

WITHDRAWAL AGREEMENT

By and Between

Maine Regional School Unit No. 59 and the Town of Athens Withdrawal Committee

This Agreement dated as of February 26, 2013, by and between Regional School Unit No. 59, a Maine regional school unit comprised of the municipalities of Athens, Brighton Plantation and Madison (hereinafter "RSU 59", or the "RSU") and the Town of Athens Withdrawal Committee, a duly appointed municipal withdrawal committee representing the Town of Athens (hereinafter "Athens" or the "Town") organized in accordance with 20-A M.R.S. § 1466(4)(A).

1. **Purposes.** The purposes of this Agreement are:

- a. To provide for the timely and orderly withdrawal of Athens from RSU 59;
- b. To provide educational continuity for all students residing in Athens;
- c. To allocate RSU 59's financial and contractual obligations, and its assets, between RSU 59 and the new administrative unit that includes, or is comprised solely of, Athens, as of the effective date of Athens' withdrawal in a manner that fairly takes into account the continuing educational needs of students and the continuity of educational programs.

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

2. **Withdrawal.** Pursuant to 20-A M.R.S. § 1466, the Town shall withdraw from RSU 59 in accordance with the terms of this Agreement as of June 30, 2013, and thereafter shall no longer be a member of the RSU 59 school administrative unit. As of June 30, 2013, the Town shall create the New Athens SAU which will be a separate municipal school administrative unit comprised solely of Athens, unless Athens joins, merges with or otherwise is included in another school administrative unit.

3. **Provision for Educational Services.**

- a. **Right to Continued Enrollment.** During the first year after withdrawal (i.e. from July 1, 2013 to June 30, 2014) students residing in Athens may attend the RSU 59 school they would have attended if Athens had not withdrawn from RSU 59 in accordance with 20-A M.R.S. § 1466(4)(A)(1). The Superintendents of RSU 59 and the New Athens SAU shall determine this enrollment in accordance with applicable law. A student's right to continue to be educated at RSU 59 schools during the 2013-2014 school year may be discontinued to the extent provided by law, including without limitation suspension, expulsion, out-of-RSU placement, or enrollment in another public or private school.

appropriate program to meet the terms of the IEP and applicable requirements of Maine law and regulations. Decisions about whether RSU 59 can implement the terms of the IEP, and whether RSU 59 has an appropriate program or placement for a student pursuant to the requirements of the IEP, shall be made by RSU 59 after a careful review of the IEP for the student. In no event shall RSU 59 refuse to provide needed special education services as provided in the IEP for students residing in Athens who are permitted to attend RSU 59 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 from RSU 59, or when RSU 59 has determined that RSU 59 cannot provide an appropriate program or placement for that student. The New Athens SAU's Director of Special Education Services (or designee) shall represent the New Athens SAU for special education programming, supervision of the IEP Team process, and supervision of the student evaluation process for Athens students attending RSU 59 schools. In the event that the IEP Team is unable to reach consensus on issues that are the responsibility of the Team, the New Athens SAU's Director of Special Education Services (or designee) at that Team meeting shall make the decisions on those issues, subject to the parent's due process rights in relation thereto. RSU 59 personnel will work cooperatively with the New Athens SAU's Director of Special Education Services (or designee), and, upon request will provide the New Athens SAU's representative with all information regarding classroom observations, student performance, academic achievement testing, and functional behavior assessment components of the student evaluation process. The New Athens SAU's Director of Special Education Services (or designee) shall provide input to RSU 59's Special Education Director on the proper implementation of the IEPs of Athens special education students attending RSU 59 schools or perceived deficiencies in IEP implementation. RSU 59 shall consider that input in good faith and RSU 59 shall respond in an appropriate manner consistent with the terms of this Agreement.

The New Athens SAU shall be responsible for all the costs of special education for special education students residing in Athens attending RSU 59 schools following the Effective Date pursuant to the terms of this Agreement. The New Athens SAU shall pay RSU 59 for the special education costs of any such student as follows: The tuition rate calculations under sections 5804 and 5805 of Title 20-A expressly exclude expenditures for special education. Therefore, in accordance with Chapter 101 of the Rules of the Maine Department of Education, Maine Unified Special Education Regulation, Section IV(4)(A) and (B), the New Athens SAU, in addition to the maximum allowable tuition for those students as calculated under sections 5804 or, as applicable, 5805, of Title 20-A, shall be responsible for the actual costs of special education for those students, including special education transportation costs and costs for facilities modifications required to accommodate the students. For purposes of this subsection, special education shall include non-special education 504/ADA plans and services and special education costs shall include costs of non-special education 504/ADA plans and services, facilities modifications, and reasonable attorneys' fees incurred by RSU 59 in connection with disputes over

delivery of special education services and/or section 504/ADA plan services for individual Athens students. RSU 59 shall provide an itemized invoice to the New Athens SAU for such special education costs during the fiscal year in which the special education costs are incurred.

6. **Need for School Construction.** Withdrawal of Athens from RSU 59 will not create the need for state subsidized school construction in the New Athens SAU within five years from the effective date of withdrawal.
7. **Transportation.** During the first year after withdrawal, RSU 59 will provide transportation to and from the Athens Elementary School to New Athens SAU students who attend RSU 59 schools outside of Athens. Following the first year after withdrawal, RSU 59 may, in its discretion, provide transportation to New Athens SAU students who attend RSU 59 schools.

To facilitate the New Athens SAU's transportation of students who attend Athens Elementary School, RSU 59 shall transfer to the New Athens SAU without charge the following two (2) buses on June 30, 2013, the effective date of withdrawal: (1) Bus No. 12, a 2003 Blue Bird TC2000 and (2) Bus No. 20, a 2006 Blue Bird All-American. After withdrawal, the New Athens SAU shall be responsible for all outstanding indebtedness and lease purchase obligations on the school buses and vehicles transferred by RSU 59 to the New Athens SAU, and RSU 59 shall be responsible for all outstanding indebtedness and lease purchase obligations on the school buses and vehicles retained by RSU 59.

8. **Financial Commitments from Outstanding Bonds or Notes.** RSU 59 is indebted on bonds issued for the construction of Madison Elementary School in 2000. These include bonds for State-approved debt service and bonds for local-only debt service. RSU 59 is also indebted under a lease purchase agreement for geo-thermal heating project at Madison High School. Under 20-A M.R.S. § 1466(16), when a municipality withdraws from a regional school unit having outstanding indebtedness on bonds, notes, or lease purchase agreements, the RSU remains intact for the purpose of retiring and securing that debt, but the withdrawal agreement may provide for an alternate means for retiring that outstanding indebtedness.
 - a. **State Approved Debt Service:** As an alternate means of retiring the existing State approved indebtedness for the Madison Elementary School under 20-A M.R.S. § 1466(16), Athens shall remain obligated for and shall pay to RSU 59 its allocable share of the RSU's existing State approved debt service for the Madison Elementary School, calculated on the basis that RSU 59 has remained intact, with Athens as a member municipality of RSU 59, for purposes of paying that debt service. Athens shall make such payment to RSU 59 at least thirty (30) days before the due date of each installment of principal and interest.
 - b. **Local-Only Debt Service.** As of July 1, 2013, RSU 59 will have an outstanding local only debt service obligation on the Madison Elementary School in the amount of \$273,225. In FY 2012-2013, the percentage of locally raised funds for RSU 59 to be

assessed against taxable property located in Athens is eleven percent (11%). After the effective date of withdrawal, the New Athens SAU will pay 11% of the remaining local-only debt service on the Madison Elementary School. The New Athens SAU shall make such debt service payments to RSU 59 at least thirty (30) days prior to the due date of each installment of principal and each interest payment on that debt.

- c. Lease Purchase for Geothermal Heating System. During FY 2012-2013, RSU 59 entered into a lease purchase agreement for a geo-thermal heating system and related improvements at Madison High School. The outstanding balance for principal and interest under this obligation as of June 30, 2013 will be \$2,063,312. During the period that this lease purchase obligation, or any refinancing of this lease purchase obligation, is outstanding, as an alternate means of paying this obligation, the New Athens SAU agrees to pay RSU 59, at least thirty (30) days before the due date of each installment of principal and interest payment eleven percent (11%) of the principal and interest due on the lease purchase obligation.
- d. Fiscal Agent. RSU 59 shall accept and pay Athens' share of debt service under Sections 8(b) and (c) and under Section 10 of this Agreement as the fiscal agent of the New Athens SAU and such amounts shall not be included in RSU 59's budget.

9. Other Financial Commitments.

- a. RSU 59 has signed a three-year contract with Todd Leroy to be its Superintendent for a term that runs from July 1, 2012 through June 30, 2015 (the "Superintendent Contract"). The New Athens SAU will be responsible for eleven percent (11%) of the annual salary and benefits of the Superintendent Contract that were in effect during the 2012-2013 contract year (\$12,642.05), which RSU 59 shall apply toward the Superintendent Contract during the first year after withdrawal.
- b. As of June 30, 2013, RSU 59 will have certain insurance and sick leave buy back obligations to retired employees that have been calculated to be in the amount of \$133,881.05. The New Athens SAU will be responsible for 11% of this amount (\$14,726.92).
- c. Effective upon the date of withdrawal, the New Athens SAU will assume and be solely liable at its own expense for the copier lease and maintenance agreement related to the copy machines located at Athens Elementary School.
- d. Effective upon the date of withdrawal, the New Athens SAU will assume and be solely liable at its own expense for any other contracts related to assets to be owned by the New Athens SAU under the terms of this Agreement, including the Athens Elementary School. These contracts are listed at **Exhibit 1**. To the extent such existing contracts and agreement also cover facilities or assets retained by RSU 59, the New Athens SAU shall comply with the terms and conditions of the same, shall not exercise any right of non-appropriation without the consent of RSU 59, and shall

promptly pay invoices of RSU 59 for an equitable pro rata share of each payment obligation.

- e. The Parties acknowledge that RSU 59 may be liable for future legal claims based on incidents arising prior to July 1, 2013, when Athens was a member of RSU 59. The New Athens SAU shall be responsible for and agrees to pay 11% of RSU 59's costs, expenses, damages, and other losses arising from such claims, including costs to defend such claims, to the extent that RSU 59's costs, expenses, damages, and other losses are not covered by insurance or other sources. RSU 59 shall give written notice of such claims to the New Athens SAU within 30 days after RSU 59 receives notice of a claim. RSU 59 shall regularly update the New Athens SAU regarding the status of such claims, and shall consult with the Superintendent of the New Athens SAU before entering into a settlement of such claims.
- f. In the event that RSU 59 becomes the subject of a federal or state audit for a period when Athens was a member of RSU 59 and as a result of such audit RSU 59 is subject to any payment obligation or withholding by federal or state authority, then the New Athens SAU shall reimburse RSU 59 for 11% of the amount of such payment obligation or withholding including without limitation, any interest and penalties thereon, within thirty (30) days of any such payment by RSU 59 or any such withholding from RSU 59. If as a result of such audit RSU 59 receives any rebate, refund, credit or overpayment from any federal or state authority, then RSU 59 shall reimburse the New Athens SAU for 11% of such rebate, refund, credit or overpayment within thirty (30) days of any such payment or credit to RSU 59.

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

- a. Financial Commitments Issued Prior to a Vote on Withdrawal . During FY 2012-2013 RSU 59 may issue bonds or notes or enter into additional lease purchase financing arrangements to upgrade facilities at the RSU's schools or for other purposes. Such improvements are not currently contemplated, but may be necessary in case of a failure of a structure or building system or other need. For any debt issued or incurred by RSU 59 before approval of withdrawal by Athens voters is certified, under 20-A M.R.S. § 1466(16) RSU 59 will remain intact for purposes of retiring and securing that indebtedness. If Athens votes to withdraw and if such bonds, notes or lease purchase obligations related solely to school facilities located outside of Athens, as an alternate means for retiring such indebtedness or lease purchase obligations under 20-A MRS §1466(16), RSU 59, exclusive of the New Athens SAU, hereby agrees to pay such indebtedness from funds of RSU 59 exclusive of the New Athens SAU, provided that the New Athens SAU shall remain responsible for its share of any refinancing of the geo-formal heating system at Madison High School pursuant to paragraph 8(c) of this Agreement. To the extent that such bonds, notes or lease purchase obligations relate solely to school facilities located in Athens, as an alternate means of retiring this indebtedness or lease purchase obligations, the New Athens SAU hereby agrees to assume, and at its own

expense to pay on or before the due date, such indebtedness entirely from funds of the New Athens SAU with no contribution or participation by RSU 59.

- b. Financial Commitments Issued Following a Vote to Withdraw. After approval of withdrawal by Athens voters is certified, to the extent that proposed indebtedness is related to real or personal property located at or serving only school facilities in Athens and is a general obligation, the RSU 59 school board shall provide for the debt to be approved at an RSU 59 referendum vote conducted in accordance with the general laws but only in Athens and not in the other RSU 59 member towns. Prior to the Effective Date, the obligations will be authorized to be issued by the RSU 59 school board in the name of RSU 59, but these obligations shall be obligations only of the New Athens SAU, and to the extent the obligations are general obligations they shall be secured by ad valorem taxation in Athens but not the other member town of RSU 59. On or after the Effective Date, the obligations will be authorized to be issued by the selectmen or other school or municipal officers, as applicable to the New Athens SAU under the general laws, except that, as provided herein, any voter approval requirement applicable to the issuance of such indebtedness shall be deemed to have been satisfied by the referendum approval in Athens as described under these procedures. Whether issued before or after the Effective Date, in either case, the New Athens SAU hereby agrees to assume, and at its own expense to pay, such indebtedness entirely from funds of the New Athens SAU with no contribution or participation by RSU 59.

After approval of withdrawal by Athens voters is certified, to the extent that proposed indebtedness is related to real or personal property located at or serving only school facilities in an RSU 59 town or towns other than Athens and is a general obligation other than a refinancing of the geo-thermal heating system at Madison High School, the RSU school board shall provide for the debt to be approved at an RSU 59 referendum vote conducted in accordance with the general laws in the RSU 59 member towns that have not voted to withdraw prior to the referendum vote (thus excluding the New Athens SAU from participation in that referendum vote). The obligations will be authorized to be issued by the RSU 59 school board in the name of RSU 59 but these obligations shall not be obligations of the New Athens SAU, and to the extent the obligations are general obligations they shall be secured by ad valorem taxation in the member towns of RSU 59 that have not voted to withdraw prior to the referendum vote (thus excluding the New Athens SAU from that general obligation). RSU 59 hereby agrees to assume, and at its own expense to pay, such indebtedness entirely from its own funds with contribution and participation only from RSU 59 member towns that have not voted to withdraw as of the referendum date, thus excluding the New Athens SAU from contribution and participation in that obligation.

11. Disposition of Real and Personal Property.

- a. Real Property and Fixtures. Title to the real property upon which the Athens Elementary School is located is currently vested in RSU 59 by virtue of ___ deeds recorded in the Somerset County Registry of Deeds in Book ____, Page ____ (see attached **Exhibit 2**). Subject to approval of this Agreement by the voters of the Town of Athens, following the date of Athens' withdrawal, RSU 59 shall convey all of its rights to the real property described in these deeds to the New Athens SAU by quitclaim deed.
- b. Personal Property. Any and all personal property located at the Athens Elementary School properties or used exclusively for Athens school programs as of November 15, 2012, including movable equipment, furnishings, textbooks and other curriculum materials, supplies and inventories shall become property of the New Athens SAU on the date of withdrawal. The New Athens SAU may require such assignments, bills of sale or other instruments of transfer that are reasonably necessary to establish the New Athens SAU's right, title and interest in such personal property.

12. Undesignated Fund Balance and Other Monetary Assets.

- a. Undesignated Funds. On July 1, 2013, or at such later date as RSU 59's 2013-2014 budget is validated by the voters, RSU 59 shall pay the New Athens SAU \$167,083.00 which is RSU 59's current good faith estimate of the New Athens SAU's eleven percent (11%) share of RSU 59's undesignated fund balances as of June 30, 2013. As an offset, this payment will be reduced by (1) the New Athens SAU's contribution to the Superintendent Contract under Section 9(a) ; and (2) the New Athens SAU's contribution to retirement obligations under Paragraph 9(b).
- c. Scholarship funds. Scholarship funds intended for Athens students will be turned over to the New Athens SAU. These scholarship accounts are listed on **Exhibit 3**.
- d. Other Programs. All property and funds related to the Athens PTF (Parent Teacher Friends), the Athens Sports Boosters, the Athens Learning Power Program, the Athens Playground fund, and other funds solely related to or specifically designated for Athens programs will be transferred to the New Athens SAU on the effective date of withdrawal.

13. Continuation of Collective Bargaining Agreements.

There are three collective bargaining agreements (CBAs) that currently pertain to RSU 59 employees that will be employed by the New Athens SAU following Athens's withdrawal as follows:

Employee Unit	Term	Applies to
Madison Area Education Association	September 1, 2012 to August 31, 2015	Teachers and Specialists in RSU 59

Madison Area Education Association ESP Unit	July 1, 2012 to June 30, 2015	Bus Drivers, Custodians, Cafeteria Workers, Educational Technicians, Mechanics and Maintenance Workers
Administrative Assistants Unit	July 1, 2012 to June 30, 2015	Administrative Assistants employed regularly 25 hours or more

Following Athens's withdrawal, the New Athens SAU shall assume the RSU's existing collective bargaining agreements to the extent that they cover employees of RSU 59 assigned full-time to Athens schools as of January 1, 2013 and who have a right to continued employment as of July 1, 2013. A list of employees and positions assigned full-time to Athens schools as of January 1, 2013 is attached to this Agreement as **Exhibit 4**. This list shall be updated to June 30, 2013 by RSU 59 and the updated list shall be attached to this Agreement as **Replacement Exhibit 4**.

Following Athens' withdrawal, the Athens School Committee will extend representational rights to the bargaining units listed above for the purpose of negotiating future collective bargaining contracts.

14. Continuing Contract Rights under Section 13201.

The withdrawal of Athens will not affect teachers' continuing contract rights under 20-A M.R.S. § 13201. On June 30, 2013, the effective date of withdrawal, all continuing contract teachers assigned full-time to the Athens schools as of January 1, 2013 who have not been non-renewed shall become continuing contract teachers of the New Athens SAU. On June 30, 2013, the effective date of withdrawal, all probationary teachers assigned full-time to the Athens Schools as of January 1, 2013 who have been offered contracts for 2013-2014 and who have earned years of service with RSU 59 toward continuing contract status shall retain those years of service for purposes of attaining continuing contract status with the New Athens SAU. A list of continuing contract teachers and probationary teachers with their number of years of service toward continuing contract status, assigned to the Athens schools as of January 1, 2013 is attached as **Exhibit 5**. This list shall be updated to June 30, 2013 by RSU 59 and the updated list shall be attached to this Agreement as **Replacement Exhibit 5**.

15. Transition of Administration and Governance.

If this Agreement is approved by the Commissioner of Education and the voters of Athens, the administration and governance of education for Athens students will be transferred directly from RSU 59 to the New Athens SAU as of July 1, 2013, except as provided herein with respect to Athens students attending RSU 59 schools as tuition students. The Town of Athens will become a municipal school unit.

In the event of a positive vote to withdraw from RSU 59 by the Town of Athens, the Town of Athens will, as soon as possible, hold an election to form the Athens School Committee according to state law. Until such election can be held, the Athens Withdrawal Committee shall perform any duties and responsibilities required for withdrawal from RSU 59 and preparation for the New Athens SAU.

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

If this withdrawal agreement is approved by the Commissioner of Education and the withdrawal of Athens as of June 30, 2013 is approved by the voters of Athens, the voters of Athens shall not participate in the approval of the RSU 59 budget for the fiscal year 2013-2014 at either the budget meeting or the budget validation referendum.

16. Procedural elements.

- a. **Superintendents' Agreements.** Nothing in this Withdrawal Agreement shall limit the availability or use of Superintendents' Agreements with respect to any student .
- b. **Dispute Resolution.** Any dispute between Athens, the New Athens SAU and RSU 59 (hereinafter individually a "Party" or collectively, the "Parties") arising out of or relating to this Agreement shall be resolved in accordance with this paragraph. Any Party may give written notice of a dispute arising out of or related to this Agreement to another Party or Parties in person or by certified mail, return receipt requested. The Parties to the dispute (hereinafter the "Affected Parties") shall attempt to resolve the matter through informal communication or negotiation for a period of thirty (30) days from the date of receipt of notice by the last Party to receive notice. If the dispute has not been resolved within thirty (30) days, any Party may serve written notice on the other Affected Parties of a request for mediation. The mediation shall be conducted in Maine by a mediator mutually agreeable to the Affected Parties, shall not exceed one full day or two half days in length, and shall be completed within ninety (90) days from the date of receipt of notice of a request for mediation by the last Affected Party to receive notice. If the Affected Parties are unable to agree on a mediator within thirty (30) days, or to resolve the dispute through mediation within 90 days, the dispute shall be submitted to arbitration in accordance with the procedures of the Maine Uniform Arbitration Act, 14 M.R.S.A. §5927 et seq.

Notwithstanding the preceding paragraph, the substantially prevailing party in any dispute involving a claim that either party has breached its financial obligations under Paragraphs 4, 5, 8, 9, 10, and/or 12 shall be entitled to recover its costs and legal expenses, including reasonable attorney's fees.

- c. **Applicability to Successor School Administrative Units.** Upon approval by the Maine Commissioner of Education and approval by a majority vote of the Town of Athens, this Agreement shall be binding upon the Town of Athens, the New Athens SAU, and any successor school administrative units that Athens may join, merge with or otherwise be included in as a member during the term of this agreement, and on RSU 59 and its successor school administrative units. Accordingly, the terms of this Agreement shall be incorporated by reference into any Reorganization Plan to which Athens, the New Athens SAU, or RSU 59, or their respective successor school administrative units, is or becomes a party.
- d. **Amendment.** This Agreement may be amended by mutual written agreement of the governing bodies of RSU 59 and the New Athens SAU with the written approval of the Commissioner of the Maine Department of Education.
- e. **Termination.** This Agreement shall remain in effect until such time as it may be terminated by mutual written agreement of the governing bodies of RSU 59 and the New Athens SAU with the prior written approval of the Commissioner of the Maine Department of Education.
- f. **State and Local Approval.** This Agreement is subject to approval by the Maine Commissioner of Education as required by 20-A M.R.S. § 1466(4)(B) and approval by a majority vote at a referendum conducted in Athens as required by 20-A M.R.S. § 1466(9).

Signed at Athens, this __ day of _____, 2013.
 For The Withdrawal Committee of the Town of Athens:

Daniel Viles
 Member from the RSU 59 Board of Directors

Charles Rotondi
 Member and representative from Municipal Officers (Member of the Board of Selectmen)

Alan Linkletter
 Member at Large

Vicky Avery
 Member of Petitioning Group

Signed at Athens, this ___ day of _____, 2013.
For Regional School Unit No. 59:

Troy Emery
Chair, RSU 59 Board of Directors

Signed at Augusta, this _____ day _____, 2013.

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

Stephen L. Bowen
Maine Commissioner of Education