

SUPERINTENDENT  
Barbara J. Eretzian  
ASST. SUPERINTENDENT  
Thomas W. Morrill  
BUSINESS MANAGER  
Jude G. Cyr

CITY OF AUBURN  
**Department of Education**  
AUBURN, MAINE 04210

www.auburnschl.edu

RECEIVED NOV 29 2007  
60 Court Street, Suite 227  
Post Office Box 800  
Auburn, Maine 04212-0800  
207-753-9300  
FAX: 207-784-2969

## ALTERNATIVE PLAN SUBMITTAL SHEET

School Administrative Unit Submitting Alternative Plan:

- Auburn School Department

Contact Information:

Name: Thomas Morrill  
Address: 60 Court Street, Suite 227  
PO Box 800  
Auburn, ME 04212-0800  
Telephone: 207-333-6601 ext. 1201  
email: superintendent@auburnschl.edu

Date Plan Submitted by SAU: 29 November 2007

**The intent to submit an alternative plan has been approved by the Commissioner in the approval of the Notice of Intent?**

YES       NO

(If NO, please explain.)

## Alternative Plan Cover Sheet

(Please attach Alternative Plan as Exhibit A)

Plan Requirements				
Item	Complete	In Progress	Not Yet Started	Need Assistance <sup>1</sup>
Plan addresses how the SAU will reorganize administrative functions, duties and noninstructional personnel so that projected expenditures of RSU in fiscal 2008-2009 for the following areas will not have an adverse impact on the instructional program.				
<b>system administration</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>transportation</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>special education</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>facilities and maintenance</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Plan addresses how cost savings will be achieved in fiscal 2008-2009 for the above four areas.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parameters for Plan Development				
Enrollment meets requirements (2,500 except where circumstances justify an exception)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
When viewed in conjunction with surrounding proposed units, may not result in one or more municipalities being denied the option to join an RSU	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Includes at least one publicly supported high school	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Consistent with policies set forth in section 1451	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No displacement of teachers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No displacement of students	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No closures of schools existing or operating during school year immediately preceding reorganization, except as permitted under section 1512	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Collaborative Agreements				
			Yes	No
Does your plan currently include information/documentation on collaborative agreements? <i>(not required, but encouraged)</i>			<input checked="" type="checkbox"/>	<input type="checkbox"/>

<sup>1</sup> Please explain what assistance you need to complete this portion of your plan, and state from whom you need assistance, on the next page.



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November 29, 2007

*Exhibit A*

Susan Gendron  
Commissioner of Education  
Maine Department of Education  
23 State House Station  
Augusta, Maine 04333-0023

Dear Commissioner Gendron;

On Wednesday, November 28, 2007, the Auburn School Committee voted unanimously to authorize Interim Superintendent of Schools Thomas Morrill to file an Alternative Plan with the Department of Education pursuant to Public Law 2007, Chapter 240, Part XXXX.

This action complies with the requirements of the Reorganization Law and follows the Commissioner's September 13, 2007, correspondence which formally authorized the Auburn School Department's submission of an Alternative Plan. Certification of compliance for the submission of an Alternative Plan was based upon the fact that the Auburn School Department student enrollment exceeds the minimum threshold of 2,500 students as specified in Public Law 2007, Chapter 240, Subchapter 2, Formation of Regional School Unit #1461, 3 Submission of Plans B (1). According to the Department of Education's website, the October, 2006, enrollment for the Auburn School Department was 3,497.

It should also be noted that Auburn School Department's ten member Reorganization Committee assisted by Department of Education appointed facilitator, Dr. Jake Clockedile, met with S.A.D.# 52 and Union #29 throughout the summer of 2007 to discern any and all potential savings and programmatic gains. Based on information obtained from School Finance Supervisor, Suzan Beaudoin, which was further adjusted to reflect local expenditures and local debt, Auburn would experience significant budgetary increases from consolidating with either district. As a result of Auburn's Reorganization Committee's work, the School Committee on August 22<sup>nd</sup> rejected the concept of merging with either system and directed the Interim Superintendent to file an Intent to Submit an Alternative Plan, which was subsequently approved by the Commissioner on September 13, 2007.

### **Alternative Plan**

While the Auburn School Department complies with the parameters of Public Law 2007, Chapter 240, Part XXXX with an enrollment of 3,574 students for October 1, 2007, we have also pursued in earnest the development of a plan to address the defining challenge of our time--the efficient use of limited public funds in order to provide rigorous academic programs for our students and achieve long-term sustainability and predictability in support of our schools.

For years the Auburn School Department has followed a path of fiscal efficiency and programmatic excellence. Its 2007-2008 budget was a frugal \$802,802.58 below the EPS benchmark and yet added an expanded Pre-K program for more than 25 students including a new ELL program for Pre-K students. This emphasis on the distribution of resources to maximize programming for students and support for teachers, while being well within EPS guidelines, serves as the cornerstone in our efforts to further cut spending in central office administration, maintenance, transportation and special education. It is extremely clear that the reductions enacted in Public Law 2007, Chapter 240 scheduled for implementation in 2008-09 have created a new emphasis and alarm for asking tough questions and pursuing innovative ideas to reduce costs while avoiding any adverse impact on student learning. Auburn has embraced this challenge and pursued the development of a plan, which continues its history of collaboration and cost savings while maintaining programs that are academically rigorous and responsive to the needs of all students. The elements of the most significant findings of this plan are summarized and integrated below.

## **I. System Administrative Savings**

The projected EPS allocation for System Administration for 2008-09 at a calculation of \$204 per student is approximately \$729,296. The forecasted 2007-08 expenditure for system administration as calculated using Maine's new Chart of Accounts is \$ 908,733. This fiscal incongruence necessitates the reduction of overhead costs and specific system administration functions, a reassignment of tasks, and our active collaboration with the Lewiston School Department, S.A.D.#52 and the City of Auburn. The following represents planned changes to meet projected savings needs while minimizing any misguided operational impact.

- A. Reduce System Administration Overhead by 50%:** The cost of housing system administration at the City of Auburn's new municipal building, Auburn Hall, has risen to approximately \$100,000 per year for a 38% occupancy footprint. This cost will be reduced by \$47,000 for 2008-09 either by consolidating and moving all of our office functions to the 4<sup>th</sup> floor or by relocating to a vacant school space.
- B. Full Implementation of New Accounting and Human Resource Software:** The Auburn School Department recently purchased Advance Data Systems (ADS) software for accounting, grant tracking and human resource functions. Full implementation of this system will reduce input redundancy, allow business functions to take place more efficiently and cost-effectively and allow for the reduction of a .5 FTE secretarial position. The system also projects a \$3,000 per year savings through electronic transactions.
- C. MEDMS Staff Input:** Various MEDMS input functions including staff information may be shifted to building level administrators and department directors. This reassignment of task may afford the reduction of the .5 secretarial position noted above; however, we have grave concerns with regards to the accuracy of the reporting and the ability to meet the narrow deadlines imposed by the Department of Education.
- D. Federal Title Programs:** The administration of all Federal Title programs has presently been the responsibility of system administration. To accommodate projected changes and remove any adverse effect on students, the administration of these Title grants will be shifted to building level principals.
- E. Project Specific Work Tasks and Part-Time Employees:** Rather than employing an Assistant Superintendent on a full time basis, part time or project specific employment will be explored.

- F. Four Day Work Week For Select Employees:** Given our recent advances in technology and corresponding reduction in system administrative staff, a work flow audit planned for later in the year may yield potential opportunities to offer employees more flexible reduced work schedules. The audit will also consider any cost savings, which may occur due to collaboration and or consolidation with city functions.
- G. System Administration Function Collaboration with Lewiston:** The Auburn School Department has been meeting with the Lewiston School Department each month for the past two years to reduce costs and improve academic offerings to students while maintaining local control. This work has achieved cost savings in the areas of fuel and general supply purchases, transportation for special education students, technology offerings, etc. This work will continue next year and expand into system administration areas like employee orientation and required trainings, new teacher induction, system technology, and bulk purchasing. In addition both Auburn and Lewiston are exploring the feasibility of employing one Adult Education administrator to direct programs in both cities. We will also continue to consider contract parody.

## **II. Operation and Maintenance of Plant**

The Auburn School Department presently operates well below the EPS allocation of approximately \$3.5 million for Operation and Maintenance of Plant. At \$2,974,998 for 2007-08, Auburn maintains an operational efficiency rating that is 15% below expected costs. A 5% reduction as required by Public Law 2007, Chapter 240, will be met using a comprehensive cost containment strategy and the consolidation of existing facilities. The most voracious account in this department is fuel and electricity. Significant measures to reduce or curb our appetite for energy honor the enormity of this problem.

- A. Performance Contract:** The Auburn School Department is pursuing a \$1.96 million dollar performance contract with Siemens to retrofit lighting in all schools, replace boilers, secure building envelopes, etc. This work is projected to produce a \$203,195 annual savings and more importantly helps to rein in our energy costs particularly in light of recent increases. This work will also significantly improve the learning environment for students by providing required classroom illumine and insure that classrooms will have heat. With energy and heating costs rising, a performance contract not only guarantees energy consumption maximums, but also yields significant reductions, which translate into savings. The performance contract also reduces our budget line for lighting replacement and boiler repair work.
- B. Capital Improvement Projects:** The City of Auburn annually bonds between \$900,000 and \$1,000,000 for the school department to use for building and ground improvements. Priority areas are defined using our VFA information in consultation with staff and North East Building Consultant, Mel Cole. \$400,000 of this year's bond will be dedicated to the Performance Contract to reduce the terms of the agreement to eight years.
- C. Outsourcing of Plumbing, Heating and Electrical Work:** Cost containment efforts will continue to be explored particularly around the specialty areas of plumbing, heating and electrical work. Outsourcing has proven to be cost effective and the scheduling of specific jobs with attention to work flow may yield further savings.
- D. Consolidation of Property:** The Auburn School Department is aggressively pursuing the development and approval of a comprehensive Facility Master Plan to consolidate

facilities and programs and renovate/replace buildings that have surpassed their usefulness. This issue warrants urgent attention to bring forward an accelerated solution to reduce the school department's holdings and provide students with upgraded facilities. The Auburn School Department forecasts a reduction of two land/facility holdings in 2008-09 and will budget accordingly.

- E. Collaboration with the Lewiston School Department and the City of Auburn:** Collaborative bulk purchasing of fuel oil and supplies will continue to be aggressively pursued by Jude Cyr, Auburn School Department Business Manager. Jude has had a particularly keen eye on monitoring changes in the energy market and enlisting others to join us in a purchasing group. Additional bulk purchasing will take place whenever the opportunity arises.
- F. Continued Collaborative Efforts of ShareCenter Program:** The Auburn School Department will continue to operate its highly cost effective and green ShareCenter, which recycles materials from business and industry for reuse in schools from Farmington to Bath. Items for hands-on learning, classroom and office supplies, furniture, and paper products are available for use in our schools.
- G. Reduction in Overtime:** This particular account is often impacted by winter weather and the cost of snow removal at our eleven facilities. The Director of Support Services will monitor this account and make adjustments for snow removal during the day if necessary. This may require additional school closings to keep costs in this account on budget.

### III. Transportation

The Auburn School Department's bus fleet has been recognized as one of the most up to date and efficient in the state. It's annual operation of \$794,947 falls below that EPS allocated figure of \$899,226. To maintain expenditures within this budget allocation and support quality classroom instruction, we have resolved to pursue the following areas.

- A. Changes in Policy:** The Auburn School Committee may consider the consolidation of stops, the elimination of door-to-door service for kindergarten and Pre-K students, expanded walking distance requirements, and the elimination of bus returns to homes/stops where students have missed the bus.
- B. Changes in Routes and Right Hand Turns:** Revision of bus routes using VERSA-TRAN to insure the most efficient conveyance of students to school and an attempt at routing buses for right hand turns to minimize idling.
- C. Doubling Up on Athletic/Classroom/Co-Curricular Trips:** Expansion of the present practice of combining student groups attending an event or contest within close proximity.
- D. Redistricting:** It's been over a decade since the last system wide redistricting occurred. With the construction of the new Park Avenue School and system programs located in select schools it would be advantageous for the School Department to revise school and program catchment areas.
- E. Collaborating with the Lewiston School Department:** Both school departments will continue to collaborate and share resources and savings in the conveyance of special education and homeless students between and outside of the twin cities. We will also look into collaborating on joint trips in other areas including skiing, cross country track, golf, speech and debate, music, etc.

- F. Exploring the Purchase of Alternative Fuel Buses:** With the dramatic rise in fuel costs, the Director of Support Services will be researching the purchase of more cost efficient alternative fuel buses. This may include a look a buses that operate with a higher mile per gallon rating, biofuels or natural gas buses.
- G. Purchasing Two New Buses Per Year:** The technology and efficiency in the auto industry is changing rapidly and to insure that we have the most efficient fleet, it's necessary to purchase two buses a year. This practice limits repair costs, over time and insures that we can meet our daily conveyance schedule.
- H. Consider the Elimination of 9-12 Busing:** At this time Auburn offers busing for grade 9-12 students. The elimination of this service was explored once before, however, this generated grave concerns from our community. We will once again explore the savings this option provides.
- I. Contracted Services:** Rising costs and ongoing difficulty in staffing all requests for conveyance prompts the Auburn School Department to explore both full and part time options for contracted bus service.

#### **IV. Special Education**

Federal rules governing the allocation and expenditure of funds dedicated to special education impose stringent parameters on school systems. Section 300.203 Maintenance of Effort in Subpart C-Local Educational Agency Eligibility for Local Entitlement states that an LEA is only eligible for a Federal award if the LEA budgets and expends at least the same total or the same per capita amount for special education from the previous year. Any reduction in per capita or total expenditures for special education including the legislated 5% state reduction in special education would jeopardize these additional Federal funds. This year, the Federal Local Entitlement award for the Auburn School Department exceeded \$870,000. However, due to the foresight of the Auburn School Department and our efforts to collaborate with Child Development Service in bringing Pre-K programming to more than 90 students at three school sites, Auburn will approach our Maintenance of Effort obligation by expending in excess of \$233,072 for this intervening service. Under Section 300.205 Adjustment to Local Fiscal Efforts in Certain Fiscal Years funds expended by an LEA for early intervening services such as Pre-K programming shall be applied to an LEA's Maintenance of Effort requirement.

The Auburn School Department has a long history of addressing student special education needs through innovative and cost effective measures. The RETC/SOS program that was started almost three decades ago best illustrates this practice. This regional collaborative provides quality low cost therapeutic special education programming at a savings of over \$20,000 per student. This deferred expenditure will save the school department in excess of \$160,000 for the 2007-08 school year. This Collaborative also provides a similar savings for five other districts. The Renaissance Program, a collaborative with Sisters of Charity, and the Renaissance Middle Program also illustrates the collaborative nature of Auburn in developing cost efficient special education programs to keep our students in Auburn while meeting their complex needs.

The seeds of innovation, efficiencies and effective programming continue to be sown through the following alternative plans to align the Auburn School Department's special education programming with the state's 5% reduction in this line.

- A. Out of District Placements:** We know the refrain by now: the Auburn School Department must increasingly rely on the talent and programming of its special

education staff and specialists to reduce the number of Out of District Placements. To this end, we have decreased the number of Out of District placements by four this year and project to continue this trend into next year. A similar reduction would result in a savings of approximately \$163,100. These savings will be realized by having select students with autism transition from the Margaret Murphy School to system programming. However, this volatile account may be inflated annually by students moving into the district. Last year, eleven out of district students moved into Auburn after the budget was approved.

- B. Contracted Service Providers:** Reliance on contracted service providers for occupational therapy, physical therapy and psychological evaluations and consultation has resulted in significant annual increases in these budgeted lines. To overcome this increase, the Auburn School Department will begin to hire as full or part time employees professional staff in these areas. For particularly costly service providers like school psychologists, the Auburn School Department will enter into a cooperative agreement with the Lewiston School Department to offer school psychologists competitive salary packages as shared school employees. Shifting from contracted services to employees of the system not only will provide cost savings, but also expedite the delivery and quality of service to our students.
- C. Day Treatment Program:** The Auburn School Department presently operates two system behavioral intervention programs at Sherwood Heights. Given the forecasted level of behavioral/emotional disability in these programs, it will be more appropriate and cost-effective to reconfigure these interventions as Day Treatment programs. To accomplish this, the Auburn School Department will work with the Lewiston School Department and the Collaborative School to provide the necessary professional oversight and professional development. Moving to Day Treatment status will generate substantial revenues through Medicare, as treatments become reimbursable expenses. This action is projected to realize over \$120,000 in additional revenue.
- D. Future School Consolidation:** As Auburn develops and implements its comprehensive facility master plan, the future consolidation of facilities and the redistricting of school enrollment lines will make special education service delivery more effective and efficient. Gaining economies of scale will undoubtedly balance special education case loads across the system and either eliminate the duplication of services present with small schools or provide an opportunity to reassign staff to new emerging special education needs. The consolidation of facilities in the future has the potential to reduce special education staff, thereby realizing a savings of approximately \$40,000.
- E. New Cost Matrix for Maine State Billing:** The present daily rate billing charge for students in Day Treatment has been fixed for the past decade. Adjusting this rate to reflect present actual costs for twenty-six day treatment students will generate approximately \$150,000 in 2008-09.

### **Conclusion**

Legislated funding reductions in system administration; operation and maintenance of plant, special education and transportation have necessitated the development of a dramatically altered delivery system for the Auburn School Department in 2008-09. Consolidating internally, joining forces with other systems, pursuing efficiencies, and eliminating specific functions in order to achieve the necessary savings in the areas note above will be accomplished while maintaining a sound and rigorous academic program for our students. Yes, implementing our alternative plan

will be difficult while disentangling ourselves from the past, but Auburn's universal commitment to fiscal sustainability and outstanding educational opportunities for all students must and will prevail. The educational tea leaves reveal Auburn poised to take full advantage of the innovation opportunities stimulated by the state's current fiscal troubles and a subsequent reduction in local funding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Thomas Morrill', written over a diagonal line that extends from the top of the signature area towards the top right of the page.

Thomas Morrill, Interim Superintendent  
Auburn School Department

TM/rmw



STATE OF MAINE  
DEPARTMENT OF EDUCATION  
23 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0023

JOHN ELIAS BALDACCIO  
GOVERNOR

SUSAN A. GENDRON  
COMMISSIONER

## Exhibit B

September 13, 2007



Thomas Morrill, Intrm Superintendent  
Auburn School Department  
PO Box 800  
Auburn, ME 04212-0800

Dear Superintendent Morrill:

Thank you for the Notice of Intent to submit an Alternative Plan that you submitted on behalf of Auburn School Department, received on 8/31/2007 and that is attached here for ease of reference.

I have reviewed the intended action as described in your Notice of Intent and have determined that it does comply with the requirements of the Reorganization Law.

I wish you continued success as you proceed with your work on your Alternative Plan, and invite you to please contact my office if we can assist you with that next step.

Sincerely,

Susan A. Gendron  
Commissioner of Education

NOTICE OF INTENT

SAU Submitting: Auburn School Department

Contact Information: Thomas Morrill, Interim Superintendent

Date Submitted by SAU: August 27, 2007

1. \_\_\_\_\_ Notice of the SAU's Intent to Submit Reorganization Plan

SAUs included in the proposed RSU: \_\_\_\_\_

*A Reorganization Plan is submitted by each of the SAUs that proposes to become part of a new Regional School Unit that includes other SAUs. The SAUs of the proposed RSU must submit a Reorganization Plan even if the proposed RSU would be smaller than 2,500 but greater than 1,200 students due to geographic, demographic and other allowed exceptions.*

2. X Notice of the SAU's Intent to Submit Alternative Plan

*An Alternative Plan is submitted by an SAU that proposes to meet the required reduction in costs without partnering with other SAUs.*

*An alternative plan may be submitted only by a unit that is:*

- (1) An offshore island;*
- (2) A school operated by a tribal school committee pursuant to the Maine Revised Statutes, Title 30, section 6214;*
- (3) A school administrative unit that serves more than 2,500 students, or 1,200 students where circumstances justify an exception to the requirement of 2,500 students under XXXX-36, subsection 6, paragraph A, where expansion of the unit would be inconsistent with the policies set forth in Title 20-A, section 1451; or*
- (4) A school administrative unit that is designated as an efficient, high-performing district. For purposes of this subparagraph, a school administrative unit is designated an "efficient, high-performing district" if:*
  - (a) It contains at least 3 schools identified as "higher performing" in the May 2007 Maine Education Policy Research Institute report "The Identification of Higher and Lower Performing Maine Schools"; and*
  - (b) Its reported 2005-2006 per-pupil expenditures for system administration represent less than 4% of its total per-pupil expenditures.*

*The alternative plan must address how the SAU will reorganize administrative functions, duties and non-instructional personnel so that the projected expenditures of the SAU in FY 2008-2009 for system administration, transportation, special education and facilities and maintenance will not have an adverse impact on the instructional program.*

**3. Basis for Alternative Plan**

Explain why the SAU intends to submit an Alternative Plan, in accordance with the criteria set forth in #2, above.

The Auburn School Department exceeds the minimum student enrollment threshold of 2,500 students as specified in exemption #3. According to the Department of Education website the October 2006 enrollment for Auburn School Department was 3,497.

**4. Facilitator** (if applicable, if known): Dr. Jake Clockedile

**5. Determination and Notification of Compliance**

*The Commissioner of the Department of Education will make a determination and notify SAUs by September 14, 2007, or 14 days from receipt if received after August 31, 2007, whether the intended action, including the intention to file a Reorganization or an Alternative Plan, complies with the requirements of Chapter 103-A.*

DOE USE ONLY: Date Received 8/31/07  
DOE USE ONLY: Date Reviewed 8/31/07  
DOE USE ONLY: Intended Action Complies  Does Not Comply \_\_\_\_\_  
DOE USE ONLY: Date of Commissioner Response 9/13/07  
DOE USE ONLY: Date Returned for Revisions with Additional Questions \_\_\_\_\_  
DOE USE ONLY: Due Date for Revisions from SAU \_\_\_\_\_  
DOE USE ONLY: Date Revised Notice Reviewed \_\_\_\_\_  
DOE USE ONLY: Date of Commissioner Response to Revised Notice \_\_\_\_\_

**INTENT SCREENING**

SAU Submitting Completed?  Yes  No  
Contact Information Completed?  Yes  No  
Date Submitted Completed?  Yes  No  
Plan to submit Reorganization Plan  Yes  No  
OR  
Plan to submit Alternative Plan  Yes  No  
Basis Given?  Yes  No  
Basis Declared:  1  2  3  4  
Facilitator Info. Provided?  Yes  N/A

Maine De Date Screened 8/31/07

Additional Notes: \_\_\_\_\_

**State and Local Funds from School Administrative Unit's budgets to compare with 100% EPS Allocation**

**For 2006-07 -- Local Taxes Raised for Education**

**Exhibit C**

**Article pursuant to 20-A MRSA Sec. 15690 sub-sec. 1**

Units "required" contribution to the cost of funding public education from kindergarten to grade 12. (The amount of money determined by the State that a unit must raise in order to receive the full amount of State subsidy.)

Local Contribution ED 281 Line 50 \$12,337,380.00

**Article pursuant to 20-A MRSA Sec. 15690 sub-sec. 2**

Local amount raised for non-state funded Debt Service ( For a school administrative unit's indebtedness previously approved by its legislative body for:

- (A) non-state-funded major capital school constuction project
- (B) non-state-funded portions of major capital school construction projects
- (C) minor capital projects

The legislative body of each school administrative unit may vote to raise and appropriate an amount up to the municipality's or district's annual payments for non-state-funded debt service.)

**Must be determined by school adminstrative unit staff** \$1,333,679.00

**Article pursuant to 20-A MRSA Sec. 15690 sub-sec. 3**

Local amount raised in "addition" to local "required amount and non-state funded Debt Service above -- in order to support the total local school budget.

**Must be determined by school adminstrative unit staff** \$343,212.42

**Total Local Raised for Education:** \$14,014,271.42

**LESS** Local amount raised for non-state funded Debt Service (The payments on "Major" capital school construction projects that is totally locally funded) \$1,333,679.00

**EQUALS** Total local raised excluding non-state funded Debt Service \$12,680,592.42

**For 2006-07 State Subsidy for Education**

**State Contribution**

ED 281 Computation of Unit Allocation -- State Subsidy (Includes debt service adjustment, minimum state allocation and minimum special education adjustment)

State Contribution ED 281 Line 50 \$17,553,686.00

**Transition Adjustments pursuant to 20-A MRSA Section 15686**

Transition Adjustment ED 281 Line 58F \$0.00

**Total State Subsidy for Education:** \$17,553,686.00

**For 2007-08 Combined State & Local** \$30,234,278.42

**2007-08 100% EPS Allocation** ED 281 Line 63 \$31,037,081.00

Below 100% EPS Allocation \$802,802.58  
**Above 100% EPS Allocation** **Does not exceed 100% EPS**

2.6%

## Exhibit D

JOINT LEWISTON / AUBURN SUPERINTENDENT MEETINGS  
3:30 THE FIRST WORK MONDAY OF THE MONTH

DATE	LOCATION	TIME	TOPIC
SEPTEMBER 10	LEWISTON	3:30	ADULT ED / PRINTING
OCTOBER 1	AUBURN	3:30	HIGH SCHOOL NEW LAW
NOVEMBER 5	LEWISTON	3:30	SPECIAL EDUCATION
DECEMBER 3	AUBURN	3:30	NEGOTIATIONS / ELL NEW COMERS PROGRAM
JANUARY 7	LEWISTON	3:30	BUDGET / MARKETING
FEBRUARY 4	AUBURN	3:30	TRANSPORTATION
MARCH 3	LEWISTON	3:30	NWEA CURRICULUM
APRIL 7	AUBURN	3:30	TECHNOLOGY
MAY 5	LEWISTON	3:30	EARLY CHILDHOOD / ALTERNATIVE PROGRAMS
JUNE 2	AUBURN	3:30	POLICIES / SCHOOL COMMITTEE MEETINGS PROCESS

# SIEMENS

November 21, 2007

Mr. Jude Cyr, Business Manager  
Auburn School Department  
60 Court Street  
Auburn, Maine 04210

Dear Mr. Cyr:

Siemens Financial Services, Inc. is pleased to provide this lease proposal to the Auburn School Department (the "Lessee") for your review and consideration. Upon your approval, this proposal shall constitute Lessee's application to Siemens Financial Services, Inc. This proposal is subject to, among other things, Lessee being qualified to issue tax-exempt obligations under the Internal Revenue Code, as well as certain additional conditions set forth hereunder.

**Lessor:** Siemens Public, Inc., its affiliates, assigns or nominees

**Lessee:** Auburn School Department

**Equipment Description:** As identified in Exhibit A to the performance contract between Lessee and Siemens Building Technologies, Inc.

**Principal Sum:** \$1,590,000.00

**Equipment Locations:** To be provided in the performance contract between Lessee and Siemens Building Technologies, Inc.

**Lease Commencement:** Assumed to be December 15, 2007.

**Lease Term:** Nine (9) month construction period, eight (8) year five (5) month (101 months) repayment period.

**Lease Payments and Interest Rate:** As illustrated in the attached Exhibit "A", no lease payments will be scheduled during the nine (9) month construction period. During the repayment period, the monthly payments will increase by approximately 4% on each anniversary of the repayment period.

**The interest rate (subject to adjustment as described below) is 4.09%.**

**Adjustments to Lease Payments and Interest Rate:** The Lease Payments specified in the attached Exhibit "A" are based on a Total Amount Financed of \$1,590,000.00, and on a Reference Rate of 4.11% as published by The Wall Street Journal on November 20, 2007. The Reference Rate is hereby defined to be the yield to maturity of the U.S. Treasury Note having a 8.75% coupon and maturing on May 15, 2017, such Note having a remaining life closest to the maximum lease term, and in the case of multiple notes, the one trading closest to par. The Interest Rate will be fixed two (2) days prior to the funding date. The interest rate that

will actually be used in establishing the Lease Payments will be increased or decreased by one (1) basis point for each one (1) basis point increase or decrease in the Reference Rate as published by The Wall Street Journal two business days prior to the Lease Commencement Date, provided that the change in the Reference Rate is at least five (5) basis points.

- Escrow Fund:** Lessor will deposit the Principal Sum into an escrow fund on behalf of the Lessee to be used to acquire the Equipment. The escrow agreement will provide that these funds will be invested as directed by the Lessee, and that the investment earnings on these funds will accrue to the benefit of the Lessee.
- Prepayment:** There will no prepayment option during the first two (2) years; thereafter, prepayment will be allowed on any payment due date and will include a premium equal to two percent (2%) of the then outstanding principal balance.
- Type of Transaction:** This will be a net lease transaction, whereby any insurance, maintenance, filings, registration, searches, and taxes relating to the purchase, lease, ownership, possession and use of the Equipment and to the transaction, including Lessee's issuance costs and all items of a similar nature, will be for the Lessee's account.
- Tax Treatment:** The interest portion of the Lease Payments must be excludable from the gross income of the Lessor for federal income tax purposes.
- Non-Appropriation:** The Lease is subject to termination by the Lessee in the event funds for payment of the Lease are not appropriated for a given fiscal year.
- Insurance:** Lessee must provide evidence of physical damage and liability insurance in an amount and from an insurance carrier satisfactory to Lessor. Lessor must be listed on the policies as loss payee and additional insured, as applicable, and a certificate of insurance is to be provided to Lessor.
- Title:** Title to the Equipment will transfer to Lessees upon acceptance of the Equipment, subject to divestment for default or non-appropriation of funds by Lessee.
- Grant of Security Interest:** Lessor shall be granted a first priority security interest in the Equipment, together with all accessions, attachments, replacements, substitutions, modifications, and additions thereto, then existing or thereafter acquired, and all proceeds thereof (including insurance proceeds).

**Legal Opinion:** An opinion of Lessee's legal counsel, reasonably acceptable to Lessor, as to, among other things, the legality, enforceability, authority, title, execution, and tax effect of the Lease will be required.

**Documentation:** All documentation will be provided by Lessor and must be satisfactory to all parties concerned. The following standard documents, among others, will be required for this transaction:

1. Lease Agreement
2. Payment/Amortization Schedule
3. Escrow Agreement
4. Acceptance Certificate
5. Essential Use / Source of Funds Letter
6. Opinion(s) of Counsel as noted above
7. Authorizing Resolutions
8. Officer's Certificate
9. IRS Form 8038-G
10. Insurance Coverage Requirements Form

Lessor may, at its discretion, order UCC, judgment, tax, and similar searches against Lessee. Additional documentation and/or information may be required based on the results of those searches.

**Caveat:** **This is a proposal only. It does not represent a commitment from Lessor to enter into any financing or purchase any equipment. Such a commitment is subject to the approval of various authorities within Lessor, and to the execution and receipt of documentation acceptable to Lessor and Lessor's counsel.**

**Fees and Expenses:** Lessor will absorb its own legal fees; Lessee will pay a documentation fee of \$500, and will pay the escrow agent's fee of \$1,500.

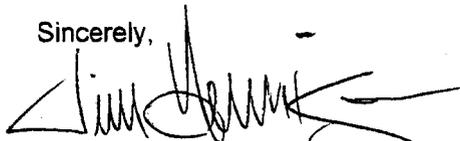
**Proposal Expiration:** This proposal will expire on December 6, 2007 if it has not been accepted by Lessee on or before that date by signing below and returning a copy to the undersigned.

By selecting Siemens Financial Services, Inc. as your financing source, the Auburn School Department has the advantage of a "100% Siemens" solution for this important and long-term project. The efficiencies which flow from a total Siemens solution manifest themselves in many ways including a seamless interface between Siemens Building Technologies, Inc. and Siemens Financial Services, Inc. over the life of the project. Our performance contract financing focus allows us to be expert in this field, which translates into a smooth funding process for your staff as we coordinate with your staff, your outside counsel, Siemens Building Technologies, and the escrow agent.

Thank you for the opportunity to present this proposal. Please feel free to contact me if you have any questions or would like to discuss the proposal in greater detail. Upon

Lessor's receipt of a countersigned copy of this proposal letter, Lessor shall promptly begin the approval process so as to be in a position to finalize this transaction with Lessee.

Sincerely,



James M. Hennigan, Account Executive  
Siemens Financial Services, Inc.

Office: (315) 437-2726

Cellular: (315) 708-9455

Fax: (315) 437-9049.

**Proposal Accepted:**

We hereby approve and accept the leasing proposal as presented in the above letter. In reviewing this application, Lessor is hereby authorized to obtain and utilize such credit information as may be deemed necessary and desirable by Lessor for the analysis and the processing of this proposed transaction.

**Lessee:** Auburn School Department

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit "A"**  
to Siemens Financial Services, Inc. Proposal Letter  
Dated November 21, 2007

<u>Month No.</u>	<u>Date Monthly Payments Begin</u>	<u>Monthly Lease Payments</u>	<u>SBT Project Year</u>	<u>Lease Payments In Project Year</u>
C1-C9	12/14/2007	Zero	C	N/A
1-12	9/15/2008	\$16,691.92	1	\$200,303.04
13-24	9/15/2009	\$17,341.42	2	\$208,097.04
25-36	9/15/2010	\$18,016.19	3	\$216,194.28
37-48	9/15/2011	\$18,717.23	4	\$224,606.76
49-60	9/15/2012	\$19,445.53	5	\$233,346.36
61-72	9/15/2013	\$20,202.18	6	\$242,426.16
73-84	9/15/2014	\$20,988.27	7	\$251,859.24
85-96	9/15/2015	\$21,804.95	8	\$261,659.40
97-101	9/15/2016	\$22,653.41	9	\$113,267.05

\*Note: Months C1-C9 represent the construction period

AMORTIZATION SCHEDULE - Normal Amortization

	Date	Payment	Interest	Principal	Balance
Loan	12/15/2007				1,590,000.00
2007 Totals		0.00	0.00	0.00	
1	1/15/2008	0.00	5,419.25	5,419.25-	1,595,419.25
2	2/15/2008	0.00	5,437.72	5,437.72-	1,600,856.97
3	3/15/2008	0.00	5,456.25	5,456.25-	1,606,313.22
4	4/15/2008	0.00	5,474.85	5,474.85-	1,611,788.07
5	5/15/2008	0.00	5,493.51	5,493.51-	1,617,281.58
6	6/15/2008	0.00	5,512.23	5,512.23-	1,622,793.81
7	7/15/2008	0.00	5,531.02	5,531.02-	1,628,324.83
8	8/15/2008	0.00	5,549.87	5,549.87-	1,633,874.70
9	9/15/2008	16,691.92	5,568.79	11,123.13	1,622,751.57
10	10/15/2008	16,691.92	5,530.88	11,161.04	1,611,590.53
11	11/15/2008	16,691.92	5,492.84	11,199.08	1,600,391.45
12	12/15/2008	16,691.92	5,454.67	11,237.25	1,589,154.20
2008 Totals		66,767.68	65,921.88	845.80	
13	1/15/2009	16,691.92	5,416.37	11,275.55	1,577,878.65
14	2/15/2009	16,691.92	5,377.94	11,313.98	1,566,564.67
15	3/15/2009	16,691.92	5,339.37	11,352.55	1,555,212.12
16	4/15/2009	16,691.92	5,300.68	11,391.24	1,543,820.88
17	5/15/2009	16,691.92	5,261.86	11,430.06	1,532,390.82
18	6/15/2009	16,691.92	5,222.90	11,469.02	1,520,921.80
19	7/15/2009	16,691.92	5,183.81	11,508.11	1,509,413.69
20	8/15/2009	16,691.92	5,144.58	11,547.34	1,497,866.35
21	9/15/2009	17,341.42	5,105.23	12,236.19	1,485,630.16
22	10/15/2009	17,341.42	5,063.52	12,277.90	1,473,352.26
23	11/15/2009	17,341.42	5,021.67	12,319.75	1,461,032.51
24	12/15/2009	17,341.42	4,979.68	12,361.74	1,448,670.77
2009 Totals		202,901.04	62,417.61	140,483.43	
25	1/15/2010	17,341.42	4,937.55	12,403.87	1,436,266.90
26	2/15/2010	17,341.42	4,895.28	12,446.14	1,423,820.76
27	3/15/2010	17,341.42	4,852.85	12,488.57	1,411,332.19
28	4/15/2010	17,341.42	4,810.29	12,531.13	1,398,801.06
29	5/15/2010	17,341.42	4,767.58	12,573.84	1,386,227.22
30	6/15/2010	17,341.42	4,724.72	12,616.70	1,373,610.52
31	7/15/2010	17,341.42	4,681.72	12,659.70	1,360,950.82
32	8/15/2010	17,341.42	4,638.57	12,702.85	1,348,247.97
33	9/15/2010	18,016.19	4,595.28	13,420.91	1,334,827.06
34	10/15/2010	18,016.19	4,549.53	13,466.66	1,321,360.40

35	11/15/2010	18,016.19	4,503.64	13,512.55	1,307,847.85
36	12/15/2010	18,016.19	4,457.58	13,558.61	1,294,289.24
2010 Totals		210,796.12	56,414.59	154,381.53	
37	1/15/2011	18,016.19	4,411.37	13,604.82	1,280,684.42
38	2/15/2011	18,016.19	4,365.00	13,651.19	1,267,033.23
39	3/15/2011	18,016.19	4,318.47	13,697.72	1,253,335.51
40	4/15/2011	18,016.19	4,271.78	13,744.41	1,239,591.10
41	5/15/2011	18,016.19	4,224.94	13,791.25	1,225,799.85
42	6/15/2011	18,016.19	4,177.93	13,838.26	1,211,961.59
43	7/15/2011	18,016.19	4,130.77	13,885.42	1,198,076.17
44	8/15/2011	18,016.19	4,083.44	13,932.75	1,184,143.42
45	9/15/2011	18,717.23	4,035.95	14,681.28	1,169,462.14
46	10/15/2011	18,717.23	3,985.92	14,731.31	1,154,730.83
47	11/15/2011	18,717.23	3,935.71	14,781.52	1,139,949.31
48	12/15/2011	18,717.23	3,885.33	14,831.90	1,125,117.41
2011 Totals		218,998.44	49,826.61	169,171.83	
49	1/15/2012	18,717.23	3,834.77	14,882.46	1,110,234.95
50	2/15/2012	18,717.23	3,784.05	14,933.18	1,095,301.77
51	3/15/2012	18,717.23	3,733.15	14,984.08	1,080,317.69
52	4/15/2012	18,717.23	3,682.08	15,035.15	1,065,282.54
53	5/15/2012	18,717.23	3,630.84	15,086.39	1,050,196.15
54	6/15/2012	18,717.23	3,579.42	15,137.81	1,035,058.34
55	7/15/2012	18,717.23	3,527.82	15,189.41	1,019,868.93
56	8/15/2012	18,717.23	3,476.05	15,241.18	1,004,627.75
57	9/15/2012	19,445.53	3,424.11	16,021.42	988,606.33
58	10/15/2012	19,445.53	3,369.50	16,076.03	972,530.30
59	11/15/2012	19,445.53	3,314.71	16,130.82	956,399.48
60	12/15/2012	19,445.53	3,259.73	16,185.80	940,213.68
2012 Totals		227,519.96	42,616.23	184,903.73	
61	1/15/2013	19,445.53	3,204.56	16,240.97	923,972.71
62	2/15/2013	19,445.53	3,149.21	16,296.32	907,676.39
63	3/15/2013	19,445.53	3,093.66	16,351.87	891,324.52
64	4/15/2013	19,445.53	3,037.93	16,407.60	874,916.92
65	5/15/2013	19,445.53	2,982.01	16,463.52	858,453.40
66	6/15/2013	19,445.53	2,925.89	16,519.64	841,933.76
67	7/15/2013	19,445.53	2,869.59	16,575.94	825,357.82
68	8/15/2013	19,445.53	2,813.09	16,632.44	808,725.38
69	9/15/2013	20,202.18	2,756.41	17,445.77	791,279.61
70	10/15/2013	20,202.18	2,696.94	17,505.24	773,774.37
71	11/15/2013	20,202.18	2,637.28	17,564.90	756,209.47
72	12/15/2013	20,202.18	2,577.41	17,624.77	738,584.70
2013 Totals		236,372.96	34,743.98	201,628.98	

73	1/15/2014	20,202.18	2,517.34	17,684.84	720,899.86
74	2/15/2014	20,202.18	2,457.07	17,745.11	703,154.75
75	3/15/2014	20,202.18	2,396.59	17,805.59	685,349.16
76	4/15/2014	20,202.18	2,335.90	17,866.28	667,482.88
77	5/15/2014	20,202.18	2,275.00	17,927.18	649,555.70
78	6/15/2014	20,202.18	2,213.90	17,988.28	631,567.42
79	7/15/2014	20,202.18	2,152.59	18,049.59	613,517.83
80	8/15/2014	20,202.18	2,091.07	18,111.11	595,406.72
81	9/15/2014	20,988.27	2,029.34	18,958.93	576,447.79
82	10/15/2014	20,988.27	1,964.73	19,023.54	557,424.25
83	11/15/2014	20,988.27	1,899.89	19,088.38	538,335.87
84	12/15/2014	20,988.27	1,834.83	19,153.44	519,182.43
2014 Totals		245,570.52	26,168.25	219,402.27	
85	1/15/2015	20,988.27	1,769.55	19,218.72	499,963.71
86	2/15/2015	20,988.27	1,704.04	19,284.23	480,679.48
87	3/15/2015	20,988.27	1,638.32	19,349.95	461,329.53
88	4/15/2015	20,988.27	1,572.36	19,415.91	441,913.62
89	5/15/2015	20,988.27	1,506.19	19,482.08	422,431.54
90	6/15/2015	20,988.27	1,439.79	19,548.48	402,883.06
91	7/15/2015	20,988.27	1,373.16	19,615.11	383,267.95
92	8/15/2015	20,988.27	1,306.30	19,681.97	363,585.98
93	9/15/2015	21,804.95	1,239.22	20,565.73	343,020.25
94	10/15/2015	21,804.95	1,169.13	20,635.82	322,384.43
95	11/15/2015	21,804.95	1,098.79	20,706.16	301,678.27
96	12/15/2015	21,804.95	1,028.22	20,776.73	280,901.54
2015 Totals		255,125.96	16,845.07	238,280.89	
97	1/15/2016	21,804.95	957.41	20,847.54	260,054.00
98	2/15/2016	21,804.95	886.35	20,918.60	239,135.40
99	3/15/2016	21,804.95	815.05	20,989.90	218,145.50
100	4/15/2016	21,804.95	743.51	21,061.44	197,084.06
101	5/15/2016	21,804.95	671.73	21,133.22	175,950.84
102	6/15/2016	21,804.95	599.70	21,205.25	154,745.59
103	7/15/2016	21,804.95	527.42	21,277.53	133,468.06
104	8/15/2016	21,804.95	454.90	21,350.05	112,118.01
105	9/15/2016	22,653.41	382.14	22,271.27	89,846.74
106	10/15/2016	22,653.41	306.23	22,347.18	67,499.56
107	11/15/2016	22,653.41	230.06	22,423.35	45,076.21
108	12/15/2016	22,653.41	153.63	22,499.78	22,576.43
2016 Totals		265,053.24	6,728.13	258,325.11	
109	1/15/2017	22,653.41	76.98	22,576.43	0.00
2017 Totals		22,653.41	76.98	22,576.43	

Grand Totals            1,951,759.33   361,759.33   1,590,000.00

Last interest amount increased by 0.03 due to rounding.

Note: this amortization schedule is subject to change as described in "Adjustment to Lease Payments" section of this proposal.

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# **PERFORMANCE CONTRACTING AGREEMENT**

between

and

**Siemens Building Technologies, Inc.**

## TABLE OF ARTICLES

1. Agreement
2. Glossary
3. General
4. Performance Guarantee
5. Work by SIEMENS
6. The CLIENT'S Responsibility
7. Changes and Delays
8. Compensation
9. Acceptance
10. Insurance and Allocation of Risk
11. Hazardous Material Provisions
12. Miscellaneous Provisions
13. Maintenance Services Technical Support Program

# PERFORMANCE CONTRACTING AGREEMENT

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Number: -01022008001

## Article 1 AGREEMENT

This **AGREEMENT**, is made this **1st** day of **December, 2007** by and between Siemens Building Technologies, Inc., ("SIEMENS") and the party identified below as the CLIENT.

**The CLIENT: Auburn School Department**  
**60 Court Street Suite 227**  
**P O Box 800**  
**Auburn, Maine 04210**  
**-0800**

DESIGNATED REPRESENTATIVE: **Thomas Morrill**  
PHONE: 207-333-6601 ext 1210 FAX: 207-784-2969

**Siemens Building Technologies, Inc.**  
1000 Deerfield Parkway  
Buffalo Grove, Illinois 60018

**With offices at:**  
66 Mussey Road  
Scarborough, Maine 04074

DESIGNATED REPRESENTATIVE: **Brent Dudley**  
PHONE: 207-885-4120 FAX: 877-520-6663

For services in connection with the following project:

**Project** Siemens to provide a turnkey guaranteed savings project to include new lighting replacements and upgrades, occupancy control, boiler replacements, building envelope, high efficiency motors, plug load controllers, energy management control replacement and upgrades, water upgrades, project management, and variable frequency drives. Work to be performed at listed Auburn School Department Schools.

# PERFORMANCE CONTRACTING AGREEMENT

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## Articles and Attachments

Agreement shall consist of this document which includes the following thirteen articles and indicated Exhibits ("Contract Documents") which are acknowledged by the CLIENT and SIEMENS and incorporated herein by this reference:

### Articles

1. Agreement
2. Glossary
3. General
4. Performance Guarantee
5. Work BY SIEMENS
6. The CLIENT'S Responsibility
7. Changes and Delays
8. Compensation
9. Acceptance
10. Insurance and Allocation of Risk
11. Hazardous Material Provisions
12. Miscellaneous Provisions
13. Maintenance Services Technical Support Program

### Exhibits

- Exhibit A     Scope of Work and Services  
Exhibit B     Payment Schedule(s)  
Exhibit C     Performance Assurance

This Agreement, when accepted in writing by an authorized representative of the CLIENT and by an authorized representative of SIEMENS, constitutes the entire, complete and exclusive agreement between the Parties. The above documents constitute the entire Agreement between the CLIENT and SIEMENS relative to the project scope as stated in Exhibit A and supersede all prior and contemporaneous negotiations, statements, representations, agreements, letters of intent, awards, or proposals, either written or oral relative to the same. This Agreement may be modified only by a written instrument signed by both Parties.

### COMPENSATION/TERMS OF PAYMENT:

As full consideration for the performance of the Work and Services set forth in Exhibit A and for the Performance Assurance set forth in Exhibit C, the CLIENT shall pay to SIEMENS the Contract Sum in such manner as agreed in Exhibit B and in accordance with the payment terms and conditions established by the Contract Documents.

Agreed for Auburn Schools

(Signature) by: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

Agreed for **Siemens Building Technologies, Inc.**

(Signature) by: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

(Signature) by: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

# PERFORMANCE CONTRACTING AGREEMENT

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## Article 2

### Glossary

The following terms shall, for all purposes of the Contract Documents comprising this Agreement, have the meanings stated herein, unless the context otherwise specifies or requires, or unless otherwise defined in the Contract Documents:

**“Acceptance”** means the CLIENT has signed the Certificate of Substantial Completion.

**“Acceptance Date”** means the date on which the CLIENT signs the Certificate of Substantial Completion.

**“Accumulated Realized Savings”** means the sum of the actual savings achieved from the Effective Contract Date of this Agreement through the end of the current Annual Period, derived from the sum of the Measured & Verified Savings plus the Stipulated Savings.

**“Accumulated Guaranteed Savings”** means the sum of the Guaranteed Measured & Verified Savings plus the Stipulated Savings from the Guarantee Date of the Agreement through the end of the current Annual Period.

**“Annual Guaranteed Savings”** are the Measured & Verified Savings and the Stipulated Savings that occur in any Annual Period of the Guarantee Term.

**“Annual Period”** means a twelve (12) month period beginning on the Guarantee Date or on any anniversary date thereof.

**“Baseline”** means a period of time or multiple periods of time that have occurred prior to project commencement, which has been agreed upon and is set forth in Exhibit C. The energy usage, operating practices, and facility and equipment in place during such time period represents the basis against which all future energy and operating usage will be compared in order to determine the Accumulated Realized Savings.

**“BTU”** a unit of thermal energy defined as a British Thermal Unit.

**“Certificate of Substantial Completion”** means documentation executed by the CLIENT agreeing that the Work, or a designated portion of the Work, is Substantially Complete in accordance with the Agreement and such Work is accepted by the CLIENT.

**“CLIENT Representative”** means the person identified to SIEMENS by the CLIENT as the person authorized to make decisions on behalf of the CLIENT as set forth in Section 6.1(a) hereof.

**“Construction Period”** means the period between the Effective Contract Date and the first day of the month following the Substantial Completion Date.

**“Construction Period Savings”** means the actual accumulated Measured & Verified Savings plus the Stipulated Savings achieved from the Effective Contract Date of this Agreement until the Guarantee Date.

**“Contracted Baseline”** means the future annual period or multiple annual periods post-FIM implementation agreed upon and stated in Exhibit C that define the energy usage, operating practices, and facility and equipment in place post-FIM implementation and represents the basis on which the Guaranteed Savings are calculated.

**“Deliverable”** means a report or drawing specifically prepared for and deliverable to the CLIENT pursuant to the terms hereof.

**“Effective Contract Date”** is the date appearing at the top of this contract, unless specifically indicated otherwise.

**“Energy Conservation Measure”** or **“ECM”** means the equipment, devices, materials and/or software as installed by SIEMENS at the Facilities, or as repaired or replaced by the CLIENT hereunder, for the purpose of improving the efficiency of utility consumption.

## PERFORMANCE CONTRACTING AGREEMENT

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**“Equipment”** means the installed products to be provided by SIEMENS as described in the Scope of Work and Services, Exhibit A.

**“Escalation Factor”** means an annual escalation percentage to be applied to the previous year’s Energy Savings, Operational Savings and Technical Support Program, beginning and occurring on dates outlined in Performance Assurance, Exhibit C.

**“Facility” or “Facilities”** means the building(s) or structure(s) where Work will be installed or implemented. It shall have the same meaning as the term “Site”.

**“Facility Improvement Measures” or “FIMs”** means the methods, techniques, application of know-how, installation of devices or otherwise, described in the Scope of Work and Services, Exhibit A, that are undertaken by SIEMENS as a result of this Agreement with the intent of generating net savings or efficiencies at or in connection with the operation of the Facilities, including without limitation the ECMs, OIMs, TIMs, USMs, WCMs, SCMs and any other, non-conservation-related activities, means or methods.

**“Guarantee Date”** means the date on which the CLIENT executes the final Certificate of Substantial Completion, thus indicating that the Construction Period is complete.

**“Guaranteed Measured & Verified Savings”** means the Measured & Verified Savings guaranteed to be achieved as described in the Performance Assurance, Exhibit C.

**“Guaranteed Savings”** means the amount of savings that this Agreement anticipates will be achieved at the Facilities defined in this Agreement, calculated as the aggregate of the Measured & Verified Savings and the Stipulated Savings amounts identified in the Performance Assurance, Exhibit C, but shall not exceed the aggregate of the Contract Sum; the Performance Assurance TSP Payments; and the CLIENT’S cost of financing the Work.

**“Instruments”** means all reports, notes, calculations, data, drawings, estimates, specifications, manuals, documents, including Deliverables, all computer programs, codes and computerized materials prepared by or for SIEMENS are instruments of SIEMENS’ work.

**“kW” and “kWh”** means kilowatt and kilowatt hour, respectively.

**“Maintenance Services TSP”** means the Services performed under a Technical Support Program as stated in the Scope of Work and Services, Exhibit A.

**“Material Change”** means an event causing a 10% deviation in the Contracted Baseline.

**“Measured and Verified Savings”** means those savings that can be measured and verified by the methodology as set forth in Performance Assurance, Exhibit C.

**“Operational Improvement Measure” or “OIM”** means the programs, practices, methodologies, devices, materials and/or software as installed or instituted by SIEMENS at the Facilities, or as instituted by the CLIENT hereunder, for the purpose of improving the efficiency of operations activities, operational costs and/or operational results as described in the Scope of Work and Services Exhibit A.

**“Parties”** means the CLIENT and SIEMENS.

**“Performance Assurance”** is the process of ascertaining that the FIMs defined in Scope of Work and Services, Exhibit A, are performing at the guaranteed values that are defined in Performance Assurance, Exhibit C.

**“Performance Assurance TSP”** means the Services performed to monitor and report the performance relative to the guarantees defined in Performance Assurance, Exhibit C.

**“Performance Guarantee”** means the result of the Performance Assurance process as set forth in Exhibit C hereof.

## PERFORMANCE CONTRACTING AGREEMENT

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**"Performance Guarantee Period"** means the entire period from the Guarantee Date of this Agreement until the termination or expiration of this Agreement as set forth herein.

**"Permitted Users"** means the CLIENT, its employees and agents.

**"Realized Annual Savings"** means the actual savings achieved by the CLIENT during an Annual Period, calculated as the sum of the Measured & Verified Savings plus the Stipulated Savings.

**"Savings Excess"** means the Realized Annual Savings less the Annual Guaranteed Savings for the Annual Period. If the amount is zero or greater, the Guarantee Savings in Performance Assurance, Exhibit C, has been fulfilled.

**"Savings Shortfall"** means the Realized Annual Savings less the Annual Guaranteed Savings for the Annual Period. If the amount is less than zero the Guarantee Savings in Performance Assurance, Exhibit C, has not been fulfilled.

**"Services"** means those services to be provided by SIEMENS as described in the Scope of Work and Services, Exhibit A and as described in Performance Assurance, Exhibit C.

**"Site"** shall have the same meaning as Facilities.

**"Stipulated Savings"** are the savings that have been mutually agreed upon and are stipulated to by SIEMENS and the CLIENT prior to or upon implementation of the FIMs. The Stipulated Savings cannot be changed unless agreed upon by the Parties or as set forth herein. The Stipulated Savings for each Annual Period, with the corresponding Escalation Factor if applicable, are set forth in Performance Assurance, Exhibit C.

**"Substantial Completion"** or **"Substantially Complete"** means the first to occur of the following: (i) the Work, or any identifiable portion thereof, is sufficiently complete, in accordance with the provisions of this Agreement relating to the Scope of the Work and Services, Exhibit A, that the CLIENT will be able to realize from such Work substantially all of the practical benefits intended to be gained therefrom, or otherwise to employ the Work or the FIMs associated therewith for its intended purposes; or (ii) temporary, qualified or final certificates of occupancy, if required, have been issued with respect to such portions of the Work by the appropriate public authority.

**"Technical Support Program"** or **"TSP"** is a plan detailing the tasks, material, and responsibilities provided by SIEMENS to the CLIENT during a specified time period defined in the Scope of Work and Services, Exhibit A, and/or described in the Performance Assurance, Exhibit C.

**"Term"** is a stipulated period of time starting on the Effective Contract Date of this Agreement and ending at the termination or expiration of this Agreement as set forth herein.

**"Technology Improvement Measure"** or **"TIM"** means the application of new technology methods, devices, materials and/or software as installed or instituted by SIEMENS at the Facilities for the purpose of improving the efficiency of operations activities, operational costs and/or utility costs as described in the Scope of Work and Services, Exhibit A.

**"Therm"** is a measure of energy equal to 100,000 BTUs.

**"Total Guaranteed Savings"** are the amount of savings identified to be achievable based on calculations and adjustments as set forth in Performance Assurance, Exhibit C. Total Guaranteed Savings includes all savings that SIEMENS has guaranteed for each Annual Period of the Term and may also include Construction Period Savings if specified in Performance Assurance, Exhibit C.

**"Utility Services Measure"** or **"USM"** means the application of utility services methods and technology as described in the Scope of Work and Services, Exhibit A.

**"Work"** means collective labor, equipment and services comprising the FIMs to be performed by SIEMENS as described in the Scope of Work and Services, Exhibit A.

## PERFORMANCE CONTRACTING AGREEMENT

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**“Water Conservation Measure”** or **“WCM”** means the equipment, devices, materials, programs, practices, methodologies and/or software as installed or coordinated by SIEMENS at the Facility for the purpose of improving the efficiency of the Facility's water consumption, as described in Scope of Work and Services, Exhibit A.

**“Waste Conservation Measure”** or **“SCM”** means the equipment, devices, materials, programs, practices, methodologies and/or software as installed or coordinated by SIEMENS at the Facility for the purpose of improving the efficiency of operations, activities, operational costs and/or operations results, as described in Scope of Work and Services, Exhibit A.

### Article 3

#### General

- 3.1 The CLIENT hereby engages and SIEMENS hereby accepts the engagement to perform and provide the Work and Services as set forth in Exhibit A hereof and in accordance with the terms and conditions of this Agreement.
- 3.2 SIEMENS shall perform the Work as an independent contractor with exclusive control of the manner and means of performing the Work in accordance with the requirements of this Agreement. SIEMENS has no authority to act or make any agreements or representations on behalf of the CLIENT. This Agreement is not intended, and shall not be construed to create, between the CLIENT and SIEMENS, the relationship of principal and agent, joint venturers, co-partners or any other such relationship, the existence of which is hereby expressly denied. No employee or agent of SIEMENS shall be, or shall be deemed to be, an employee or agent of the CLIENT.
- 3.3 SIEMENS represents, warrants and covenants to the CLIENT that:
- (a) It has all requisite corporate power and statutory authority to enter into this Agreement, and that its execution hereof has been duly authorized and does not and will not constitute a breach or violation of any of SIEMENS' organizational documents, any applicable laws or regulations, or any agreements with third parties;
  - (b) It has done and will continue to do all things necessary to preserve and keep in full force and effect its existence and the Agreement;
  - (c) This Agreement is the legal, valid and binding obligation of SIEMENS, in accordance with its terms, and all requirements have been met and procedures have been followed by SIEMENS to ensure the enforceability of the Agreement;
  - (d) To SIEMENS' best knowledge, there is no pending or threatened, suit, action, litigation or proceeding against or affecting SIEMENS that affects the validity or enforceability of this Agreement; and,
  - (e) It is duly authorized to do business in all locations where the Work and Service are to be performed.
- 3.4 The CLIENT represents, warrants and covenants to SIEMENS that:
- (a) It has all requisite corporate power and statutory authority to enter into this Agreement, and that its execution hereof has been duly authorized and does not and will not constitute a breach or violation of any of the CLIENT'S organizational documents, any applicable laws or regulations, or any agreements with third parties;
  - (b) It has done and will continue to do all things necessary to preserve and keep in full force and effect its existence and the Agreement;
  - (c) This Agreement is the legal, valid and binding obligation of the CLIENT, in accordance with its terms, and all requirements have been met and procedures have been followed by the CLIENT to ensure the enforceability of the Agreement; and
  - (d) To the CLIENT'S best knowledge, there is no pending or threatened, suit, action, litigation or proceeding against or affecting the CLIENT that affects the validity or enforceability of this Agreement.

### Article 4

#### Performance Guarantee

- 4.1 SIEMENS guarantees that the Guaranteed Savings generated from the Guarantee Date to the last date of the Performance Guarantee Period will be no less than the Total Guaranteed Savings shown in Performance Assurance, Exhibit C. The measurement and verification calculation methodology for determining the Measured & Verified Savings is set forth in Performance Assurance, Exhibit C.

4.1.1 General. Except as otherwise provided, energy savings will be calculated for each month of each Annual Savings Period as the product of (a) “units of energy saved” (kWh, Therms, GJ, etc.) multiplied by (b) “cost of energy.”

## PERFORMANCE CONTRACTING AGREEMENT

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- (a) Units of energy saved are computed by a software application which is specified in Exhibit C. Units of energy saved are calculated by subtracting current period measured units of energy consumed from the adjusted Baseline units of energy defined in Article 5 of Exhibit C. Adjustments to the Baseline energy units are based on factors such as weather, occupancy, operating hours, etc., and changes to the Contracted Baseline conditions and operating practices as defined in Article 7 of Exhibit C.
- (b) Costs of energy are defined in Article 6 of Exhibit C, Utility Rate Structures and Escalation Rates.
- 4.2 Any future escalation factors applied to utility, energy or other costs which are to be applied are set forth in Exhibit C. SIEMENS and the CLIENT agree that the Baseline data which is set forth in Exhibit C is an full and accurate reflection of the existing Facility, equipment, operation, business use and energy usage, and that such Baseline data will be the basis on which all future energy use will be compared in order to determine both the Annual Realized Savings and the Accumulated Realized Savings.
- 4.3 SIEMENS and the CLIENT agree that the Contracted Baseline defined in Exhibit C will represent the new operating and/or equipment profile of the Facility resulting from the FIM implementation. The Performance Guarantee is dependent upon and is subject to the express condition that the CLIENT operates and maintains its Facilities within the Contracted Baseline parameters during the entire term of the Performance Guarantee Period.
- 4.4 The CLIENT agrees to notify SIEMENS prior to or within 30 days of any:
- (a) Material Change to operating schedules, strategies, equipment and conditions in the Facility from those described in the Contracted Baseline data.
- (b) Any other Material Changes in or at the Facility that may increase or decrease energy usage, including without limitation: changes in operations, business conducted, occupancy, hours of operation, and energy consuming equipment and malfunctions, failures and related changes in energy consuming equipment; and
- (c) Any damage to, or destruction of, the FIM Work that may result in a Material Change.
- 4.5 SIEMENS agrees to respond and advise the CLIENT within 30 days of the receipt of a notice of a Material Change that SIEMENS will:
- (a) Continue the Performance Assurance without adjustments;
- (b) Require an adjustment to the Performance Assurance as a result of the Material Change; or,
- (c) Where a commercially reasonable adjustment to the Performance Guarantee is unavailable, terminate the Performance Assurance and terminate the Performance Guarantee.
- 4.6 Failure of the CLIENT to notify SIEMENS of a Material Change shall void the Performance Guarantee and the Performance Assurance where a commercially reasonable adjustment is unavailable and where a Savings Shortfall cannot be prevented.
- 4.7 Performance Guarantee Period savings reconciliation as identified in Section 4.1 will be performed at the end of each annual period as follows unless otherwise agreed:
- (a) Within thirty (30) days of the Guarantee Date the Construction Savings shall be reconciled and added to the Accumulated Realized Savings;
- (b) At each annual reconciliation, the Realized Annual Savings shall be applied to the Accumulated Realized Savings.
- 1) Should the Accumulated Realized Savings be greater than the Accumulated Guaranteed Savings, a Savings Excess shall be recorded.
- 2) Should the Accumulated Realized Savings be less than the Accumulated Guaranteed Savings, a Savings Shortfall shall be recorded.
- (c) A Savings Shortfall shall be paid by SIEMENS within thirty (30) days following the CLIENT'S acceptance of the reconciliation and the amount paid shall be then added to calculate the Accumulated Realized Savings.
- (d) If SIEMENS can correct a shortfall through an operational improvement at no material expense or material inconvenience to the CLIENT and with no future operational expenses, and the CLIENT declines to allow such operational improvement, then any future Savings Shortfall that the improvement would have corrected will be negated. The amount of such Savings Shortfall shall be added to calculate the Accumulated Realized Savings.

The Performance Guarantee is dependent upon and is subject to the express condition that the CLIENT enter into and maintain, during the entire term of the Performance Guarantee Period, the Performance Assurance TSP. If the CLIENT

## PERFORMANCE CONTRACTING AGREEMENT

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fails to enter into, breaches, cancels or otherwise causes the termination of the Performance Assurance TSP this Performance Guarantee shall terminate immediately and be void and of no force or effect. The services to be provided under the Performance Assurance TSP are defined in Exhibit A.

- 4.9 The payments and credits based on Savings Shortfalls, if any, are the sole remedy of the CLIENT for this Performance Guarantee. Any payments made or to be made to the CLIENT under the terms of this Performance Guarantee shall not exceed the payments actually made by CLIENT to SIEMENS for the aggregate of the Contract Sum; the Performance Assurance TSP Payments; and, the CLIENT'S cost of financing the Work.
- 4.10 The Performance Assurance TSP is the technical service to be provided by SIEMENS to the CLIENT during the Performance Guarantee Period, commencing on the Guarantee Date. Performance Assurance TSP is defined in the Glossary and described more fully in Exhibit A.
- (a) The CLIENT represents that all existing equipment (equipment that is not installed by SIEMENS under this Agreement) deemed necessary to achieve the Performance Guarantee is in satisfactory working condition. Prior to the beginning of the Guarantee Period SIEMENS will have inspected all such existing equipment and report any deficiencies to the CLIENT.
- (b) If the existing equipment or Equipment installed by SIEMENS is altered or moved by any person, including the CLIENT, other than SIEMENS or a person authorized by SIEMENS, the CLIENT shall immediately notify SIEMENS in writing, and SIEMENS reserves the right to perform a reacceptance test on, or if necessary a re-commissioning of, the system at the CLIENT'S expense.
- 4.11 SIEMENS will have no liability or obligation to continue providing Performance Assurance TSP Services or any Guaranteed Savings under the Performance Guarantee in the event that the CLIENT fails to:
- (a) Authorize a re-acceptance test or re-commissioning that SIEMENS reasonably deems necessary in order to prevent a Savings Shortfall;
- (b) Provide access to any Site where Work is to be performed as required by the Contract Documents;
- (c) Service and maintain all equipment involved with the FIMs defined in the Scope of Work and Services, Exhibit A, in accordance with the manufacturers' recommendations in order to prevent a Savings Shortfall; or,
- (d) Provide SIEMENS with accurate Facility operating information, including energy usage and cost, executed preventive maintenance and repair records, building or equipment additions, and occupancy levels during each Annual Period, as soon as such information becomes reasonably available to the CLIENT.
- 4.12 Should the CLIENT decide to discontinue the guarantee before the end of the contract period, 30 days notice will be given and the CLIENT will select one of the following:
- (a) SIEMENS will cancel the Performance Assurance TSP and the CLIENT will re-invest the avoided cost into building improvements and services that improve the overall building(s) performance which are implemented by SIEMENS.
- (b) SIEMENS will cancel the Performance Assurance TSP and the CLIENT will pay to SIEMENS 100% of the remaining value left in the TSP Annual Period.
- 4.13 Unless expressly contrary to law, any disputes concerning the calculation of the Realized Annual Savings, the Accumulated Realized Savings, or changes to the Contracted Baseline under this Performance Guarantee, that are not resolved by negotiation between the Parties within thirty (30) days of the notice of the dispute, will be resolved by a third-party professional engineering firm reasonably acceptable to both SIEMENS and the CLIENT. The determination of such firm will be final and binding upon CLIENT and SIEMENS. SIEMENS and the CLIENT will each be responsible for half of the fees of such firm.

### Article 5

#### Work by SIEMENS

- 5.1 SIEMENS will perform the Work expressly described in this Agreement and in any work release documents or change orders that are issued under this Agreement and signed by both Parties. The Work performed by SIEMENS shall be conducted in a workmanlike manner.
- 5.2 SIEMENS shall perform the Work during its normal working hours, Monday through Friday inclusive, excluding holidays, unless otherwise agreed herein. The CLIENT shall make the Site available in order for Work to proceed in an efficient manner.

## PERFORMANCE CONTRACTING AGREEMENT

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- 5.3 SIEMENS is not required to conduct safety, reacceptance or other tests, install new devices or equipment or make modifications to any Equipment beyond the Scope set forth in this Agreement. Any CLIENT request to change the Scope or the nature of the Work must be in the form of a mutually agreed upon change order, effective only when executed by the Parties.
- 5.4 All Deliverables shall become the CLIENT'S property upon full payment to SIEMENS. SIEMENS may retain file copies of such Deliverables. All Instruments shall remain SIEMENS' property. To the extent specified in Exhibit A, Permitted Users shall have a right to make and retain copies of Instruments except uncompiled code, and to use all Instruments, provided, however, that the Instruments shall not be used or relied upon by any parties other than Permitted Users, and such use shall be limited to the particular project and location for which the Instruments were provided. All Deliverables and Instruments provided to the CLIENT are for Permitted Users' use and only for the purposes disclosed to SIEMENS. The CLIENT shall not transfer any Deliverables or copies of Instruments to others or use them or permit them to be used for any extension of the Work or any other project or purpose, without SIEMENS' express written consent. Any reuse of Deliverables or Instruments for other projects or locations without the written consent of SIEMENS, or use other than by Permitted Users, will be at Permitted Users' and such other user's sole risk and without liability to SIEMENS; and, unless expressly prohibited by law, the Permitted Users, jointly and severally shall indemnify, defend and hold SIEMENS harmless from any claims, losses or damages arising from such unauthorized use.
- 5.5 SIEMENS shall be responsible for any portion of the Work performed by any subcontractor of SIEMENS. SIEMENS shall not have any responsibility, duty or authority to direct, supervise or oversee any contractor of the CLIENT or their work or to provide the means, methods or sequence of their work or to stop their work. SIEMENS' work and/or presence at the Site shall not relieve others of their responsibility to the CLIENT or to others.
- 5.6 SIEMENS warrants that:
- (a) Unless otherwise agreed, all Equipment shall be new and of good quality. Until one year from the date the Equipment is installed all Equipment manufactured by SIEMENS or bearing its nameplate will be free from defects in material and workmanship arising from normal use and service.
  - (b) Labor for all Work, excluding TSP Services, is warranted to be free from defects in workmanship for one year after the Works are performed. TSP services are warranted to be free from defects in workmanship for ninety (90) days after the Services are performed.
- 5.7 Warranty Limitation:
- (a) The limited warranties set forth in Section 5.6 will be void as to, and shall not apply to, any Equipment (i) repaired, altered or improperly installed by any person other than SIEMENS or its authorized representative; (ii) subjected to unreasonable or improper use or storage, used beyond rated conditions, operated other than per SIEMENS' or the manufacturer's instructions, or otherwise subjected to improper maintenance, negligence or accident; (iii) damaged because of any use of the Equipment after the CLIENT has, or should have, knowledge of any defect in the Equipment; or (iv) not manufactured, fabricated and assembled by SIEMENS or not bearing SIEMENS' nameplate. However, SIEMENS assigns to the CLIENT, without recourse, any and all assignable warranties available from any manufacturer, supplier, or subcontractor of such Equipment.
  - (b) Any claim under the limited warranty granted above must be made in writing to SIEMENS within thirty (30) days after discovery of the claimed defect unless discovered directly by SIEMENS. Such limited warranty only extends to the CLIENT and not to any subsequent owner of the Equipment. The CLIENT'S sole and exclusive remedy for any Equipment or Services not conforming with this limited warranty is limited to, at SIEMENS' option: (i) repair or replacement of defective components of covered Equipment; (ii) re-performance of the defective portion of the Services; or, (iii) to the extent previously paid, the issuance of a credit or refund for the original purchase price of such defective component or portion of the Equipment or Services.
  - (c) SIEMENS shall not be required to repair or replace more than the component(s) of the Equipment or the portion of the Work and Services actually found to be defective. SIEMENS' warranty liability shall not exceed the purchase price of such item. Repaired or replaced Equipment or Services will be warranted hereunder only for the remaining portion of the original warranty period.
- 5.8 THE EXPRESS LIMITED WARRANTIES PROVIDED ABOVE ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, STATUTORY, EXPRESS, OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY

## PERFORMANCE CONTRACTING AGREEMENT

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DISCLAIMED. SIEMENS MAKES NO WARRANTY, EXPRESS OR IMPLIED, THAT ANY EQUIPMENT PROVIDED HEREUNDER WILL PREVENT ANY LOSS, OR WILL IN ALL CASES PROVIDE THE PROTECTION FOR WHICH IT IS INSTALLED OR INTENDED. THE LIMITED EXPRESS WARRANTIES AND REPRESENTATIONS SET FORTH IN THIS AGREEMENT MAY ONLY BE MODIFIED OR SUPPLEMENTED IN A WRITING EXECUTED BY A DULY AUTHORIZED SIGNATORY OF EACH PARTY.

- 5.9 SIEMENS will not be responsible for the maintenance, repair or replacement of, or Services necessitated by reason of:
- (a) Non-maintainable, non-replaceable or obsolete parts of the Equipment, including but not limited to: ductwork, shell and tubes, heat exchangers, coils, unit cabinets, casings, refractory material, electrical wiring, water and pneumatic piping, structural supports, cooling tower fill, slats and basins, etc. unless otherwise specifically stated herein; or
  - (b) CLIENT, or a third-party's, negligence, abuse, misuse, improper or inadequate repairs or modifications, improper operation, lack of operator maintenance or skill, corrosion, erosion, improper or inadequate water treatment, electrolytic action, chemical action, failure to comply with manufacturer's operating and environmental requirements, Acts of God, or other reasons beyond SIEMENS' control. Unless expressly agreed in writing, SIEMENS is not responsible for the removal or reinstallation of replacement valves, dampers, or waterflow and tamper switches with respect to pipes and ductwork, including vent or drain system. SIEMENS ASSUMES NO RESPONSIBILITY FOR ANY SERVICE PERFORMED ON ANY EQUIPMENT OTHER THAN FOR THAT PERFORMED BY SIEMENS OR ITS AGENTS.

### Article 6

#### The CLIENT'S Responsibilities

6.1 The CLIENT, without cost to SIEMENS, shall:

- (a) Designate a contact person with authority to make decisions for the CLIENT regarding the Work and provide SIEMENS with information sufficient to contact such person in an emergency;
- (b) Coordinate the work of contractors under CLIENT'S sole control with the Work and Services so as not to disrupt the Work and Services proceeding in an efficient manner.
- (c) Provide or arrange for 24 hour, 7 day per week access and make all reasonable provisions for SIEMENS to enter any Site where Work is to be performed so that Work may proceed in an efficient manner;
- (d) Permit SIEMENS to control and/or operate all building controls, systems, apparatus, equipment and machinery necessary to perform the Work;
- (e) Furnish SIEMENS with blueprints, surveys, legal descriptions, waste management plans and all other available information pertinent to the Work and any Site where the Work is to be performed as may be reasonably requested by SIEMENS;
- (f) Furnish SIEMENS with all approvals, permits and consents from government authorities and others as may be required for performance of the Work, except for those SIEMENS has expressly agreed in writing to obtain;
- (g) In accordance with Article 11 hereof, notify SIEMENS promptly of all known or suspected Hazardous Materials at the Site, of any contamination of the Site by Oil or Hazardous Material, and of any other conditions requiring special care or which may reasonably be expected to affect the Work, and provide SIEMENS with any available documents describing the quantity, nature, location and extent of such materials, contamination or conditions;
- (h) Comply with all laws and provide any notices required to be given to any government authorities in connection with the Work, except such notices SIEMENS has expressly agreed in writing to give;
- (i) Provide SIEMENS with legally required materials and information (including but not limited to Material Safety Data Sheets) related to all Hazardous Materials located at any Site where the Work is to be performed;
- (j) Furnish to SIEMENS any contingency plans, safety programs and other policies, plans or programs related to any Site where the Work is to be performed;
- (k) Operate, service and maintain all Equipment according to the manufacturer's recommendations including those set forth in the manufacturer's operating manuals or instructions, as well as all requirements of applicable law or of authorities having jurisdiction. The CLIENT shall furnish all needed servicing and parts for said FIMs, which parts shall become part of the FIMs. Such Equipment shall be operated only in the specified operating environment, which shall be supplied by the CLIENT, including without limitation: (1) suitable electrical service.

## PERFORMANCE CONTRACTING AGREEMENT

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including clean, stable, properly conditioned power, to all Equipment; (2) telephone lines, capacity and connectivity as required by such Equipment; and (3) heat, light, air conditioning or other environmental controls, and other utilities in accordance with the specifications for the Equipment;

- (l) Promptly notify SIEMENS of any unusual or materially changed operating conditions, hours of usage, system malfunctions, installed equipment or building alterations that may affect the Equipment or energy usage or any Services; and
  - (m) If applicable, provide and pay for a dedicated voice grade dial-up phone line, or a mutually agreed communication method, and install a terminal block, or an equivalent communication mechanism, in a mutually agreed upon location. All on-line service Equipment (excluding the phone line) will remain the property of SIEMENS unless otherwise stated herein.
- 6.2 Unless contrary to law, the CLIENT acknowledges that the technical and pricing information contained in this Agreement is confidential and proprietary to SIEMENS and agrees not to disclose it or otherwise make it available to others without SIEMENS' express written consent.
- 6.3 The CLIENT acknowledges that it is now and shall at all times remain in control of the project Site. Except as expressly provided herein, SIEMENS shall not be responsible for the adequacy of the health or safety programs or precautions related to the CLIENT'S activities or operations, the CLIENT'S other contractor, the work of any other person or entity, or Site conditions. SIEMENS shall not be responsible for inspecting, observing, reporting or correcting health or safety conditions or deficiencies of the CLIENT or others at the Site. So as not to discourage SIEMENS from voluntarily addressing health or safety issues while at the Site, in the event SIEMENS does address such issues by making observations, reports, suggestions or otherwise, the CLIENT shall not hold, or attempt to hold, SIEMENS liable or responsible on account thereof.

### Article 7

#### Changes and Delays

- 7.1 As the Work is performed, conditions may change or circumstances outside SIEMENS' reasonable control (including changes of law) may develop which would require SIEMENS to expend additional costs, effort or time to complete the Work, in which case SIEMENS will notify the CLIENT and an equitable adjustment will be made to SIEMENS' compensation and the time for performance. In the event conditions or circumstances require the Work to be suspended or terminated, SIEMENS shall be compensated for Work previously performed and for costs reasonably incurred in connection with the suspension or termination.
- 7.2 Either party may request additions, deletions, modifications or changes to the Work. Any such requests shall only become effective upon execution of a written agreement by authorized representatives of both parties.
- 7.3 SIEMENS may, in its sole discretion, substitute alternative parts, goods or equipment in the performance of the Work, provided that any such substitution shall be of an equal or better quality.
- 7.4 SIEMENS shall not be responsible for loss, delay, injury, damage or failure of performance that may be caused by circumstances beyond its control, including but not restricted to acts or omissions by the CLIENT or its employees, agents or contractors, Acts of God, war, civil commotion, acts or omissions of government authorities, fire, theft, corrosion, flood, water damage, lightning, freeze-ups, strikes, lockouts, differences with workmen, riots, explosions, quarantine restrictions, delays in transportation, or shortage of vehicles, fuel, labor or materials. In the event of such delay or failure, the time for performance shall be extended by a period equal to the time lost plus a reasonable recovery period and the compensation shall be equitably adjusted to compensate for additional costs SIEMENS incurs due to such delay. If any such delay exceeds sixty (60) days, SIEMENS may terminate this Agreement upon three (3) days notice to the CLIENT and the CLIENT shall promptly pay SIEMENS for the allocable portion of the Work completed and for any costs and expenses of termination and for any loss or damage incurred with respect to materials, equipment, tools and machinery, including reasonable overhead and profit.

### Article 8

#### Compensation

- 8.1 Unless otherwise agreed in writing, SIEMENS shall be compensated for any extra work requested by the CLIENT at SIEMENS' then prevailing rates and shall be reimbursed for costs and expenses (plus reasonable profit and overhead) reasonably incurred in its performance of the Work or Services. The Contract Sum provides for, and is in consideration

## PERFORMANCE CONTRACTING AGREEMENT

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of, only the Work and Services specifically included under the Scope of Work and Services, Exhibit A. All other work or services, including but not limited to the following, shall be separately billed or surcharged on a time and materials basis:

- (a) Emergency services performed at the CLIENT'S request, if inspection does not reveal any deficiency covered by the Scope of Work and Services, Exhibit A;
  - (b) Work and/or services performed at the CLIENT'S request at times other than during SIEMENS normal working hours; and
  - (c) Work and/or services performed on equipment not covered by the Scope of Work and Services, Exhibit A.
- 8.2 Unless otherwise agreed in writing, SIEMENS may invoice the CLIENT on a monthly or other progress-billing basis. Unless otherwise agreed in writing, invoices are due and payable upon receipt by the CLIENT. If the CLIENT disagrees with any portion of an invoice, it shall notify SIEMENS in writing of the amount in dispute and the reason for its disagreement within 21 days of receipt of the invoice, and shall pay the portion not in dispute.
- 8.3 SIEMENS may suspend or terminate the Work or Services at any time if payment is not received when due and shall be entitled to compensation for the Work or Services previously performed and for costs reasonably incurred in connection with the suspension or termination.
- 8.4 On amounts not paid within 30 days of invoice date, the CLIENT shall pay interest from invoice date until payment is received at the lesser of 12% per annum or the maximum rate allowed by law. the CLIENT shall reimburse SIEMENS for SIEMENS' costs and expenses (including reasonable attorneys' and witnesses' fees) incurred for collection under this Agreement.
- 8.5 Except to the extent expressly agreed in writing, SIEMENS' fees do not include any taxes, excises, fees, duties or other government charges related to the Work or Services, and the CLIENT shall pay such amounts or reimburse SIEMENS for any amounts it pays. If the CLIENT claims that Work or Services is subject to a tax exemption or direct payment permit, it shall provide SIEMENS with a valid exemption certificate or permit and, unless specifically prohibited by law, shall indemnify, defend and hold SIEMENS harmless from any taxes, costs and penalties arising out of the use or acceptance of same.

### Article 9

#### Acceptance

When SIEMENS believes that all, or an independent, definable phase or portion, of the Work is Substantially Complete, SIEMENS will submit a Certificate of Substantial or Final Completion to the CLIENT. If the described portion of the Work as performed is Substantially Complete as defined herein, the CLIENT will accept that Work by signing the Certificate of Substantial or Final Completion and returning it to SIEMENS. If the Work is not Substantially Complete, then the CLIENT Representative shall notify SIEMENS within five (5) business days of any discrepancies and SIEMENS shall correct the Work to conform to the description of the Work set forth herein and resubmit the Certificate of Substantial or Final Completion to the CLIENT if SIEMENS agrees with the notice of discrepancies or, if SIEMENS disagrees with the notice, notify the CLIENT of its disagreement and such disagreement shall be resolved under the terms of this Agreement. If the CLIENT Representative does not deliver written notice to SIEMENS within five (5) business days of receiving the Certificate of Substantial or Final Completion, the CLIENT will be deemed to have agreed to, signed and returned the Certificate of Substantial or Final Completion. Any disputes concerning the completion or Substantial Completion of the Work will be resolved by submitting the issue to a third party professional engineering firm acceptable to both SIEMENS and the CLIENT. The determination of this firm with respect to completion or Substantial Completion will be final and binding upon the parties hereto. SIEMENS and the CLIENT shall share equally the costs or fees for such firm in connection with such dispute resolution process.

### Article 10

#### Insurance and Allocation of Risk

- 10.1 SIEMENS shall maintain, at SIEMENS' expense, the following insurances while performing the Work and shall add the CLIENT as an "Additional Insured" to each policy that is referenced in subsections (c) through and including (e) hereof:
- (a) Workers' Compensation at the statutory amounts and limits as prescribed by applicable law.

## PERFORMANCE CONTRACTING AGREEMENT

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- (b) Employer's Liability insurance (and, where applicable, Stop Gap extended protection endorsement) limits of liability shall be:
- \$1,000,000 per occurrence
  - \$1,000,000 Disease Policy
  - \$1,000,000 Each Employee
- (c) SIEMENS shall carry, in the Occurrence Coverage Form, Comprehensive General Liability or Commercial General Liability, insurance covering SIEMENS' operations and providing insurance for bodily injury and property damage with limits of liability stated below and including coverage for:
- Products and Completed Operations
  - Contractual Liability insuring the obligations assumed by SIEMENS in this Agreement
  - Broad Form Property Damage (including Completed Operations)
  - Explosion, Collapse and Underground Hazards
  - Personal Injury Liability:
    - Limits of liability shall be \$1,000,000 per occurrence/aggregate
- (d) SIEMENS shall carry Automobile Liability Insurance in the Occurrence Coverage Form covering all owned, hired and non-owned automobiles and trucks used by or on behalf of SIEMENS providing insurance for bodily injury liability and property damage liability for the limits of:
- \$1,000,000 per occurrence/aggregate
- (e) SIEMENS shall carry Excess Liability Insurance in the Occurrence Coverage Form with limits of:
- \$5,000,000 per occurrence/aggregate
- 10.2 The CLIENT will maintain, at its own expense, property insurance written on a builder's "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent modifications and cost of materials supplied or installed by others, on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by SIEMENS, until final payment has been made to SIEMENS or no person or entity other than the CLIENT has an insurable interest in the property, whichever is later. The policy form shall include without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and start-up, rebuilding and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for SIEMENS' services and expenses required as result of such insured loss. If the insurance requires deductibles or retentions, the CLIENT shall pay costs not covered because of such deductibles or retentions. This insurance shall cover portions of the work off the Site, and also portions of the work in transit. Partial occupancy or use shall not commence unless the insurance company providing this insurance has consented to such partial occupancy or use by endorsement for otherwise. The CLIENT shall purchase and maintain boiler and machinery insurance which shall specifically cover such insured objects during installation and until Acceptance by the CLIENT. The insurance required by this section shall include the interests of the CLIENT, SIEMENS, subcontractor and sub-subcontractor in the Work. SIEMENS shall be included as an additional insured on each such insurance coverage. The CLIENT and SIEMENS waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by the insurance required by this section and for any other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the CLIENT as fiduciary. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. Insurance certificates shall be furnished upon request.
- 10.3 Risk of loss of materials and Equipment furnished by SIEMENS shall pass to the CLIENT upon their delivery to the Site, and the CLIENT shall be responsible for protecting and insuring them against theft and damage. However, until SIEMENS is paid in full, SIEMENS shall retain title for security purposes only and the right to repossess the materials and Equipment.
- 10.4 SIEMENS will indemnify the CLIENT from and against losses, claims, expenses and damages (including reasonable attorney's fees) for personal injury or physical damage to property (collectively "Damages"). Such indemnification

## PERFORMANCE CONTRACTING AGREEMENT

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shall be solely to the extent the Damages are caused by or arise directly from SIEMENS or its employees', consultants' or agents' negligent acts or omissions or willful misconduct in connection with SIEMENS' performance of the Work. SIEMENS' obligations under this indemnity shall not extend to Damages arising out of or in any way attributable to the negligence of the CLIENT or its agents, contractors or employees. SIEMENS reserves the right to control the defense and settlement of any claim for which SIEMENS has an obligation to indemnify hereunder. UNLESS CONTRARY TO APPLICABLE LAW, IN NO EVENT SHALL THE CLIENT OR SIEMENS BE LIABLE UNDER THIS INDEMNITY OR OTHERWISE UNDER THIS AGREEMENT FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING COMMERCIAL LOSS, LOSS OF USE, OR LOST PROFITS, HOWEVER CAUSED, EVEN IF SIEMENS OR THE CLIENT HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND, IN ANY EVENT, UNLESS CONTRARY TO APPLICABLE LAW, SIEMENS' AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS, LOSSES OR EXPENSES ARISING OUT OF THIS AGREEMENT, OR OUT OF ANY GOODS OR SERVICES FURNISHED UNDER THIS AGREEMENT, WHETHER BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, AGENCY, WARRANTY, TRESPASS, INDEMNITY OR ANY OTHER THEORY OF LIABILITY, SHALL BE LIMITED TO THE LESSER OF \$1,500,000 OR THE TOTAL COMPENSATION RECEIVED BY SIEMENS FROM THE CLIENT UNDER THIS AGREEMENT.

### 10.5 As to Patents and Copyrights:

- (a) SIEMENS will, at its own expense, defend or at its option settle any suit or proceeding brought against the CLIENT in so far as it is based on an allegation that any Work (including parts thereof), or use thereof for its intended purpose, constitutes an infringement of any United States patent or copyright, if SIEMENS is promptly provided Notice and given authority, information, and assistance in a timely manner for the defense of said suit or proceeding. SIEMENS will pay the damages and costs awarded in any suit or proceeding so defended. SIEMENS will not be responsible for any settlement of such suit or proceeding made without its prior written consent. In case the Work, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement or its use by the CLIENT is enjoined, SIEMENS will, at its option and its own expense, either: (i) procure for the CLIENT the right to continue using said Work; (ii) replace it with substantially equivalent non-infringing Work; or (iii) modify the Work so it becomes non-infringing.
- (b) SIEMENS will have no duty or obligation to the CLIENT under Section 10.5(a) to the extent that the Work is: (i) supplied according to the CLIENT'S design or instructions wherein compliance therewith has caused SIEMENS to deviate from its normal course of performance; (ii) modified by the CLIENT or its contractors after delivery; or, (iii) combined by the CLIENT or its contractors with items not furnished hereunder and by reason of said design, instruction, modification, or combination a suit is brought against the CLIENT. In addition, if by reason of such design, instruction, modification or combination, a suit or proceeding is brought against SIEMENS, unless expressly prohibited by law, the CLIENT shall protect SIEMENS in the same manner and to the same extent that SIEMENS has agreed to protect the CLIENT under the provisions of Section 10.5(a) above.
- (c) THIS SECTION 10.5 IS AN EXCLUSIVE STATEMENT OF ALL THE DUTIES OF THE PARTIES RELATING TO PATENTS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY PATENT OR COPYRIGHT AND OF ALL THE REMEDIES OF THE CLIENT RELATING TO ANY CLAIMS, SUITS, OR PROCEEDINGS INVOLVING PATENTS AND COPYRIGHTS. Compliance with Section 10.5 as provided herein shall constitute fulfillment of all liabilities of the Parties under the Agreement with respect to the intellectual property indemnification.

10.6 The parties acknowledge that the price for which SIEMENS has agreed to perform the Work and obligations under this Agreement was calculated based upon the foregoing allocations of risk, and that each Party has expressly relied on and would not have entered into this Agreement but for such allocations of risk.

## Article 11

### Hazardous Materials Provisions

11.1 The Work does not include directly or indirectly performing or arranging for the detection, testing, handling, storage, removal, treatment, transportation, disposal, monitoring, abatement or remediation of any contamination of any Site at which Work is performed and any soil or groundwater at the Site by petroleum or petroleum products (collectively called "Oil"), asbestos, PCBs or hazardous, toxic, radioactive or infectious substances, including any substances regulated under RCRA, CERCLA or any other federal, state or local environmental laws, regulations, statutes, rules, standards or ordinances (collectively called "Hazardous Materials"), including without limitation: ionization smoke

## PERFORMANCE CONTRACTING AGREEMENT

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detectors, ballasts, mercury bulb thermostats, used oil, contaminated filters, contaminated absorbents, and refrigerant. Except as expressly disclosed pursuant to Section 11.2, the CLIENT represents and warrants that there are no Hazardous Materials or Oil, present at the CLIENT'S locations where the Work is to be performed. SIEMENS will notify the CLIENT immediately if it discovers or reasonably suspects the presence of any previously undisclosed Oil or Hazardous Material. All Services have been priced and agreed to by SIEMENS in reliance on the CLIENT'S representations as set forth in this Article. The discovery or reasonable suspicion of Hazardous Materials or hazardous conditions at a Site where SIEMENS is to perform Work or of contamination of the Site by Oil or Hazardous Materials not previously disclosed pursuant to Section 11.2 shall entitle SIEMENS to suspend the Work immediately, subject to mutual agreement of terms and conditions applicable to any further Work, or to terminate the Work and to be paid for Work previously performed.

- 11.2 The CLIENT warrants that, prior to the execution of the Agreement, it notified SIEMENS in writing of any and all Oil or Hazardous Materials present, potentially present or likely to become present at the Site and provided a copy of any Site safety policies and information, including but not limited to lock-out and tag procedures, chemical hygiene plan, material safety data sheets, and other items covered or required to be disclosed or maintained by federal, state, or local laws, regulations or ordinances.
- 11.3 Regardless of whether or not Oil or Hazardous Material was disclosed pursuant to Section 11.2, the CLIENT shall be solely responsible for properly testing, abating, encapsulating, removing, disposing, remedying or neutralizing such Oil or Hazardous Materials, and for the costs thereof. Even if an appropriate change order has been entered into pursuant to Section 11.1, SIEMENS shall have the right to stop the Work until the Site is free from Oil or Hazardous Materials. In such event, SIEMENS will receive an equitable extension of time to complete the Work, and compensation for delays caused by Oil or Hazardous Materials remediation. In no event shall SIEMENS be required or construed to take title, ownership or responsibility for such Oil or Hazardous Materials. The CLIENT shall sign any required waste manifests in conformance with all government regulations, listing the CLIENT as the generator of the waste. If someone other than the CLIENT is the generator of the waste, the CLIENT shall arrange for such other person to sign such manifests.
- 11.4 Except where expressly prohibited by law, for separate consideration of \$10 and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the CLIENT shall indemnify, defend and hold SIEMENS harmless from and against any damages, losses, costs, liabilities or expenses (including attorneys' fees) arising out of any Oil or Hazardous Materials or from the CLIENT'S breach of, or failure to perform its obligations under this Article.

### Article 12

#### Miscellaneous Provisions

- 12.1 Notices between the parties shall be in writing and shall be hand-delivered or sent by certified mail, express courier, or acknowledged telefax properly addressed to the appropriate party. Any such notice shall be deemed to have been received when delivered in-person or when sent by telefax, or five (5) business days subsequent to deposit in the U.S. mails, or one (1) day after deposit with express courier.
- 12.2 Neither the CLIENT nor SIEMENS shall assign or transfer any rights or obligations under this Agreement, except that either party may assign this Agreement to its affiliates and SIEMENS may use subcontractors in the performance of the Work. Nothing contained in this Agreement shall be construed to give any rights or benefits to anyone other than the CLIENT and SIEMENS without the express written consent of both parties.
- 12.3 This Agreement shall be governed by and construed in accordance with the laws of the state or commonwealth within which the Facilities are located.
- 12.4 Unless contrary to applicable law and with the exception of disputes arising under Article 4, all disputes not resolved by negotiation between the Parties shall be resolved in accordance with the Commercial Rules of the American Arbitration Association in effect at that time, except as modified herein. All disputes shall be decided by a single arbitrator. A decision shall be rendered by the arbitrator no later than nine months after the demand for arbitration is filed, and the arbitrator shall state in writing the factual and legal basis for the award. No discovery shall be permitted. The arbitrator shall issue a scheduling order that shall not be modified except by the mutual agreement of the Parties. Judgment may be entered upon the award in the highest state or federal court having jurisdiction over the matter. Where allowed by applicable law, the prevailing Party shall recover all costs, including attorney's fees, incurred as a result of the dispute.

## PERFORMANCE CONTRACTING AGREEMENT

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- 12.5 This Agreement and all provisions of this Agreement allocating responsibility or liability between the Parties shall survive the completion of the Work and the termination of this Agreement.
- 12.6 SIEMENS' performance of the Work is expressly conditioned on the CLIENT assenting to all of the terms of this Agreement, notwithstanding any different or additional terms contained in any writing at any time submitted or to be submitted to SIEMENS by the CLIENT relating to the Work, even if signed by SIEMENS, unless SIEMENS signs a written statement expressly indicating that such terms supersede the terms of this Agreement.
- 12.7 Any provision of this Agreement found to be invalid, unlawful or unenforceable by a court of law shall be ineffective to the extent of such invalidity, and deemed severed herefrom, without invalidating the remainder of this Agreement. All other provisions hereof shall remain in full force and effect.
- 12.8 The waiver by a party of any breach by the other party of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach hereof. No waiver shall operate or be effective unless made in writing and executed by the party to be bound thereby.
- 12.9 In the event that the law or the CLIENT requires that SIEMENS procure a performance bond and/or a payment bond, SIEMENS shall provide a performance and payment bond in the amount of \$1,618,000.00. The performance and payment bond will solely apply to the Work performed during the Construction Period and to the required statutory lien filing period thereafter. The performance and payment bond will not apply to any of the obligations included in Performance Assurance, Exhibit C.

### Article 13

#### Maintenance Services Technical Support Program

- 13.1 The scope of services provided by SIEMENS for the Maintenance Services Technical Support Program (MSTSP) is stated in Exhibit A.
- 13.2 The CLIENT represents that all equipment not installed by SIEMENS under this Agreement and subject to a MSTSP is in satisfactory working condition. SIEMENS will have inspected all such equipment within the first thirty (30) days of MSTSP commencement or no later than the first scheduled inspection. Testing and inspection will not be deemed to be complete until all such equipment has been so tested and inspected.
- 13.3 If the equipment is altered or moved by any person, including the CLIENT, other than SIEMENS or a person authorized by SIEMENS, the CLIENT shall immediately notify SIEMENS in writing, and SIEMENS reserves the right to perform a reacceptance test on, or if necessary a re-commissioning of, the system at the CLIENT'S expense.
- 13.4 If SIEMENS reasonably determines as a result of such inspection and/or testing that any equipment requires repair or replacement, the CLIENT will be so notified and shall take corrective action within thirty (30) days, or such equipment shall be removed from coverage hereunder without further action by the parties. SIEMENS is not liable or responsible for the continued testing, maintenance, repair, replacement or operating capabilities of any portion of the equipment until it has been inspected and/or tested and has been, if necessary, restored to an acceptable initial condition at the CLIENT'S sole expense. Any services provided by SIEMENS in the course of such restoration will be separately charged, on a time and materials basis, and not included in fees paid hereunder. If individual items of equipment cannot, in SIEMENS' sole determination, be properly repaired or replaced due to age, obsolescence, lack of availability of refrigerant gas, halon gas, necessary parts, materials, compatibility or otherwise, or as a result of excessive wear or deterioration, SIEMENS may, within ten (10) days of such inspection, give written notice that it is withdrawing such items from coverage under the MSTSP and adjust the MSTSP Payments due hereunder accordingly.
- 13.5 If the removal of equipment from coverage would compromise or impair the integrity of the Work, Services or compliance with law of any system, then SIEMENS will provide a written statement thereof for execution by the CLIENT. The CLIENT'S failure to execute such statement within ten (10) days will void the MSTSP and release SIEMENS from any further obligations with respect to the MSTSP.
- 13.6 If the MSTSP scope of Services defined in this Agreement provides for equipment maintenance, repairs and/or replacements of equipment by SIEMENS, those Services are limited to restoring the proper working condition of such equipment. SIEMENS will not be obligated to provide replacement equipment that represents significant capital improvement compared to the original. Exchanged components become the property of SIEMENS, except Hazardous Materials, which under all circumstances remain the property and responsibility of the CLIENT.

# Exhibit F

## Auburn Bus Profile

RETIRED BUS NUMBERS: 7, 19

10/1/2007

NEW BUSES REPLACE REGULAR ROUTE BUSES COMING OFF DAILY RUNS, SENIORITY NOT A FACTOR

Bus #	YR	MAKE/MODEL	ENGINE	FUEL	VIN #	BODY & #	HOUSED	MILEAGE	PLATE #	CAP
1	96	INT 3800	DT466	D	1HVBBAAAN2TH372531	BB B-065114	SUPPORT SERVICES	124798	412-321	77
2	97	INT 3800	DT466	D	1HVBBAAAN5VH482406	BB B-067006	SUPPORT SERVICES	135014	413-148	40SPED
3	5	FRTL-FS65	C-7/CAT	D	4UZAAXDC25CU86259	THOMAS'0437221	SUPPORT SERVICES	59378	418-560	45SPED
4	1	INT 3800	DT466	D	1HVBBAAAN1H407048	B-089517	SUPPORT SERVICES	99775	416-048	77
5	99	INT 3800	DT466	D	1HVBBAAANOXH207383	BB B-079764	SUPPORT SERVICES	118288	414-674	40SPED
6	3	INT 3800	DT466	D	1HVBBAAAN53H562737	B-095651	SUPPORT SERVICES	88506	417-174	77
8	96	INT 3800	DT466	D	1HVBBAAAN4TH373139	BB B-065115	SUPPORT SERVICES	172336	412-322	77 - SP
9	1	INT 3800	DT466	D	1HVBBAAAN41H376425	BB B-086674	SUPPORT SERVICES	121720	416-035	77
10	97	INT 3800	DT466	D	1HVBBAAANIVH482533	BB B-067005	SUPPORT SERVICES	139991	413-153	77
11	97	INT 3800	DT466	D	1HVBBAAANXVH482532	BB B-067004	SUPPORT SERVICES	119181	413-152	77
12	93	INT 3800	DT360	D	1HVBBPEN1PH490227	BB B-051891	SUPPORT SERVICES	159459	408-480	77 - SP
13	3	INT 3800	DT466	D	1HVBBAAAN93H562739	B-095652	SUPPORT SERVICES	79015	417-173	77
14	98	INT 3800	DT466	D	1HVBBAAAN5WH570500	BB B-073982	SUPPORT SERVICES	JUNKED	413-820	77
15	1	INT 3800	DT466	D	1HVBBAAAN31H407049	B-089518	SUPPORT SERVICES	78241	416-049	77
16	6	BB-ALL AMER	C-7/CAT	D	1BABNBKA16F234532	F143921	SUPPORT SERVICES	47193	418-888	84
17	4	INT 3800	DT466	D	1HVBBAAAN74H581257	B 100670	SUPPORT SERVICES	72358	417-726	77
18	1	INT 3800	DT466	D	1HVBBAAAN21H370903	BB B-086673	SUPPORT SERVICES	142495	416-036	77
20	6	BB-ALL AMER	C-7/CAT	D	1BABNBKA36F234533	F143922	SUPPORT SERVICES	37021	418-889	84
21	5	FRTL-FS65	C-7/CAT	D	4UZAAXDCX5CU86252	THOMAS '0437301	SUPPORT SERVICES	64716	418-561	77
22	4	INT 3800	DT466	D	1HVBBAAAN94H581258	B 100668	SUPPORT SERVICES	57465	417-727	77
23	92	INT 3800	DT360	D	1HVBBNMMN9NH422972	BB V-51605	SUPPORT SERVICES	107411	408-643	77 - SP
24	07	FRTL-C2	C-7/CAT	D	4UZABRDC37CX73069	THOMAS 87873-0661956-340TS	SUPPORT SERVICES	13111	418-919	77
24-old	92	INT 3800	DT360	D	1HVBBPENXPH490226	BB B-051890	SUPPORT SERVICES	RETIRED	408-479	72 - SP
25	3	INT 3800	DT466	D	1HVBBAAAN73H562738	B-095653	SUPPORT SERVICES	69654	417-175	77
26	99	INT 3800	DT466	D	1HVBBAAAN8XH207437	BB B-084060	SUPPORT SERVICES	84388	416-008	77 - SP
27	07	FRTL-C2	C-7/CAT	D	4UZABRDC37CX73068	THOMAS 87873-0661954-340TS	SUPPORT SERVICES	14183	418-920	77
27-old	92	INT 3800	DT360	D	1HVBBPEN6PH490224	BB B-051880	SUPPORT SERVICES	RETIRED	408-477	77 - SP
28	4	INT 3800	DT466	D	1HVBBAAAN04H581259	B 100669	SUPPORT SERVICES	51082	417-728	77
29	99	INT 3800	DT466	D	1HVBBAAANXXH207438	BB 'B-084061	SUPPORT SERVICES	77652	416-009	77
30	5	FRTL-FS65	C-7/CAT	D	4UZAAXDC85CU86251	THOMAS '0437300	SUPPORT SERVICES	47991	418-562	77
31	98	INT 3800	DT466	D	1HVBBAAAN5WH570499	BB B-073981	SUPPORT SERVICES	121189	413-819	77
32	0	INT 3800	DT444	D	1HVBBABM4YH260160	BB B-079766	SUPPORT SERVICES	77923	415-152	23 - SP

REPLACEMENTS

\*Blown motor-using bus for parts

Conventional:

Special Needs: 2, 3, 5, 32

TRUCK AND VAN PROFILE

6/14/07

#	YR	MAKE	SIZE	BODY	MODEL	VIN #	PLATE	HOUSED	MILEAGE
T40	83	CHEVROLET	1/2 TON	PICK-UP	4 X 2	2GCE14HXD52350	403-294	SUPPORT SERV	78,328
T41	05	GMC	1 1/2 TON	DUMP	4 X 4	1GDE4C3275F506885		SUPPORT SERV	27,061
T42	06	FORD	1 TON	RACK BODY	4 X 4	1FDWF37Y96FCO6611	420-060	SUPPORT SERV	2,331
T43	04	GMC	1 TON	DUMP	4 X 4	1GDJK34U54E241943	418-552	SUPPORT SERV	14,398
T44	03	DODGE	3/4 TON	PICK UP	4 X 4	3D7KU26D03G750376	417-736	165 WHITNEY ST	31,645
T45	91	CHEVROLET	1/2 TON	PICK UP	4 X 4	2GCEK14ZXM1102933	408-279	SUPPORT SERV	85,339
T46	00	GMC	3/4 TON	PICK UP	4 X 4	1GTGK24R3YF452482	415-161	SUPPORT SERV	56,419
T47	05	FORD	3/4 TON	VAN CARGO	4 X 2	1FTNE24W25HA74434	418-876	SUPPORT SERV	26,093
T49	89	GMC	10 TON	DUMP	TOP KICK	1GDP7D1Y1KV506752	301-635	SUPPORT SERV	102,506
T50	95	GMC	SAFARI	VAN	4 X 2	1GDM19W45B523564	413-828	SUPPORT SERV	126,714
T52	02	CHEVROLET	3/4 TON	PICK-UP	4 X 4	1GCHK24092E260022	417-172	SUPPORT SERV	42,136
T53	90	GMC	3/4 TON	CARGO	4 X 2	2GJFG35K7L4508919	409-603	SUPPORT SERV	114,838
T60	05	GMC 3500	1 TON	RACK BODY	4 X 2	1GDJC34U85E259626		ELHS	4,975
T61	89	CHEVROLET	15 PASS	VAN	4 X 2	2GAFG35K2K4138963	403-284	RETC	131,425
T62	98	DODGE	15 PASS	VAN	4 X 2	2B4HB15X3WK161598	413-827	RETC	19,916

### OUT OF DISTRICT PLACEMENTS

SCHOOL	2003-2004	2004-2005	2005-2006	2006-2007	CURRENT
ELAN	0	0	0	1	1
FUTURE BUILDERS	2	2	3	2	2
MAINE COLLABORATIVE	4	1	2	3	3
MARGARET MURPHY	4	10	17	12	10
MELMARK, NEW ENGLAND	1	1	1	1	1
MERRY MEETING	0	0	1	1	1
REAL SCHOOL	0	0	0	0	1
RETC	4	7	9	12	7
RENAISSANCE	8	12	9	10	6
SPURWINK	9	14	9	18	9
SWEETSER	0	3	0	0	0
WILLIAMS CENTER, VT	0	0	1	1	1
<b>Totals:</b>	<b>32</b>	<b>50</b>	<b>52</b>	<b>61</b>	<b>42</b>

**Exhibit G**

## OUT OF DISTRICT PLACEMENTS

SCHOOL	2003-2004	2004-2005	2005-2006	2006-2007	CURRENT
ELAN	0	0	0	1	1
FUTURE BUILDERS	2	2	3	2	2
MAINE COLLABORATIVE	4	1	2	3	3
MARGARET MURPHY	4	10	17	12	10
MELMARK,NEW ENGLAND	1	1SAC	1SAC	1SAC	1SAC
MERRY MEETING	0	0	1	1	1
REAL SCHOOL	0	0	0	0	1
RETC	4	7	9	12	7
RENAISSANCE	8	12	9	10(1ISSAC)	6
SPURWINK	9	14(5aresAC)	9(2aresAC)	18(5aresAC)	9(2aresAC)
SWEETSER	0	3	0	0	0
WILLIAMS CENTER,VT	0	0	1SAC	1SAC	1SAC

