote to approve this Withdrawal Agreement shall take place in November 2013. If the Withdrawal Agreement is approved by the Commissioner of Education and the voters of Saco, the administration of education for students residing in Saco, other than RSU 23 enrolled students, will be transferred directly from RSU 23 to the Saco MSAU as of July 1, 2014.

In accordance with 20-A MRS §1466(4)(A)(5), if a successful vote to withdraw occurs in November 2013, the Saco MSAU Transition Team, as set out and constituted below, shall take those limited and preliminary steps necessary herein to effectuate the withdrawal process with RSU 23. In addition, the Saco MSAU Transition Team will meet with the Superintendent of RSU 23 not later than December 1, 2013 for the purposes of determining which Central Office personnel shall be offered employment by RSU 23, and which shall be offered employment by the Saco MSAU, with decisions as to such offers of employment to be reached not later than March 1, 2014. Notwithstanding the preceding, the Saco MSAU Transition Team shall not have the authority to hire a superintendent, or any other administrative personnel, or to establish a budget for School Year 2014-2015. All of those functions shall be reserved to the duly elected Saco MSAU School Board.

During the time period between November 2013 and the date a Saco MSAU School Board is elected, the existing four (4) City of Saco Board Members serving on the RSU 23 School Board shall act as the Saco MSAU Transition Team with the then City of Saco Mayor serving as an ex officio member who may only vote to break a tie. The Saco MSAU Transition Team shall oversee the Saco MSAU only until the new Saco MSAU School Board is sworn in.

The duly elected Saco MSAU School Board will employ, engage and/or maintain those administrative and support personnel necessary for the efficient and effective management of the Saco Schools including but not limited to a superintendent, a business manager, a special education director, one or more support coordinators for technology and curriculum development, and such other support personnel and administrative staff as shall be necessary to maintain a fully functional MSAU. The Saco MSAU reserves the right to negotiate fee for service agreements with other schools administrative units including RSU 23, and communities including, but not limited to Biddeford, Old Orchard Beach, Arundel and Dayton, for, among other matters, bulk supplies, bus repair, transportation, dispatch services, telecommunication services, IT support, financial management, and other operational needs not otherwise expressly addressed herein.

# Withdrawal Agreement

## City of Saco Withdrawal Committee and RSU 23 - continued

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GOVERNANCE: Should the vote to withdraw be approved by Saco Citizens, then in a separate election to be conducted not more than 90 days from the date of the Withdrawal Vote in November 2013, the Clerk of the City of Saco shall conduct an election for a new Saco MSAU School Board consisting of one (1) representative from each of Saco's seven wards. The new Saco MSAU School Board Members shall serve an initial term not longer than two years in length with the intention that all subsequent terms of office shall match and run concurrently with the same term as City Councilors; and, all subsequent school board elections shall be held thereafter at the same times as elections for City Councilors. To assure that the future terms of office of all School Board Members run for two years and run concurrently with terms of the City Councilors, the new Saco MSAU School Board member's initial term of office shall commence from the date of the first School Board election, regardless of the exact date held and shall expire at the next municipal election for City Councilors regardless of when that municipal election occurs. The provisions of this paragraph concerning the terms of members of the Saco MSAU School Board may be modified by amendment of the Saco City Charter. The City of Saco shall formalize the Saco MSAU School Board election process set forth herein by amending its City Charter, and all subsequent School Board elections thereafter shall be conducted as determined by such Charter change.

2014-2015 BUDGET: If the withdrawal of Saco is approved by voters before the RSU 23 budget has been approved, then neither the City of Saco nor the voters of Saco shall participate in approval of the RSU 23 budget for fiscal year 2014-2015 school year at either the RSU 23 budget meeting or the RSU 23 budget validation referendum, and they shall not vote on whether to continue the budget validation process in RSU 23.

## **Q. SUPERINTENDENTS' AGREEMENTS: DURATION OF LIST**

EXISTING AGREEMENTS: Nothing in this Withdrawal Agreement is intended to limit, control or supersede any Superintendents' Agreement entered pursuant to 20-A MRS Section 5205 (6) and that are in place for the 2013-2014 school year. No such agreements will be entered into by RSU 23 and the Superintendent wherein the terms/obligations extend beyond the 2013-2014 school year except as otherwise provided in this Agreement.

GOING FORWARD: Beginning in School Year 2014-2015 and thereafter, nothing in this Agreement shall bar or limit the use of Superintendents Agreements pursuant to 20-A MRS Section 5205 (6) including for Saco students desiring to attend an RSU 23 School, except as to those transfers to RSU 23 Schools described, contemplated and provided for in Section C above. Nothing in this Agreement shall be interpreted to prohibit the use of transfer agreements as described in Section C above.

# Withdrawal Agreement

## City of Saco Withdrawal Committee and RSU 23 - continued

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### **R. DISPUTE RESOLUTION**

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Any dispute between the City of Saco, the Saco MSAU and RSU 23 (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 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 panel of three (3) mediators comprised as follows: one mediator (a current or former educational professional) selected by the RSU, one mediator (a current or former municipal official) selected by the Saco MSAU and one mediator (an attorney based in York or Cumberland County) who is selected by the other two mediators. Mediation shall be scheduled thereafter within 30 days, and such mediation 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. In the event that the Affected Parties are unable to resolve the dispute through mediation, then each retains all rights and legal and equitable remedies provided by law. All costs of mediation, except for legal representation, will be shared equally among the parties. Legal costs incurred in mediation shall be solely borne by the party incurring them, and no award of legal fees may be made by any mediator.

### **S. APPLICABILITY TO SUCCESSOR SCHOOL ADMINISTRATIVE UNITS**

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Upon approval by the Maine Commissioner of Education, and provided both a majority Saco voters cast ballots at election in favor of withdrawal from RSU 23 and the conditions set forth in 20-A MRS Section 1466 (9), as may be amended from time to time, are also met, then this Agreement shall be binding upon the City of Saco, the Saco MSAU, and its successor school administrative units, and on RSU 23 and its successor school administrative units. Accordingly, the terms of this Agreement shall be incorporated by reference into any Reorganization Plan to which Saco, the Saco MSAU, or RSU 23, or their respective successor school administrative units, is or becomes a party.

# Withdrawal Agreement

## City of Saco Withdrawal Committee and RSU 23 - continued

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### **T. STATE AND LOCAL APPROVAL/TERMINATION**

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This Agreement is subject to approval by the Maine Commissioner of Education as required by 20-A MRS Section 1466 4 (B), and by subsequent approval vote of Saco's citizens. It will not come into effect, nor have binding force, until the two preceding conditions are fulfilled. The approval of this Withdrawal Agreement pursuant to Section 1466 4 (B) by the Commissioner constitutes a finding on behalf of the Maine Department of Education that the Essential Programs and Services allocations under 20-A MRS Chapter 606-B for Saco resident students attending RSU 23 schools pursuant to Section C.1 and C.2 shall be assigned to the Saco MSAU and for RSU 23 resident students attending Saco MSAU schools pursuant to Section C.3 and C.4 shall be assigned to RSU 23 as set forth in Section C governing Continuity of Education.

This Withdrawal Agreement shall remain in effect until such time as it is terminated by mutual written agreement of the governing bodies of RSU 23 and the Saco MSAU, and provided such termination has been reviewed and approved by the Commissioner of the Department of Education.

### **U. MISCELLANEOUS**

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This Agreement may only be amended after its execution by subsequent writing executed by the governing Boards of each party, after each has voted on such amendment and only after such amendment has been reviewed and approved by the Commissioner of the Maine Department of Education. This Agreement may not be assigned, and it shall be interpreted and governed by the laws of Maine. This Agreement contains the entire agreement between the parties, and there are no other understandings, oral or written, between the parties at the time of the execution of this Agreement. If any provision of this Agreement is deemed invalid or unenforceable, in whole or part, the remaining provisions and parts shall remain effective and in force and effect to the fullest extent permitted by law.

# Withdrawal Agreement

City of Saco Withdrawal Committee and RSU 23 - continued

## V. SIGNATURES

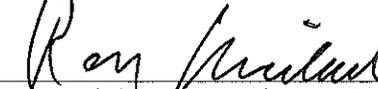
Dated at Saco, this [enter day]<sup>th</sup> day of [enter month], [enter year].

The Withdrawal Committee of the City of Saco:

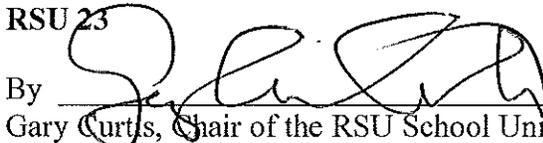
  
William D. Johnson, Chair & Representative from the General Public

  
Marston Lovell, Member & Representative from City Council

  
Vangel Cotsis, Member & Petitioner

  
Ron Michaud, Member & Representative from RSU 23 School Director

RSU 23

By   
Gary Curtis, Chair of the RSU School Unit 23 Board of Directors

Duly Authorized

[enter date]

Approved under 20-A MRS §1466(4)(B)

  
DEPUTY COMMISSIONER