

performance contract agreement



performance guarantee program

Building Systems

Number: 977-02812-52

PARTIES:

- | | |
|--------------------|---------------------------------------|
| 1. OWNER | County of San Mateo |
| Address: Street | 455 County Center |
| City, State, Zip | Redwood City , CA 94063 |
| FAX | 650 - 599 - 1072 |
| 2. INVENSYS | Invensys Building Systems Inc. |
| Address: Street | 1901 Betmor Lane |
| City, State, Zip | Anaheim, CA 92805 |
| FAX: | 714 - 938 - 1305 |

CONTRACT DOCUMENTS: Incorporated into this Agreement, as if set out in full, are the following documents and/or agreements (check as applicable), which are hereinafter collectively referred to as the "CONTRACT DOCUMENTS":

- Attachment A, Scope of Work, 88 pages, dated 11-16-01
- Attachment B, Cash Flow Analysis, 3 pages, dated 11-16-01
- Attachment C, Support Services Agreement, 4 pages, dated 11-16-01
- Attachment D, Construction Progress Payment Schedule, 1 page, dated 11-16-01
- Attachment E, Insurance, 1 page, dated 4-1-01
- Attachment F, Energy Accounting Baseline, 1 page, dated 11-16-01
- Attachment G, Baseline Event Log, 1 page, dated 11-16-01
- Attachment H, Additional Services and Comfort Schedules, 36 pages, dated 11-16-01.

ARTICLE 1 - CONDITIONS AND SCOPE OF WORK

1. The term "INVENSYS" as used herein shall refer to the INVENSYS BUILDING SYSTEMS INC., a Delaware Corporation. The term "OWNER" as used herein shall refer to:

Owner	County of San Mateo
Address	455 County Center
City, State	Redwood City, CA 94063

1.2 INVENSYS hereby agrees to provide to the OWNER the labor and materials required to install the energy conservation related equipment and/or improvements listed on Attachment A hereto in accordance with the Scope of Work for the installation of same prepared by INVENSYS. Hereinafter all such labor and materials shall be referred to as the "WORK". INVENSYS further agrees to perform the WORK in a good and workmanlike manner.

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1.3 As a condition precedent to INVENSYS providing and installing the labor and materials described in paragraph 1.2 hereof, OWNER shall agree to the **Standards of Service and Comfort** as detailed in Article 13.

1.4 As a condition precedent to INVENSYS providing and installing the labor and materials described in paragraph 1.2 hereof, OWNER shall enter into a **Support Services Agreement** as defined in Attachment C and incorporated herein for all purposes.

1.5 As a condition precedent to INVENSYS providing and installing the labor and materials described in paragraph 1.2 hereof and to its fulfilling its obligations under the Contract Documents, OWNER shall, at the time of the execution of this agreement and from time to time thereafter, provide to INVENSYS, at INVENSYS' request, reasonable evidence that it has sufficient funds to fulfill the OWNER'S financial obligations under the Contract Documents. The OWNER retains the sole right to select any and all methods of financing the sums owing under this agreement and retains the sole right to determine what interest the OWNER will retain in the equipment to be provided by INVENSYS hereunder.

ARTICLE 2 - TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

2.1 The WORK to be performed under this agreement shall be commenced on or about April 1, 2002.

2.2 Both parties shall endeavor to accomplish substantial completion of the WORK by December 31, 2002. The Date of Substantial Completion shall be the date when the WORK is sufficiently complete that the OWNER can occupy or utilize the WORK for the purpose for which it is intended. When the OWNER agrees that the WORK is substantially complete, INVENSYS will issue a Certificate of Substantial Completion.

2.3 The completion date for the WORK shall be extended by change order for such amount of time as shall be reasonably required if the progress of the WORK is delayed by:

2.3.1 any act or failure of the OWNER, any agent of the OWNER, any separate contractor employed by the OWNER or any employee of such OWNER, agent or separate contractor;

2.3.2 changes ordered in the WORK or made necessary by unforeseen or concealed conditions;

2.3.3 labor disputes, fire, unusual delays in transportation, adverse weather conditions not reasonably predictable, unavoidable casualties, catastrophes, war, civil disturbances, Acts of God, or other causes beyond INVENSYS' reasonable control.

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ARTICLE 3 - CONTRACT SUM

- 3.1 The total of all Installation Contract Payments shall be **Two Million Sixty Seven Thousand Three Hundred and Eighty Nine Dollars (\$2,067,389.00)**.
- 3.2 Refer to Article 14 for Support Services Agreement.

ARTICLE 4 - PAYMENT

- 4.1 Unless the WORK is substantially completed within a period of thirty (30) days after commencement resulting in a single first and last payment, the OWNER shall make monthly progress payments to INVENSYS in the manner set forth in this article.
- 4.2 The OWNER shall make an initial payment of 15(%) percent of the contract amount within thirty (30) days of the signing of this agreement.
- 4.3 On or before the tenth (10th) day of each month, INVENSYS shall submit an application for payment based on the value of the WORK completed as of the last day of the calendar month preceding the month in which payment is due. Attached hereto as Attachment D is a schedule of the proposed payment amounts based upon INVENSYS' estimate of the completion of the WORK.
- 4.4 Not later than the twenty-fifth (25) day of each month the OWNER will make full payment to INVENSYS of the amount detailed in Attachment D of this agreement. Set forth in INVENSYS' application for payment. In the event the OWNER disputes the value of the WORK claimed in the application as satisfactorily completed, the OWNER shall promptly pay on the basis of its estimate of value and shall notify INVENSYS in writing of the dispute. The parties shall endeavor to resolve the difference and, if it is not resolved by agreement, INVENSYS shall be entitled to interest on such portion of the unpaid amounts as it is subsequently found entitled to from the date it was originally due at the rate of one (1%) percent per month.
- 4.5 The entire unpaid balance of the contract price for the WORK shall be due and payable thirty (30) days after Substantial Completion of the WORK or beneficial use of the WORK by the OWNER, which ever occurs first.
- 4.6 Payments may be withheld on account of (1) defective WORK not remedied, (2) failure of INVENSYS to make payments properly to the Subcontractors or for labor, materials or equipment, or (3) the persistent failure of INVENSYS to carry out the WORK in accordance with the Contract Documents.
- 4.7 Final payment shall not become due until INVENSYS has delivered to OWNER a complete release of all liens arising out of the WORK or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to OWNER to indemnify OWNER against such lien.

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4.8 The making of final payment shall constitute a waiver of claims by OWNER except those arising from liens caused by the failure of INVENSYS to pay its obligations, those arising from defective WORK which was not evident at the time of Substantial Completion, and those arising from any warranty expressly set out in this agreement.

4.9 Acceptance of final payment by INVENSYS, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 5 - GUARANTEE

5.1 Guaranteed Period and Amount

5.1.1 During the initial term of this program, which shall be fifteen (15) years, INVENSYS' program will deliver to the owner a minimum cost avoidance of \$2,067,389 based on the annual utility cost avoidance as defined in Attachment B, Cash Flow Analysis.

5.1.2 The initial term will begin on January 1, 2003 or on a date to be mutually established, cosigned by both parties, and appended to this agreement, subject to beneficial use of the modifications and services detailed in the contract agreement.

5.1.3 INVENSYS' program will achieve this total cost avoidance through reductions in energy consumption as detailed in the attached Cash Flow Analysis (Attachment B). Energy Cost Avoidance will be determined using:

5.1.3.1 Standard Energy Accounting adjustments for; degree days, occupancy, hours of operation, conditioned square feet and production as applicable, and compared to a mutually agreed upon **Energy Accounting Baseline** (Attachment F), and/or

5.1.3.2 Actual measured and/or verified energy reductions using standard Energy Engineering practices and calculations.

5.2 Definitions:

5.2.1 Cost Avoidance refers to the Energy cost avoidances.

5.2.2 Energy Cost Avoidance refers to those cost avoidances achieved through the addition, repair and/or replacement of equipment or systems, and/or recontrolled methods of operation that result in energy cost avoidances.

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5.2.3 Stipulated Avoidance refers to any or all of the Energy Cost Avoidance that will be annually recognized as achieved cost avoidance by the owner for the term of the agreement as defined in the **Cash Flow Analysis** (Attachment B).

5.3 Guarantee Verification

5.3.1 Reconciliation - Reconciliation of the Performance Guarantee will occur annually after the anniversary of the start of the Guarantee Period.

5.3.2 If actual cost avoidance falls short of the projected cost avoidance for any annual segment of the term, INVENSYS will reimburse the Owner the difference between the actual and Guaranteed cost avoidance up to the owner's annual program expense, as set forth in the attached **Cash Flow Analysis**; or at the owner's option and as mutually agreed, deliver to the owner a credit for additional services. Furthermore, the Owner and INVENSYS agree that if in any annual segment of the term, the actual cost avoidance exceeds the guaranteed cost avoidance, the additional costs avoided will be:

5.3.2.1 Added to the actual cost avoidance for any future periods of the term for which cost avoidance will be calculated,

5.3.2.2 Or, if INVENSYS has previously reimbursed the owner for shortfalls, these additional costs avoided can be billed back to the Owner up to the amount of past reimbursements.

5.3.3 The Owner will retain in total any cost avoidance that exceeds the liability of this Performance Guarantee.

5.3.4 Adjustments - The following items can be grounds for modification of the Performance Guarantee:

5.3.4.1 As part of this program, the owner agrees to adhere to a Standard of Service and Comfort, Article 13. Significant and/or ongoing deviations to the agreed upon Standards of Service & Comfort are grounds for INVENSYS to modify the Performance Guarantee amount or to cancel the Guarantee in its entirety.

5.3.4.2 The addition/removal of any energy consuming devices that would affect the units of energy differently than in the base period.

5.3.4.3 Override of the software programs which are agreed upon and programmed into the INVENSYS Facility Management System, i.e., set points, operating parameters, etc. that would affect the energy consumption of the equipment/systems being controlled.

5.3.4.4 Failure to maintain thermostat set points as agreed to and described in the Standards of Service & Comfort,

5.3.4.5 Failure of existing mechanical equipment which results in the need to operate a larger system for an extended period of time.

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5.3.4.6 Failure of the owner to maintain the building to current standards or failure to maintain the energy consuming devices to manufacturer's accepted standards of performance.

5.3.4.7 At such times as INVENSYS deems reasonably necessary to inspect any FMS and the above connected loads so as to insure adherence to the above conditions, INVENSYS reserves the right to enter upon the premises of any or all facilities, and INVENSYS has the right to link up to the FMS through phone modem on (a) separate phone line(s) to be supplied and maintained by the owner.

5.3.4.8 In the event that during the term of this Performance Guarantee, any utility providing the owner with energy modifies its method of billing, INVENSYS will adjust the energy cost avoidance calculations and the Performance Guarantee to reflect these modifications.

ARTICLE 6 - OWNER'S RESPONSIBILITIES

6.1 Except for permits and fees which are the responsibility of INVENSYS under the Contract Documents, OWNER shall secure and pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or permanent changes in existing facilities.

6.2 If INVENSYS fails to correct WORK which is not in accordance with the requirements of the Contract Documents or persistently fails to carry out the WORK in accordance with the Contract Documents, OWNER, by a written order, may order INVENSYS to stop the WORK, or any portion thereof, until the cause for such order has been eliminated; however, the right of OWNER to stop the WORK shall not give rise to a duty on the part of OWNER to exercise this right for the benefit of INVENSYS or any other person or entity.

6.3 OWNER agrees to repair or replace, as necessary, any defective existing equipment which is intended to be reused.

6.4 OWNER will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed WORK and to determine in general if the WORK is being performed in a manner indicating that the WORK, when completed, will be in accordance with the Contract Documents. However, OWNER will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the WORK.

6.5 The OWNER shall provide all information or services under its control necessary for the performance of the WORK and for the work required by the Contract Documents with reasonable promptness and shall designate in writing its representative or representatives who shall have authority to approve change orders and render decisions on its behalf and on whose action and approvals INVENSYS may rely and deliver said written designation and any subsequent amendments to INVENSYS upon the commencement of the WORK or prior to the effective date of any subsequent amendment to said written designation.

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6.6 In the event that the OWNER fails to pay INVENSYS at the time the payment of any amount becomes due under the terms of the Contract Documents, INVENSYS may at any time after five (5) calendar days following mailing or the facsimile transmission of a written notice from INVENSYS to the OWNER at the address set forth above advising that a required payment has not been made, stop the work required by the Contract Documents until payment of the amount owing, including interest thereon, has been received. A change order shall thereafter be issued extending the contract time to reflect such period of shutdown and increasing the contract sum by the amount of any costs of shutdown and standby, delay and start-up of work incurred by INVENSYS.

6.7 The OWNER shall indemnify INVENSYS and its subcontractors, suppliers, employees, directors, shareholders, and agents harmless from and against all claims, damages, losses and expenses arising out of or resulting from activities, facilities, or equipment of the OWNER or its other contractors, or of its or their suppliers, employees or agents, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death or to injury to or destruction of property including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent or willful act or omission of the OWNER or its other contractors or of its or their suppliers, employees or agents.

6.8 The OWNER shall notify INVENSYS in writing of any or all uses or restrictions in usage of all areas of the site. The OWNER shall also notify INVENSYS in writing of any or all special requirements for providing protection for occupants at the site. The OWNER shall indemnify INVENSYS and its subcontractors, suppliers, employees, directors, shareholders, and agents harmless from and against all claims, damages, losses and expenses arising out of or resulting from use of site not indicated by OWNER as being restricted and from all above contracted costs arising from unknown or concealed construction conditions.

ARTICLE 7 – INVENSYS' RESPONSIBILITIES

7.1 INVENSYS shall supervise and direct the WORK, using INVENSYS' best skill and attention. INVENSYS shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the WORK, unless the Contract Documents give other specific instructions concerning these matters.

7.2 Unless otherwise provided in the Contract Documents, INVENSYS shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery necessary for the proper execution and completion of the WORK.

7.3 For a period of one (1) year from the date of substantial completion, INVENSYS warrants to OWNER that materials and equipment furnished under the Contract Documents will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the WORK will be free from defects, and that the WORK will conform with the requirements of the Contract Documents. INVENSYS warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the contractor, improper or insufficient maintenance, improper operations, or normal wear and tear under normal usage. If required by OWNER, INVENSYS shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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7.4 Unless otherwise provided in the Contract Documents, INVENSYS shall pay sales, consumer, use and other similar taxes based on the WORK to the extent such taxes have been legally enacted at the date of this agreement and, unless otherwise provided in the Contract Documents, shall secure and pay for the building permit and other permits and governmental fees, licenses and inspection necessary for proper execution and completion of the WORK.

7.5 INVENSYS shall be responsible to OWNER for the acts and omission of INVENSYS' employees, Subcontractors and their agents and employees, and other persons performing portions of the WORK under a contract with INVENSYS.

7.6 INVENSYS shall keep the premises and surrounding areas free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the WORK, INVENSYS shall remove from the site where the WORK was performed and from the surrounding area, all waste materials, rubbish, INVENSYS' tools, construction equipment, machinery and surplus material.

7.7 INVENSYS shall provide OWNER access to the WORK in preparation and progress wherever located.

7.8 INVENSYS shall pay all royalties and license fees; shall defend suits or claims for infringement or patent rights and shall hold OWNER harmless on account thereof.

7.9 To the fullest extent permitted by law, INVENSYS shall indemnify and hold harmless OWNER, and agents and employees thereof from and against claims, damages, losses and expenses, including, but not limited to, attorneys' fees arising out of or resulting from performance of the work provided for in the Contract Documents provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by negligent acts or omissions of INVENSYS, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Under no circumstances shall INVENSYS be liable for any special or consequential damages whether based upon lost goodwill, lost resale profits, work stoppage, impairment of other goods or otherwise and whether arising out of breach of warranty, breach of contract, negligence or otherwise, except only in the case of personal injury where applicable law requires such liability.

7.10 INVENSYS shall provide the OWNER with all surety bonds required by the laws of the state in which the WORK is to be performed. If so required, surety bonds cover only the installation portion of the agreement and do not apply in any way to energy savings or cost avoidance guarantees, payments or maintenance provisions.

7.11 INVENSYS shall, in the performance of the work required by the Contract Documents, comply with applicable safety and health regulations.

7.12 INVENSYS shall promptly correct WORK properly rejected by OWNER for failing to conform to the requirements of the Contract Documents.

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7.13 INVENSYS shall notify OWNER in writing of any or all uses or restrictions in use of all areas of the site that will adversely affect the progress of the WORK. INVENSYS and its subcontractors will make right all changes or modifications to the site and structures made necessary to accomplish the WORK and required by the terms of the contract.

ARTICLE 8 - SUBCONTRACTS

8.1 A Subcontractor is a person or entity who has a direct contract with INVENSYS to perform a portion of the WORK at the site.

8.2 INVENSYS shall have the option of subcontracting portions of the WORK to other persons or entities. INVENSYS shall not be required to contract with any subcontractor to whom it has a reasonable objection. Unless otherwise stated in the Contract Documents or the bidding requirements, INVENSYS, as soon as practicable after the signing of this agreement, shall furnish in writing to OWNER the names of the Subcontractors for each of the principal portions of the WORK, if any. INVENSYS shall not contract with any Subcontractor to whom OWNER has made reasonable and timely objections.

8.3 Contracts between INVENSYS and Subcontractors shall (1) require each Subcontractor, to the extent of the WORK to be performed by the Subcontractor, to be bound to INVENSYS by the terms of the Contract Documents, and to assume toward OWNER all the obligations and responsibilities which INVENSYS, by the Contract Documents, assumes toward OWNER, and (2) allow to the Subcontractor the benefit of all rights, remedies and redress afforded to INVENSYS by these Contract Documents.

ARTICLE 9 - CHANGES IN THE WORK

9.1 OWNER, without invalidating the agreement, may order changes in the WORK consisting of additions, deletions or modifications, the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by OWNER and INVENSYS. As a condition precedent to INVENSYS being required to sign such a change order or to perform the WORK required by said change order, the OWNER shall furnish INVENSYS with evidence that sufficient funds to fulfill the OWNER'S financial obligations under the Contract Documents are available and committed and with proof that any other entities whose consent is required has been obtained.

9.2 The Contract Sum and Contract Time shall be changed only by written Change Order approved and executed by authorized representatives of both parties, prior to commencement of any additional work.

9.3 The cost or credit to OWNER from a change in the Work shall be determined by mutual agreement.

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ARTICLE 10 - HAZARDOUS MATERIALS

10.1 The scope of work or service to be performed by INVENSYS pursuant to the Contract Documents, and the compensation to be paid to INVENSYS hereunder for work or services performed pursuant to the Contract Documents, expressly excludes any work or service of any nature associated or connected with the identification, abatement, cleanup, control or removal of environmentally hazardous materials. "Hazardous Materials" to include, but not be limited to, asbestos and PCBs discovered in or on the premises. OWNER agrees that all duties and obligations in connection with any hazardous materials located in or on the premises are strictly OWNER'S responsibilities.

10.2 OWNER warrants and represents, except as otherwise defined herein, to the best of OWNER'S knowledge there are no hazardous materials in or on the premises which will affect, be affected by, come in contact with, or otherwise impact upon or interfere with the work to be performed by INVENSYS pursuant to the Contract Documents. Should INVENSYS become aware or suspect the presence of hazardous materials during performance of its work under the Contract Documents, INVENSYS will be authorized to cease work in the affected area immediately, and will promptly notify OWNER of the conditions discovered. Should INVENSYS stop work because of the discovery or suspicion of hazardous materials, the time for performance of INVENSYS' work or service will be extended to cover the period required for abatement, cleanup, or removal of the hazardous materials.

10.3 INVENSYS will not be held responsible for any claims, damages, costs, or expenses of any kind associated with the period during which INVENSYS has stopped work as a result of hazardous materials. If appropriate, INVENSYS will be entitled to an equitable adjustment of the contract price set forth in the Contract Documents for any increased costs or other charges incurred by INVENSYS in connection with the existence of its rights under this paragraph. OWNER will be responsible for taking all necessary steps to correct, abate, clean up or control hazardous materials in accordance with all applicable statutes and regulations.

10.4 Except for any damages or injuries arising from the gross negligence of INVENSYS, OWNER specifically agrees to indemnify and hold INVENSYS, its officers, directors, shareholders, agents and employees harmless from and against any and all claims, demands, damages or causes of action and associated costs in any way arising out of the release of hazardous materials into the air, soil, or any water system or water course, or any actions taken in connection with same, or any failure to act.

ARTICLE 11 - INSURANCE

11.1 INVENSYS shall purchase from and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the WORK is to be performed, insurance for protection from claims under workers' or workmen's compensation acts and other employee benefit acts which are applicable, claims for damages because of bodily injury, including death, and from claims for damages, other than to the WORK itself, to property which may arise out of or result from INVENSYS' performance of the WORK, whether such performance be by INVENSYS or by a Subcontractor or anyone directly or indirectly employed by any of them.

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11.2 This insurance shall be written for not less than limits of liability specified in Attachment E hereto or required by law, whichever coverage is greater. Certificates of such insurance shall be filed with OWNER prior to commencement of the Work.

ARTICLE 12 - TERMINATION OF THE CONTRACT

12.1 If OWNER fails to recommend construction progress payments for a period of thirty (30) days after a request for payment is received, through no fault of INVENSYS, or if OWNER fails to make payment thereon for a period of ten (10) days after payment is due pursuant to the terms of the Contract Documents, INVENSYS may, upon five (5) additional calendar days' written notice to OWNER, terminate the agreement and related agreements and recover from OWNER payment for all WORK executed and for proven loss with respect to materials, equipment, tools and construction equipment and machinery, including reasonable overhead, profit and damages applicable to work to be done pursuant to the Contract Documents.

12.2 If INVENSYS defaults or persistently fails or neglects to carry out the WORK, OWNER, after seven days' written notice to INVENSYS and without prejudice to any other remedy OWNER may then make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due INVENSYS, provided INVENSYS fails within said seven (7) days' period to cure such neglect or to begin curing such neglect. Alternatively, at OWNER's option, and again, only following seven (7) days' written notice to INVENSYS and INVENSYS' failure to begin curing such neglect OWNER may, if sufficient cause exists to justify such action, terminate the Contract and finish the WORK. If the unpaid balance of the contract sum exceeds the reasonable and necessary costs of finishing the WORK, such excess shall be paid to INVENSYS, but if such reasonable and necessary costs exceed such unpaid balance, INVENSYS shall pay the difference to OWNER.

ARTICLE 13 - STANDARDS OF SERVICE AND COMFORT

13.1 The Standards of Service and Comfort establish the agreed upon parameters within the annual Energy Accounting Baseline for future operation of the facility necessary to achieve the Performance Guarantee. Cost Avoidance projections are based upon the specific operating times for equipment and temperatures as defined in Article 13.1.

13.2 Parameters - The parameters are standards within the baseline for occupancy hours, heating availability, cooling availability, minimum and maximum acceptable temperatures during occupied and unoccupied periods for both heating and cooling. Operations that vary from these parameters that jeopardize the Energy Performance of the facility will be grounds for adjusting the baseline and the Performance Guarantee.

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13.2.1 Operating Hours

13.2.1.1 **Occupancy Hours** - For the purpose of this policy, occupied hours shall be defined as those periods during which occupied ventilation, heating and cooling temperatures must be observed. The Occupancy Hours are identified by facility according to the following Schedules:

Occupancy Schedule

Facility Name: See Attachment H								
Time of Day	Sun.	Mon.	Tue.	Wed.	Thu.	Fri.	Sat.	Holidays
Begin								
End								

13.2.1.2 **Lighting Hours** - For the purpose of this policy, lighting hours shall be defined as those periods during which occupancy lighting must be observed. The Lighting Hours are identified by facility according to the following calendar:

Lighting Schedule

Facility Name: See Attachment H								
Time of Day	Sun.	Mon.	Tue.	Wed.	Thu.	Fri.	Sat.	Holidays
Begin								
End								

13.2.1.3 **Process Hours** - For the purpose of this policy, process hours shall be defined as those periods during which process equipment and associated equipment is required to operate. The Occupancy Hours are identified by facility according to the following calendar:

Process Schedule

Facility Name: N/A								
Time of Day	Sun.	Mon.	Tue.	Wed.	Thu.	Fri.	Sat.	Holidays
Begin								
End								

13.2.1.4 **Scheduled Exceptions to Unoccupied Hours** - The following activities, which occur on a non-weekly schedule but occur on a scheduled basis, will be considered as Occupied Hours for baseline purposes, during which temperatures will be maintained according to Occupied Parameters:

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Exceptions to Unoccupied Hours (N/A)

Facility Name	Activity	Scheduled Duration

13.2.1.5 **Unscheduled Exceptions to Unoccupied Hours** - Modifications to the occupancy schedule for temporary activities during the normally unoccupied hours should be documented and written notice provided to INVENSYS by means of Attachment G, Baseline Event Log. This Log should be updated as exceptions occur and made available to INVENSYS upon request.

13.2.2 Temperatures

13.2.2.1 **Cooling Temperature** - If mechanical cooling is required to maintain temperature in the cooling mode, the temperature setpoint during the occupied periods shall be no lower than 72 degrees. Occupants may operate at temperatures above this setpoint at their discretion. During unoccupied periods in the cooling mode, the temperature setpoint shall be no lower than 78 degrees.

13.2.2.2 **Heating Temperature** - If mechanical heating is required to maintain temperature in the heating mode, the temperature setpoint during the occupied mode shall be no higher than 68 degrees. Occupants may operate at temperatures below this setpoint at their discretion. During unoccupied periods in the heating mode, the temperature setpoint shall be no higher than 60 degrees.

13.3 **Equipment** - The addition of loads, not defined in the Energy Accounting Baseline, and the use of portable heating devices (space heaters) will not be allowed within any facility. Exceptions can only be made in emergency situations and then only to avoid structural damage to the facility. INVENSYS must be notified within 24 hours of such emergency situations.

13.4 **Energy Policy Committee** - The ultimate success of the Energy Performance of the facility is dependent upon the support of the occupants. To maintain their awareness of their part in the Energy Performance of the facility, INVENSYS requires that an Owner Energy Policy Committee, whose charter is to see that the necessary operating parameters are observed within the facilities, should be formed.

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ARTICLE 14 - SUPPORT SERVICES AGREEMENT

14.1 Prior to the commencement of the Performance Guarantee period, INVENSYS will inspect and provide a report on all control devices, mechanical equipment, and related systems detailing the work necessary to place them in proper working order. If repairs are found necessary upon initial inspection or initial seasonal start-up, repair charges will be submitted for approval. Should these restoration charges be declined, those items will be eliminated from the program and the Performance Guarantee will be adjusted accordingly.

14.2 Furthermore, the owner will maintain, with INVENSYS, a **Support Services Agreement** (Attachment C) as outlined in this proposal for the entire term of the Performance Guarantee. The Owner agrees to continue to support their other related equipment in accordance with the manufacturer's standards.

14.3 Owner shall make regular monthly payments for the **Support Services Agreement** and as detailed in the **Cash Flow Analysis** (Attachment B).

ARTICLE 15 - RESOLUTION OF DISPUTES

15.1 Any dispute, controversy or claim arising out of or in connection with or relating to the Agreement or any breach or alleged breach hereof, shall upon the request of any party involved, be submitted to and settled by arbitration at the locality where the premises are situated in conformance with rules of the American Arbitration Association then in effect (or place or forum of arbitration mutually acceptable to the parties).

15.2 Any award rendered shall be final and conclusive upon the parties and a judgment thereon may be entered in the highest court or forum, state or federal, having jurisdiction. The expenses of the arbitrators shall be borne equally by the parties, provided that each party shall pay for and bear the cost of its own experts, evidence, and counsel.

ARTICLE 16 - MISCELLANEOUS PROVISIONS

16.1 If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

16.2 The agreement evidenced by the Contract Documents shall be performable in the State and the county or parish within that State in which the work required by the Contract Documents is to be performed and jurisdiction and venue of any action brought in connection with this agreement shall lie in the courts of the state and county or parish in which the agreement is performable.

16.3 The contract Documents shall be governed by the laws of the state in which the agreement is performable.

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16.4 This agreement assumes the non-occurrence of the following contingencies which, without limitation, might render performance by INVENSYS impractical, strikes, fires, war, late or non-performance by suppliers of INVENSYS, and all other contingencies and or acts of God beyond the reasonable control of INVENSYS.

16.5 Unless otherwise indicated in the Contract Documents, all notices provided for in the Contract Documents must be in writing and must be delivered in person or by depositing the same in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested or by facsimile transmission. Notices by mail shall be deemed received upon mailing in accordance with the foregoing requirements. Notices shall be sent to the addresses set forth at the beginning of this agreement. Either party may change the address to which notices are to be sent by giving the other party notice of the new address in the manner provided in this section.

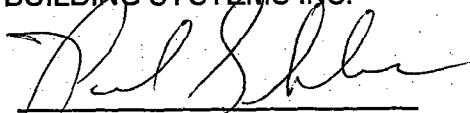
16.6 If, as a result of a breach of this agreement by either party, the other party employs an attorney to enforce its rights under the Contract Documents, the prevailing party shall be entitled to recover its costs, and expenses incurred in connection with enforcing its rights against breaching or defaulting party and said breaching or defaulting party hereby agrees to pay same to the prevailing party.

Agreed and accepted:

INVENSYS BUILDING SYSTEMS INC.

COUNTY OF SAN MATEO

Signature:



Signature: _____

Name:

~~Wayne P. Geary~~ Paul G. Schuler
Vice President

Name: Jerry Hill

Title:

~~General Manager & Vice President,~~
IMServ Americas

Title: President, Board of Supervisors
County of San Mateo

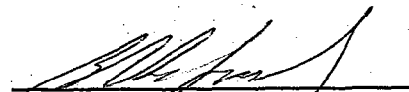
Date:

²¹
February 13, 2002

Date: _____

Approved for INVENSYS BUILDING SYSTEMS INC.

Signature:



Name:

Barry N. Safranek

Title:

Vice President, Facility Solutions

Date:

February 12, 2002