

STATE OF MICHIGAN  
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET  
PURCHASING OPERATIONS  
P.O. BOX 30026, LANSING, MI 48909  
OR  
530 W. ALLEGAN, LANSING, MI 48933

August 17, 2011

**CHANGE NOTICE NO.2**  
**TO**  
**CONTRACT NO. 071B1300173**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF CONTRACTOR  <b>PNC Equipment Finance LLC</b> <b>155 E Broad St.</b> <b>Columbus, OH 43215</b>  Email:rose.konrath@pnc.com	TELEPHONE Rose Konrath <b>(614) 463-6575</b>
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-2619 <b>Seleana Samuel</b>
Contract Compliance Inspector: <b>Lease Agreement for Energy Performance Contract (ESG) – Department of Corrections</b>	
CONTRACT PERIOD: From: <b>December 16, 2010</b> To: <b>December 14, 2021</b>	
TERMS <b>N/A</b>	SHIPMENT <b>N/A</b>
F.O.B. <b>N/A</b>	SHIPPED FROM <b>N/A</b>
ALTERNATE PAYMENT OPTIONS: <input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other	
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	

**NATURE OF CHANGE (S):**

Effective immediately, the Buyer for this Contract is hereby changed to:

**Seleana Samuel**  
**517-241-2619**  
[SamuelS1@michigan.gov](mailto:SamuelS1@michigan.gov)

All other terms, conditions, specifications and pricing remain the same.

**AUTHORITY/REASON:**

Per DTMB-Purchasing Operations approval.

**TOTAL LEASE FINANCED VALUE REMAINS: \$10,840,078.00**

**TOTAL LEASE COST REMAINS: \$12,931,072.00**

STATE OF MICHIGAN  
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET      March 2, 2011  
 PURCHASING OPERATIONS  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 530 W. ALLEGAN, LANSING, MI 48933

**CHANGE NOTICE NO. 1**  
**TO**  
**CONTRACT NO. 071B1300173**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF CONTRACTOR		TELEPHONE: Rose Konrath <b>(614) 463-6575</b>
<b>PNC Equipment Finance LLC</b> <b>155 E Broad St.</b> <b>Columbus, OH 43215</b> <b>Email: rose.konrath@pnc.com</b>		CONTRACTOR NUMBER/MAIL CODE
		BUYER/CA (517) 241-0920 <b>Brenda Sprunger</b>
CONTRACT COMPLIANCE INSPECTOR: <b>Lease Agreement for Energy Performance Contract (ESG) – Department of Corrections</b>		
CONTRACT PERIOD:      From: <b>December 16, 2010</b> To: <b>December 14, 2021</b>		
TERMS <b>N/A</b>	SHIPMENT <b>N/A</b>	
F.O.B. <b>N/A</b>	SHIPPED FROM <b>N/A</b>	
ALTERNATE PAYMENT OPTIONS: <input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other		
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>		

**NATURE OF CHANGE(S):**

**Effective March 1, 2011, the end date on this lease to finance equipment as part of the Energy Performance contract with Energy Systems Group (ESG) for the Parnall Correctional facility is hereby corrected to December 14, 2021. The original end date of December 14, 2020 was incorrect as it did not allow for the installation period of the equipment.**

**This correction does not change the financing terms of the equipment.**

**AUTHORITY/REASON:**

**Per PNC email dated February 10, 2011, Administrative Board approval dated March 1, 2011, and DTMB Purchasing Operations agreement.**

**TOTAL LEASE FINANCED VALUE REMAINS: \$10,840,078.00**

**TOTAL LEASE COST REMAINS: \$12,931,072.00**

STATE OF MICHIGAN  
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET  
 PURCHASING OPERATIONS  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 530 W. ALLEGAN, LANSING, MI 48933

**NOTICE  
 OF  
 CONTRACT NO. 071B1300173  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF CONTRACTOR  <b>PNC Equipment Finance, LLC          155 E. Broad St.          Columbus, OH 43215</b>  Email: rose.konrath@pnc.com	TELEPHONE: Rose Konrath <b>(614) 463-6575</b>
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-0920 <b>Brenda Sprunger</b>
Contract Compliance Inspector: <b>Lease Agreement for Energy Performance Contract (ESG) – Department of Corrections</b>	
CONTRACT PERIOD: From: <b>December 16, 2011</b> To: <b>December 14, 2021</b>	
TERMS <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT <p style="text-align: center;"><b>N/A</b></p>
F.O.B. <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM <p style="text-align: center;"><b>N/A</b></p>
ALTERNATE PAYMENT OPTIONS: <input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other	
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION:	

**The terms and conditions of this Contract are attached.**

**Estimated Contract Value: \$12,931,072.00**

## LEASE WITH OPTION TO PURCHASE

This Lease With Option to Purchase ("Lease"), dated December 16, 2010 as of and entered into between PNCEF, LLC, dba PNC Equipment Finance authorized to do business in Michigan ("Lessor"), and the Michigan Department of Technology, Management and Budget, an agency of the State of Michigan ("Lessee") and the Michigan Department of Corrections, an agency of the State of Michigan.

1. **Lease.** Lessee agrees to lease from Lessor certain "Equipment" as described in the Equipment Schedule (Exhibit A), which, together, with a "Lease Payment Schedule" (Exhibit A-1) constitutes a "Schedule," subject to the terms and conditions of and for the purposes set forth in this Lease.

2. **Term.** This Lease will consist of an "Initial Term" and subsequent "Renewal Terms." The "Commencement Date" for this Lease is the date on which the Equipment is accepted by Lessee in the manner described in Section 12. The "Initial Term" is the period from the Commencement Date, until the end of the first fiscal period for which funds have been appropriated to make lease payments under this Lease. A "Renewal Term" is a subsequent period for which funds have been appropriated to make lease payments under this Lease. The "Lease Term" for this Lease is the Initial Term and all Renewal Terms from the Commencement Date until this Lease is terminated.

3. **Representations and Covenants of Lessee.** Lessee represents, covenants and warrants for the benefit of Lessor on the date hereof and as of the Commencement Date of this Lease as follows: (a) Lessee Michigan Department of Technology, Management and Budget is an agency of the State of Michigan, which is a department of state government duly organized and existing under the constitution and laws of the State of Michigan, with full power and authority under the constitution and laws of the state where the Lessee is located to enter into this Lease and to perform all of its obligations; (b) Lessee has complied with such public bidding requirements as may be applicable to this Lease and the acquisition by Lessee of the Equipment as provided in this Lease; (c) during the Lease Term, the Equipment will be used by Lessee solely and exclusively for the purpose of performing essential governmental functions of Lessee consistent with the permissible scope of Lessee's authority; (d) the equipment is and will remain personal property.

4. **Representations and Covenants of Lessor.** Lessor represents, covenants and warrants for the benefit of Lessee on the date hereof and as of the Commencement Date of this Lease as follows: (a) Lessor, at the request of the Lessee, will pay for the Equipment from and; (b) Pursuant to Section 22, Lessor will convey clear title for the Equipment to Lessee if and when Lessee exercises the purchase option.

5. **Tax Covenant.** It is the intention of Lessee and Lessor that the interest portion of the Lease Payments received by Lessor be and remain free from federal income taxation. Lessee covenants that it will not intentionally perform any act or enter into any agreement or use or permit the use of the Equipment or any portion thereof in a manner that shall have the effect of terminating the exemption from federal income taxation of the interest portion of the Lease Payments.

6. **IRS Reporting.** At Lessor's request, the parties shall cooperate to ensure compliance with IRS reporting requirements. Lessor shall prepare for the State's signature an IRS Form 8038G, or take such other action requested by other State agencies, including, but not limited to, the State Treasurer's Office. Lessor shall provide the State Purchasing Director of the Department of Management and Budget with a copy and filing date of any IRS Form 8038G filed with the IRS. However, the parties acknowledge that Lessor has the exclusive responsibility to file IRS Form 8038G and has exclusive liability for any penalties, costs, damages, or other consequences resulting from a failure to file.

7. **Lease of Equipment.** Upon the execution of this Lease, Lessor leases to Lessee, and Lessee leases from Lessor, the Equipment in accordance with the terms hereof. The Lease Term for this Lease may be continued, solely at the option of Lessee, at the end of the Initial Term or any Renewal Term, for the next succeeding Renewal Term up to the maximum Lease Term set forth in this Lease. At the end of the Initial Term and at the end of each Renewal Term, the Lease Term shall be automatically extended upon the successive appropriation by the Michigan State Legislature of amounts sufficient to pay Lease Payments and other amounts payable under this Lease during the next succeeding Fiscal Period, until all Lease Payments payable under this Lease have been paid in full, unless Lessee shall have terminated such Lease pursuant to Section 8 or Section 22. The Director of the Department of Technology, Management and Budget currently intends to use his/her best efforts in making recommendations to the State Budget Office for the necessary appropriations for this lease for inclusion in the Governor's Executive Budget in future fiscal years. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Initial Term, except that the Lease Payments shall be as provided in the applicable Lease Payment Schedule.

8. **Nonappropriation.** Lessee is obligated only to pay such Lease Payments under this Lease as may be appropriated for the Lease of the Equipment. Should the State Legislature fail to appropriate funds to pay Lease Payments, or should an appropriation be adopted which specifically prohibits the use of funds for this Lease, Lessee agrees to deliver notice to Lessor of such nonappropriation within thirty (30) business days of a final legislative action terminating funding for this Lease. Failure to give Lessor such notice shall not create any obligation on the part of the Lessee to make Lease payments beyond the period for which funds have been appropriated. If this Lease is terminated in accordance with this Section, Lessee agrees to peaceably deliver the Equipment to Lessor at the location(s) specified by Lessor or to allow Lessor to peaceably obtain possession of the Equipment. The parties have agreed and determined that the principal amount to be paid to Lessor under this Lease is not in excess of the total fair market value of the Equipment. In making such determination, consideration has been given to the costs of the Equipment, the uses and purposes served by the Equipment and the benefit that will accrue to the parties by reason of this Lease and to the general public by reason of Lessee's use of the Equipment. Lessor understands that as of the date of execution of this Lease, Lessee has an appropriation for the Equipment for the current fiscal year, as defined in 1984 PA 431, MCL 18.1491.

9. **Lease Payments.** Lessee shall promptly pay "Lease Payments" as described in Exhibit A-1 to this Lease, exclusively from funds appropriated for lease of the Equipment. Pursuant to 1984 PA 279, MCL 17.51-17.57, Lessee shall pay Lessor a charge on any Lease Payment, which remains unpaid on the date such Lease Payment is due. Lease Payments consist of principal and interest portions. *Lessor and Lessee understand and intend that the obligation of Lessee to pay Lease Payments under this Lease shall constitute a current expense of the State of Michigan and shall not in any way be construed to be a debt or general obligation of the State of Michigan in contravention of any applicable constitutional or statutory limitation or requirement*

*concerning the creation of indebtedness by Lessee, including, but not limited to, Const 1963, art 9, §§12, 17, nor shall anything contained herein or in a Lease constitute a pledge of the general tax revenues, credit, funds or monies of the State.*

**10. LEASE PAYMENTS TO BE UNCONDITIONAL.** EXCEPT AS PROVIDED IN SECTION 8, AND SUBJECT TO LESSEE'S ACCEPTANCE OF THE EQUIPMENT AS PROVIDED IN SECTION 12, THE OBLIGATIONS OF LESSEE TO MAKE LEASE PAYMENTS AND TO PERFORM AND OBSERVE THE OTHER COVENANTS AND AGREEMENTS CONTAINED IN THIS LEASE SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS WITHOUT ABATEMENT, DIMINUTION, DEDUCTION, SET-OFF OR DEFENSE, FOR ANY REASON, INCLUDING, WITHOUT LIMITATION, ANY DEFECTS, MALFUNCTIONS, BREAKDOWNS OR INFIRMITIES IN THE EQUIPMENT OR ANY ACCIDENT, CONDEMNATION OR UNFORESEEN CIRCUMSTANCES.

**11. Delivery and Installation.** Lessee shall order the Equipment, cause the Equipment to be delivered and installed at the location agreed upon by the parties and pay any and all delivery and installation costs in connection therewith.

**12. Performance and Reliability Evaluation; Acceptance.** The parties agree and acknowledge that the obligations under this Lease are conditioned, in part, upon the successful completion of a Performance and Reliability Evaluation (PARE), described in Contract No. 071B1300090 between Energy Systems Group LLC. ("Vendor or ESCO") and the State of Michigan. Upon successful completion of the PARE, Lessee shall confirm to Lessor its written acceptance of the Equipment by executing a "Certificate of Acceptance." A blank, unexecuted copy of a Certificate of Acceptance is attached hereto as Exhibit B. The PARE shall commence when the Equipment has been delivered and installed as provided in Section 11.

**13. Marking; Inspection.** Lessor shall have the right to mark or affix a nonpermanent label on the Equipment for purposes of identifying it at a later date. Lessor or its agents shall have the right, from time to time, with prior written notice, during reasonable business hours, and subject to the needs of Lessee, to enter into and upon the property of Lessee for the purpose of inspecting the existence, condition and proper maintenance of the Equipment.

**14. Use; Maintenance.** Lessee will not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Lease. Lessee agrees that it will, at Lessee's own cost and expense, maintain, preserve and keep the Equipment in good repair and working order.

**15. Title to the Equipment.** During the Term of this Lease, title to the Equipment shall remain in Lessor. Title to the Equipment shall be conveyed to Lessee upon the occurrence of one of the following: (a) the exercise by Lessee of the purchase option under Section 22; or (b) the payment by Lessee of all sums required to be paid under this Lease as specified in the Lease Payment Schedule. Upon Lessee's exercise of the purchase option or Lessee's payment of all sums due under the Lease Payment Schedule, Lessor shall transfer free and clear title to Lessee.

**16. Financing Statements.** At Lessor's request, Lessee shall join Lessor in executing any necessary or appropriate Financing Statements indicating its obligation under this Lease.

**17. Taxes, Other Governmental Charges and Utility Charges.** The parties to this Lease contemplate that the Equipment will be used for governmental purposes of Lessee and that the Equipment will therefore be exempt from all property taxes. If the use, possession or acquisition of any Equipment is nevertheless determined to be subject to taxation, Lessee shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to such Equipment. Lessee shall pay all utility and other charges incurred in the use and

maintenance of the Equipment. Lessee shall pay such taxes or charges as the same may become due.

18. **Insurance.** Lessee is self-insured for all risk, physical damage, and public liability and will provide proof of such self-insurance in letterform together with a copy of the statute authorizing this form of insurance.

19. **Risk of Loss or Damage.** Lessee shall assume all risk of loss, theft, damage to, or destruction of the Equipment for any cause ("Loss or Damage") upon acceptance, as described in Section 11. In the event of Loss or Damage to the Equipment, Lessee shall promptly report the same to Lessor and concerned governmental agencies. Lessee shall not be relieved of its obligation to pay Lease Payments or to perform any other obligations under this Lease by reason of any Loss or Damage. In the event of any Loss or Damage, Lessee shall either: (a) promptly replace lost Equipment or promptly repair damaged Equipment and place it in good repair and working condition and continue to make all Lease Payments; or (b) within sixty (60) business days of notifying Lessor that the Equipment will not be repaired, pay Lessor the outstanding principal balance and any unpaid accrued interest as of the payoff date, as described in the Lease Payment Schedule. Lessee shall have the right to retain any residual insurance benefit, which remains after payment to Lessor of the outstanding principal balance and unpaid accrued interest.

20. **DISCLAIMER OF WARRANTIES.** LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE EQUIPMENT, OR WARRANTY WITH RESPECT THERETO WHETHER EXPRESS OR IMPLIED, AND LESSEE ACCEPTS SUCH EQUIPMENT AS IS. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE IN CONNECTION WITH OR ARISING OUT OF THIS LEASE OR THE EXISTENCE, FURNISHING, FUNCTIONING OR LESSEE'S USE OF ANY ITEM, PRODUCT OR SERVICE PROVIDED FOR IN THIS LEASE.

21. **Vendor's Warranties.** Upon execution of this Lease, Lessor irrevocably appoints Lessee as its agent and attorney-in-fact during this Lease, so long as Lessee shall not be in default under this Lease, to assert from time to time whatever claims and rights, including, but not limited to, warranties, relating to the Equipment that Lessor may have against Vendors. The term "Vendors" means any supplier or manufacturer of the Equipment, as well as agents or representatives of those suppliers or manufacturers. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against Vendors of the Equipment, and not against Lessor. Any such matter shall not have any effect whatsoever on the rights and obligations of Lessor with respect to this Lease, including the right to receive full and timely payments under this Lease. Lessee acknowledges that Lessor makes, and has made, no representations regarding the existence or availability of warranties made by Vendors.

22. **Purchase Option.** Lessee reserves the unilateral right to exercise a purchase option for the Equipment. Lessee may exercise this right by paying to Lessor a "Concluding Payment", based on the payment terms specified in the Lease Payment Schedule. The Concluding Payment for a given date shall be defined as the sum of the outstanding principal balance as of that date, plus any unpaid accrued interest as of that date, plus any prepayment premium, plus one dollar (\$1.00). Upon receiving payment of the Concluding Payment, Lessor shall transfer any and all of its rights, title, and interest to the Equipment and covenant to Lessee that the Equipment is free of any liens or encumbrances.

23. **Assignment.** Lessor's right, title and interest in and to this Lease, including Lease Payments and any other amounts payable by Lessee thereunder and all proceeds therefrom, may only be assigned and reassigned to one or more assignees or subassignees by Lessor with the

written consent of Lessee, which shall not be unreasonably withheld. Assignments may include without limitation assignment of all of Lessor's security interest in and to the Equipment listed in this Lease and all rights in, to and under the Lease related to such Equipment. Notwithstanding the above, Lessee hereby agrees that Lessor may, without the consent of Lessee, but with notice to Lessee, sell, dispose of, or assign this Lease through a pool, trust, limited partnership, or other similar entity, whereby one or more interests are created in this Lease, or in the Equipment listed in or the Lease Payments under a Lease. In accordance with Section 149(a) of the Internal Revenue Code of 1986, as amended, Lessor shall keep a record of all such assignments and provide written notice to Lessee. Lessor agrees to continue servicing the Lease or arrange for a servicer with equal standards of high quality. Lessor also agrees remittance will remain with a single servicer.

None of Lessee's right, title and interest in, to and under any Lease or any portion of the Equipment listed in each Lease may be assigned, subleased, or encumbered by Lessee for any reason without obtaining prior written consent of Lessor.

**24. Lessee Default.** Any of the following events shall constitute an "Event of Default" under this Lease: (a) failure by Lessee to pay any Lease Payment due under the Lease Payment Schedule or other payment required to be paid under this Lease at the time specified therein; (b) failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subparagraph (a) above, for a period of thirty (30) business days after written notice specifying such failure and requesting that it be remedied is given to Lessee by Lessor; or (c) any representation or warranty made by Lessee in or pursuant to this Lease proves to be false in any material respect when made and such breach of representation and warranty is not cured within ten (10) business days of Lessee's receipt of written notice of such breach.

**25. Lessor Default.** Any of the following events shall constitute an "Event of Default" under this Lease: (a) failure by Lessor to, at the request of the Lessee, promptly forward payment to the Vendor for the Equipment after receipt of fully executed documents including a Certificate of Acceptance, pursuant to Section 12; (b) failure by Lessor to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subparagraph (a) above, for a period of thirty (30) business days after written notice specifying such failure and requesting that it be remedied is given to Lessee by Lessor; (c) failure to convey clear title; or (d) any representation or warranty made by Lessor in or pursuant to this Lease proves to be false in any material respect when made and such breach of representation and warranty is not cured within ten (10) business days of Lessee's receipt of written notice of such breach.

**26. Lessor's Remedies on Default by Lessee.** Whenever Lessee defaults, and the default is not cured within the period specified in Section 24, Lessor shall have the right, at its sole option without any further demand, to take one of the following remedial steps: (a) by written notice to Lessee, declare all Lease Payments payable to the end of the period for which an appropriation has been made, to be immediately due and payable; (b) take whatever action at law or in equity may appear necessary or desirable to enforce its rights under this Lease or as a secured party in any or all of the Equipment including peaceably obtaining possession of the Equipment

**27. Lessee's Remedies on Default by Lessor.** Whenever Lessor defaults and the default is not cured within the period specified in Section 25, Lessee shall have the right, at its sole option without any further demand, to take one of the following remedial steps: (a) procure comparable equipment from other sources; (b) take whatever action at law or in equity may appear necessary or desirable to enforce its rights under this Lease.

28. **No Remedy Exclusive.** No remedy herein conferred upon or reserved to Lessor or Lessee is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease now or hereafter existing at law or in equity.

29. **Notices.** All notices or other communications under this Lease shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties hereto at the addresses listed below (or at such other address as either party hereto shall designate in writing to the other for notices to such party), or to any assignee at its address as it appears on the registration books maintained by Lessee.

30. **Indemnification.** Lessor does hereby agree to indemnify, defend, and hold Lessee harmless from and against any and all claims, losses, costs, attorneys' fees, and expenses arising out of or related to the breach of Lessor's representations under this Lease.

31. **Miscellaneous Provisions.** This Lease constitutes the complete and exclusive agreement and understanding of the parties as it relates to this transaction. This Lease supersedes all proposals, or other prior agreements, and all other communications, oral or written, between the parties relating to this Lease and the Equipment described herein. This Lease shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns. References herein to "Lessor" shall be deemed to include each of its assignees and subsequent assignees from and after the effective date of each assignment as permitted by Section 23. In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof. This Lease may be amended by mutual written consent of Lessor and Lessee. This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of this Lease.

32. **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Michigan.

33. **Statutory Obligations.** This Lease may be cancelled by Lessee provided Lessor is notified in writing at least thirty (30) business days prior to the effective date of cancellation and any of the following occur: (a) Lessor or any subcontractor, manufacturer, or supplier of Lessor appears in the register compiled by the Michigan Department of Labor pursuant to 1980 PA 278, as amended, MCL 423.321 et seq. (Employers Engaging in Unfair Labor Practices Act); (b) Lessor or any subcontractor, manufacturer, or supplier of Lessor is found liable for discrimination, pursuant to 1976 PA 453, as amended, MCL 37.2101 et seq. (Elliott-Larsen Civil Rights Act) or 1976 PA 220, as amended, MCL 37.1101 et seq. (Persons With Disabilities Civil Rights Act).

34. **Nondiscrimination.** Lessor shall comply with the Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 et seq. and the Persons With Disabilities Civil Rights Act, 1976 PA 220, as amended, MCL 37.1101 et seq. (Persons With Disabilities Civil Rights Act), and all other federal, state and local fair employment practices and equal opportunity laws, and covenants that it shall not discriminate against any employee or applicant for employment, to be employed in the performance of this contract, with respect to his or her hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of his or her race, religion, color, national origin, age, sex, height, weight, marital status, or physical or mental disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Lessor agrees to include in every subcontract

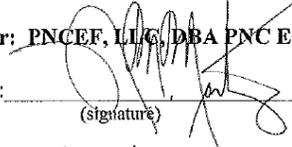
entered into for the performance of this contract this covenant not to discriminate in employment. A breach of this covenant is a material breach of this Lease.

35. **Electronic Payment Requirement.** Electronic transfer of funds is required for payments on State Contracts. Contractors are required to register with the State electronically at <http://www.epexpress.state.mi.us>. As stated in Public Act 431 of 1984, all contracts that the State enters into for the purchase of goods and services shall provide that payment will be made by electronic fund transfer (EFT).

36. **Escrow.** The Lease contemplates that the parties will enter into an escrow agreement with U.S. Bank National Association, as escrow agent "Escrow Agent", in which Lessor will deposit an amount equal to the anticipated aggregate acquisition cost of the Equipment ("Purchase Price"), being \$10,840,078.00 with Escrow Agent to be held in escrow and **applied** on the express terms of the Escrow Agreement. The deposit, together with all interest ("Escrow Fund") is to be applied to pay the Vendor its invoice cost (a portion of which may, if required, be paid prior to final acceptance of the Equipment by Lessee); and, if applicable, to reimburse Lessee for progress payments already made by it to the Vendor of the Equipment.

Lessor and Lessee have caused this Lease to be executed in their names by their duly authorized representatives as of the date first above written.

Lessor: ~~PNCEF, LLC, DBA PNC EQUIPMENT FINANCE~~

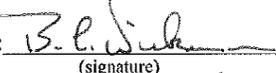
Name:  DATE 12/16/2010  
(signature)

Name: Ralph Martinez  
(print)

Title: COO

Fed. I.D. \_\_\_\_\_

Lessee: MICHIGAN DEPARTMENT OF CORRECTIONS, AN  
AGENCY OF THE STATE OF MICHIGAN

Name:  DATE 12/14/10  
(signature)

Name: Barry W. Wickman  
(print)

Title: ADMINISTRATOR  
Michigan Department of Corrections

**Lessee: MICHIGAN DEPARTMENT OF TECHNOLOGY,  
MANAGEMENT AND BUDGET AN AGENCY OF THE STATE  
OF MICHIGAN**

Name: Anthony J. DesCherz DATE 12/16/10  
(signature)

Name: ANTHONY J. DES CHERZ  
(print)

Title: DIRECTOR, COMMODITIES DIVISION  
Michigan Department of Technology, Management and Budget



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**ARTICLE 5. FISCAL FUNDING - Refer to Section 2.154 Termination for Non-Appropriation**

**ARTICLE 6. CONSTRUCTION SCHEDULE AND EQUIPMENT INSTALLATION; APPROVAL**

**Section 6.1. Construction Schedule; Equipment Installation**

Construction and equipment installation must proceed in accordance with the construction schedule approved by DTMB and Agency and attached as Schedule G - Construction and Equipment Installation Schedule.

All equipment/installation work associated with this Contract, such as construction contracts for installation of energy saving equipment, must comply with all applicable federal, state and local Laws including health and safety regulations, environmental protection, permits and licensing.

**Section 6.2. Systems Startup and Equipment Commissioning**

The ESCO must conduct a thorough and systematic performance test of each element and total system of the installed Equipment in accordance with the procedures specified in Schedule H - Systems Start-Up and Commissioning of Equipment; Operating Parameters of Installed Equipment and prior to acceptance of the project by DTMB and Agency as specified in Exhibit II (ii) - Certificate of Acceptance - Installed Equipment. Testing must be designed to determine if the Equipment is functioning in accordance with both its published specifications and the Schedules to this Contract, and to determine if modified building systems, subsystems or components are functioning properly within the new integrated environment. The ESCO must provide notice to DTMB and Agency of the scheduled test(s) and DTMB and Agency and/or its designees have the right to be present at all the tests conducted by ESCO and/or manufacturers of the Equipment. The ESCO is responsible for correcting and/or adjusting all deficiencies in systems and Equipment operations that may be observed during system commissioning procedures as specified in Schedule H - Systems Start-Up and Commissioning of Equipment; Operating Parameters of Installed Equipment. The Contractor is responsible for correcting and/or adjusting all deficiencies in Equipment operation that may be observed during system testing procedures. Prior to DTMB and Agency acceptance ESCO must also provide DTMB and Agency with reasonably satisfactory documentary evidence that the Equipment installed is the Equipment specified in Schedule A - Equipment to be Installed by ESCO.

**ARTICLE 7. EQUIPMENT WARRANTIES - Refer to Section 2.120 Warranties**

ESCO warrants that all equipment acquired and installed as part of this Contract is new, materially free from defects in materials or workmanship, will be installed properly in a good and workmanlike manner, and will function properly for a period of one (1) year from the date of the Substantial Completion for the particular energy conservation measure if operated and maintained in accordance with the procedures established per building. Substantial Completion shall be defined as the stage in the progress of the Work where the Work is sufficiently complete in accordance with the Contract Documents so that the Agency can utilize and take beneficial use of the Work for its intended use or purpose. Substantial Completion does not occur until the Equipment or system has been commissioned, accepted, and the "Substantial Completion" form fully executed.



**SCHEDULE G. CONSTRUCTION AND INSTALLATION SCHEDULE**

The timetables and milestones for project construction will consist of a 14 month construction period. All construction/installation will be in compliance with individual Agency requirements and the appropriate governing statutes.

ESG will work with all appropriate State of Michigan Agencies/Personnel, with all appropriate personnel at Parnall Correctional Facility, and our installation contractors to create a detailed schedule of equipment lead times/delivery, construction, installation work and a schedule will be prepared and agreed by all parties.

**Preliminary Parnall Project Schedule**

	<u>Task Name</u>	<u>Duration</u>	<u>Start</u>	<u>Finish</u>
1	Sign Contract	1 day	Thurs 11/4/10	Thurs 11/4/10
2	Subcontracts	10 days	Fri 11/5/10	Thurs 11/18/10
3	Lighting - Interior	0 days	Thurs 11/4/10	Thurs 11/4/10
4	Final Engineering	10 days	Fri 11/19/10	Thurs 12/2/10
5	Material Delivery	35 days	Fri 12/3/10	Thurs 1/20/11
6	Installation	120 days	Fri 1/21/11	Thurs 7/7/11
7	Punch List	10 days	Fri 7/8/11	Thurs 7/21/11
8	Water Conservation	0 days	Thurs 11/4/10	Thurs 11/4/10
9	Final Engineering	7 days	Fri 11/19/10	Mon 11/29/10
10	Material Delivery	85 days	Tues 11/30/10	Mon 3/28/11
11	Installation	112 days	Tues 3/29/11	Wed 8/31/11
12	Punch List	10 days	Thurs 9/1/11	Wed 9/14/11
13	Commissioning	5 days	Thurs 9/15/11	Wed 9/21/11
14	Mechanical	0 days	Thurs 11/4/10	Thurs 11/4/10
15	Final Engineering	60 days	Fri 11/19/10	Thurs 2/10/11
16	State Approvals	30 days	Fri 2/11/11	Thurs 3/24/11
17	Material Delivery	45 days	Fri 11/19/10	Thurs 1/20/11
18	Installation	215 days	Fri 1/21/11	Thurs 11/17/11
19	Punch List	20 days	Fri 11/18/11	Thurs 12/15/11
20	Commissioning	15 days	Fri 12/16/11	Thurs 1/5/12
21	Training	3 days	Fri 1/6/12	Tues 1/10/12

**SCHEDULE H. SYSTEMS START-UP AND COMMISSIONING OF EQUIPMENT;  
OPERATING PARAMETERS OF INSTALLED EQUIPMENT**

All major equipment shall be started under supervision of Authorized Manufacturer's Representatives; furthermore, a third party commissioning agent (Pro-MEC Engineering Services out of Grand Ledge, MI) shall be contracted to perform commissioning services in accordance to ASHRAE Standards. The third-party commissioning agent shall be responsible for the following: 1) verification of proper operation/achieve design conditions; 2) facilitate/aid in construction process optimization; 3) decrease energy consumption/cost of operation; 4) improve occupant satisfaction and level of comfort; 5) decrease cost of maintenance and operations; and 6) improve risk management through identification of potential future issues. The following section further describes the Commissioning Agents Scope of Work:

# MECHANICAL EQUIPMENT SCHEDULE

## Parnall Correctional Facility Equipment Schedule

ITEM	BUILDING	ROOM	NO. OF	MODEL NUMBER	TOTAL
RADIANT PANEL	CELL BLOCK 10	GUARDS WALKWAY	152	RUNTAL R-8 (9' PANEL)	\$ 801,105.89
RADIANT PANEL	CELL BLOCK 10	GUARDS WALKWAY	16	RUNTAL R-8 (12' PANEL)	\$ 83,274.30
RADIANT PANEL	CELL BLOCK 10	GUARDS WALKWAY	12	RUNTAL R-8 (13' PANEL)	\$ 47,455.73
AIR HANDLING UNIT	CELL BLOCK 10	ROOF	1	TRANE TSCX-1	\$ 711,835.92
AHU HEATING COIL CIRULATING PUMP (P-10, P-11)	CELL BLOCK 10	ATTIC	2	BELL & GOSSETT SERIES 90 SIZE 2AA	\$ 15,818.58
RADIANT PANEL	CELL BLOCK 9	GUARDS WALKWAY	136	RUNTAL R-8 (9' PANEL)	\$ 537,831.58
RADIANT PANEL	CELL BLOCK 9	GUARDS WALKWAY	16	RUNTAL R-8 (12' PANEL)	\$ 83,274.30
RADIANT PANEL	CELL BLOCK 9	GUARDS WALKWAY	12	RUNTAL R-8 (13' PANEL)	\$ 47,455.73
AIR HANDLING UNIT	CELL BLOCK 9	ROOF	1	TRANE TSCX-1	\$ 711,835.92
AHU HEATING COIL CIRULATING PUMP (P-12, P-13)	CELL BLOCK 9	ATTIC	2	BELL & GOSSETT SERIES 90 SIZE 2AA	\$ 15,818.58
GAS FIRED CONDENSING BOILER	CELL BLOCK 8	BASE LEVEL MECH ROOM	2	Aerco BMK-3.0 GWB	\$ 1,466,382.00
SYSTEM PUMP (P-1,2,3)	CELL BLOCK 8	BASE LEVEL MECH ROOM	3	BELL & GOSSETT SERIES 1610 SIZE 2-1/2AB	\$ 450,829.42
HYDRONIC UNIT HEATER	CELL BLOCK 8	BASE LEVEL MECH ROOM	1	TRANE UHSA042-S	\$ 7,009.29
HYDRONIC UNIT HEATER	CELL BLOCK 8	BASE LEVEL MECH ROOM	6	TRANE UHSA354-S	\$ 263,853.85
DOMESTIC WATER HEATER	CELL BLOCK 8	BASE LEVEL MECH ROOM	2	LOCHINVAR CFN2071PM	\$ 438,174.56
DOMESTIC WATER HEATER TANK	CELL BLOCK 8	BASE LEVEL MECH ROOM	2	LOCHINVAR RGA0432	\$ 66,438.02
DOMESTIC WATER HEATER RETURN PUMP (P-9)	CELL BLOCK 8	BASE LEVEL MECH ROOM	1	BELL & GOSSETT PL36	\$ 7,809.29
WATER METER	CELL BLOCK 8	BASE LEVEL MECH ROOM	1	DYNASONIC DTFXL-2-H	\$ 15,818.58
DOMESTIC WATER HEATER	BUILDING 10	BOILER ROOM	1	LOCHINVAR CFN0991PM	\$ 209,012.50
GAS FIRED UNIT HEATER	BUILDNG 29	1ST FLOOR	4	TRANE GKND-022	\$ 324,438.99
GAS FIRED UNIT HEATER	BUILDNG 31	1ST FLOOR	14	TRANE GKND-022	\$ 432,954.43
GAS FIRED UNIT HEATER	BUILDNG 31	2ND FLOOR	14	TRANE GKND-022	\$ 432,954.43
GAS FIRED UNIT HEATER	BUILDNG 32	BASEMENT	18	TRANE GKND-012	\$ 473,766.35
GAS FIRED UNIT HEATER	BUILDNG 32	1ST FLOOR	18	TRANE GKND-020	\$ 473,766.35
GAS FIRED UNIT HEATER	BUILDNG 32	2ND FLOOR	18	TRANE GKND-020	\$ 473,766.35
GAS FIRED INFRARED HEATER	BUILDNG 71	WORK AREA	6	SUPERIOR RADIANT PRODUCTS UX-125 (30 FT.)	\$ 251,398.72
GAS FIRED INFRARED HEATER	BUILDNG 71	WORK AREA	1	SUPERIOR RADIANT PRODUCTS UX-40 (10 FT.)	\$ 41,800.24
GAS FIRED INFRARED HEATER	BUILDNG 71	WASH BAY	1	SUPERIOR RADIANT PRODUCTS UXR-60 (20 FT.)	\$ 41,898.66
GAS FIRED CONDENSING BOILER	BUILDING 74	BREAK ROOM	1	LOCHINVAR KBN400	\$ 184,355.00
INDIRECT FIRE NATURAL GAS MAKE UP AIR HANDLING UNIT	BUILDING 79	DINING ROOM	2	RAPID 8-318-1000	\$ 492,432.27
GAS FIRED UNIT HEATER	BUILDNG 79	PAPER GOODS STORAGE	1	MODINE HOT DAWG HDS-60	\$ 20,564.15
GAS FIRED UNIT HEATER	BUILDNG 79	STAFF WORK AREA	1	MODINE HOT DAWG HDS-45	\$ 20,564.15
GAS FIRED UNIT HEATER	BUILDNG 79	DOCK ENTRY	1	MODINE HOT DAWG HDS-100	\$ 20,564.15
EXHAUST FAN	BUILDING 79	DINING ROOM	1	GREENHECK RBE-H54-30	\$ 51,262.19
DOMESTIC WATER HEATER	BUILDING 79	MECH ROOM	1	LOCHINVAR CFN401PM	\$ 85,420.31
GAS FIRED UNIT HEATER	BUILDNG 80	EAST OVERHEAD DOOR TO PROCESS CREAMERY AREA	1	TRANE GKND-010	\$ 39,625.53
GAS FIRED UNIT HEATER	BUILDNG 80	WEST OVERHEAD DOOR	1	TRANE GKND-010	\$ 39,625.53
GAS FIRED UNIT HEATER	BUILDNG 80	WEST OVERHEAD DOOR	5	TRANE GKND-012	\$ 187,338.74
GAS FIRED RTU WITH DX COOLING	BUILDNG 80	ROOF	1	TRANE YCD211	\$ 212,680.76
GAS FIRED UNIT HEATER	BUILDNG 213	GARAGE	4	TRANE GKND-010	\$ 183,901.67
TOTALS					\$ 10,238,059.00

**ICON Parts List**  
**Parnall Correctional Institution**  
**Jackson, Michigan**

Part Number	Description	Qty
CTR-X11-B-01-F-001	Controller; X11; 1 IO; Battery; Flush; Standard	2
CTR-X11-S-04-4F-001	Controller; X11; 4 IO; Standalone; 4 Flush; Standard	12
CTR-X11-S-04-4S-001	Controller; X11; 4 IO; Standalone; 4 Shower; Standard	337
MHW-EN-7503-TOILET	Enclosure; Toilet Valve; 14" W; 15" L; 5" D; With Paper Holder; Internal Mounting Bracket; S.S.	673
SEN-1489-006	Sensor Assembly; Standard; with 6' Lead, Nut & Lock Washer	760
SLD-0912-006	Solenoid Assembly; 24 VAC; 0912 Series; with 6' Lead; includes Bleed Plug & Latch	760
VLV-CMIN-2702	Valve Assembly; Common; Pre-Tempered Water Manifold; Dual Station	24
VLV-FVL-3701-L	Valve Assembly; Flush; Sloan Retrofit; Left; 1"; excludes Solenoid	365
VLV-FVL-3701-R	Valve Assembly; Flush; Sloan Retrofit; Right; 1"; excludes Solenoid	347
S-20-001	Symmons 4" center set faucet with dual handles	83
S-60-001	Symmons 4" center set faucet slow close single handle	90
S-71	Symmons Single Spout Faucet	32
S-245-001	Symmons 8" center set kitchen faucet	4
Z-5550	1.6 gpf ADA, Elongated, Two-Piece Toilet	3
Z-5551	1.6 gpf, Elongated, Two-Piece Toilet	11
Z-5610	1.6 gpf Elongated, Wall Mount Top Spud, Toilet	12
Z-5660	1.6 gpf ADA, Elongated, Floor Mount Top Spud, Toilet	5
Z-5661	1.6 gpf Elongated, Floor Mount Top Spud, Toilet	23
Z-6200	Metroflush 1.6 Piston Flush Valve; Water Closet	40
Z-6203	Metroflush 1.0 3/4" Down Tube Piston Flush Valve; Urinal	24
Z-6204	Metroflush 1.0 1 1/4" Down Tube, Piston Flush Valve, Urinal	4
HA-2226	Penal Fixed 2.0 Showerhead	59

**Total Cost \$1,830,962**

Exhibit A

SCHEDULE OF PROPERTY NO. 1

RE: LEASE WITH OPTION TO PURCHASE AGREEMENT entered into as of December 16, 2010, ("Lease"), between PNCEF, LLC, dba PNC Equipment Finance ("Lessor") and State of Michigan, Department of Technology, Management and Budget and State of Michigan Department of Corrections ("Lessee"). All terms used and not otherwise defined herein have the meaning ascribed to them in the Lease.

One hundred percent of the financing costs will be used to acquire assets that will be capitalized.

The following items of Equipment are hereby included under this Schedule to the Lease.

DESCRIPTION OF EQUIPMENT		
Qty	Model	Description
		Energy Performance Contract Equipment as Described in Contract No. 071B1300090
		Amount Financed \$10,840,078.00 (2.99%)
		Total Cost \$12,931,072.00

Lessee hereby represents warrants and covenants that its representations, warranties and covenants set forth in the Lease are true and correct as though made on the Commencement Date of Installment Payments under this Schedule. The terms and provisions of the Lease are hereby incorporated into this Schedule by reference and made a part hereof.

Dated Date:

Lessee: State of Michigan, Department of Technology, Management and Budget

Lessee: State of Michigan, Department of Corrections

By: [Signature]

By: [Signature]

Name: ANTHONY J. DES CREEVES  
(PRINT)

Name: Barry L. Wickman  
(PRINT)

Title: DIRECTOR, COMMODITIES DIV.

Title: ADMINISTRATOR

Date: 12/16/10

Date: 12/16/10

Lessor: PNCEF, LLC dba PNC Equipment Finance

By: [Signature]

Name: Ralph Martinez  
(PRINT)

Title: COO

Date: 12/16/2010

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



MIKE COX  
ATTORNEY GENERAL

P.O. Box 30754  
LANSING, MICHIGAN 48909

December 16, 2010

Sergio Paneque, Senior Deputy Director  
Business Services Administration  
Department of Technology, Management, and Budget  
2<sup>nd</sup> Floor -- Stevens T. Mason Building  
P.O. Box 30026  
Lansing, MI 48909

Dear Mr. Paneque:

Re: Opinion of Counsel: Lease with Option to Purchase dated December 16, 2010 between PNCEF, LLC dba PNC Equipment Finance, as Lessor, and State of Michigan, Department of Technology, Management and Budget, as Lessee Energy Conservation Measures Equipment Contract No. 071B1300090 with Energy Systems Group, LLC  
Agency: Department of Corrections for Parnall Correctional Facility

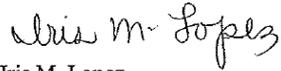
In my capacity as an Assistant Attorney General, I have examined the referenced Lease with Option To Purchase (Lease), dated December 16, 2010, Lease Addendum, Escrow Agreement, and Exhibits between PNCEF, LLC dba PNC Equipment Finance (Lessor) and the State of Michigan, Department of Technology, Management and Budget (Lessee), including a completed copy of the Lease's Equipment Schedule, between Lessor and Lessee (Equipment Schedule). This opinion is based on, and limited to the review of, the documents described above for this lease transaction and assumes that the Lease and its exhibits will be properly executed by the Parties.

Based on the above, I am of the following opinion:

- (1) Lessee is one of the principal state departments of the State of Michigan.
- (2) Lessee has the requisite power and authority to: lease; acquire the Equipment with an option to purchase; execute and deliver the Lease, and perform its obligations under the Lease.
- (3) The Lease has been duly authorized, executed, and delivered by and on behalf of Lessee; the Lease is a valid and binding obligation of Lessee; and enforceable in accordance with its terms.

- (4) To the best of my knowledge, the authorization, execution, and delivery of the Lease and all other proceedings of Lessee relating to the Lease transaction have been performed in accordance with open meetings, public bidding and all other applicable state or federal laws.
- (5) The person signing the Lease for the State of Michigan is a duly authorized representative of Lessee pursuant to 1984 PA 431.

Sincerely,



Iris M. Lopez  
Assistant Attorney General  
State Operations Division  
Tel: (517) 373-1162

IML/dab  
Enc.  
c: Anthony Des Chenes, DTMB

Payment Schedule  
Lease With Option To Purchase Agreement dated as of December 16, 2010

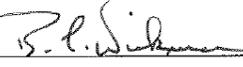
	Date	Payment	Interest	Principal	Balance	Termination Value
Lease	12/16/2010				10,840,078.00	
1	2/16/2012	323,276.80	384,491.09	61,214.29-	10,901,292.29	\$11,119,318.14
2	5/16/2012	323,276.80	81,487.16	241,789.64	10,659,502.65	\$10,872,692.70
3	8/16/2012	323,276.80	79,679.78	243,597.02	10,415,905.63	\$10,624,223.74
4	11/16/2012	323,276.80	77,858.89	245,417.91	10,170,487.72	\$10,373,897.47
5	2/16/2013	323,276.80	76,024.40	247,252.40	9,923,235.32	\$10,121,700.03
6	5/16/2013	323,276.80	74,176.18	249,100.62	9,674,134.70	\$9,867,617.39
7	8/16/2013	323,276.80	72,314.16	250,962.64	9,423,172.06	\$9,611,635.50
8	11/16/2013	323,276.80	70,438.21	252,838.59	9,170,333.47	\$9,353,740.14
9	2/16/2014	323,276.80	68,548.24	254,728.56	8,915,604.91	\$9,093,917.01
10	5/16/2014	323,276.80	66,644.15	256,632.65	8,658,972.26	\$8,832,151.71
11	8/16/2014	323,276.80	64,725.82	258,550.98	8,400,421.28	\$8,568,429.71
12	11/16/2014	323,276.80	62,793.15	260,483.65	8,139,937.63	\$8,302,736.38
13	2/16/2015	323,276.80	60,846.03	262,430.77	7,877,506.86	\$8,035,057.00
14	5/16/2015	323,276.80	58,884.36	264,392.44	7,613,114.42	\$7,765,376.71
15	8/16/2015	323,276.80	56,908.03	266,368.77	7,346,745.65	\$7,493,680.56
16	11/16/2015	323,276.80	54,916.92	268,359.88	7,078,385.77	\$7,219,953.49
17	2/16/2016	323,276.80	52,910.93	270,365.87	6,808,019.90	\$6,944,180.30
18	5/16/2016	323,276.80	50,889.95	272,386.85	6,535,633.05	\$6,666,345.71
19	8/16/2016	323,276.80	48,853.86	274,422.94	6,261,210.11	\$6,386,434.31
20	11/16/2016	323,276.80	46,802.55	276,474.25	5,984,735.86	\$6,104,430.58
21	2/16/2017	323,276.80	44,735.90	278,540.90	5,706,194.96	\$5,820,318.86
22	5/16/2017	323,276.80	42,653.81	280,622.99	5,425,571.97	\$5,534,083.41
23	8/16/2017	323,276.80	40,556.15	282,720.65	5,142,851.32	\$5,245,708.35
24	11/16/2017	323,276.80	38,442.81	284,833.99	4,858,017.33	\$4,955,177.68
25	2/16/2018	323,276.80	36,313.68	286,963.12	4,571,054.21	\$4,662,475.29
26	5/16/2018	323,276.80	34,168.63	289,108.17	4,281,946.04	\$4,367,584.96
27	8/16/2018	323,276.80	32,007.55	291,269.25	3,990,676.79	\$4,070,490.33
28	11/16/2018	323,276.80	29,830.31	293,446.49	3,697,230.30	\$3,771,174.91
29	2/16/2019	323,276.80	27,636.80	295,640.00	3,401,590.30	\$3,469,622.11
30	5/16/2019	323,276.80	25,426.89	297,849.91	3,103,740.39	\$3,165,815.20
31	8/16/2019	323,276.80	23,200.46	300,076.34	2,803,664.05	\$2,859,737.33
32	11/16/2019	323,276.80	20,957.39	302,319.41	2,501,344.64	\$2,551,371.53
33	2/16/2020	323,276.80	18,697.55	304,579.25	2,196,765.39	\$2,240,700.70
34	5/16/2020	323,276.80	16,420.82	306,855.98	1,889,909.41	\$1,927,707.60
35	8/16/2020	323,276.80	14,127.07	309,149.73	1,580,759.68	\$1,612,374.87
36	11/16/2020	323,276.80	11,816.18	311,460.62	1,269,299.06	\$1,294,685.04
37	2/16/2021	323,276.80	9,488.01	313,788.79	955,510.27	\$974,620.48
38	5/16/2021	323,276.80	7,142.44	316,134.36	639,375.91	\$652,163.43
39	8/16/2021	323,276.80	4,779.33	318,497.47	320,878.44	\$327,296.01
40	11/16/2021	323,276.80	2,398.36	320,878.44	0.00	\$1.00
Grand Totals		12,931,072.00	2,090,994.00	10,840,078.00		

State of Michigan, Department of  
Technology, Management and Budget,  
*as Lessee*

By: 

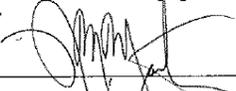
Name: ANTHONY J. DES GREZES  
Title: DIRECTOR, COMM. DIV.

State of Michigan, Department of Corrections,  
*as Lessee*

By: 

Name: BARRY L. WICKMAN  
Title: ADMINISTRATOR

PNCEF, LLC, dba PNC Equipment Finance,  
*as Lessor*

By: 

Name: Ralph Martinez  
Title: COO

**LEASE PAYMENT INSTRUCTIONS**

LESSEE NAME: State of Michigan

**INVOICE MAILING ADDRESS:**

Department of Corrections  
Finance  
PO Box 30003  
Lansing, MI 48909

Mail invoices to the attention of: **Chief Accountant**

Approval of Invoices required by: *N/A*

Phone ( ) \_\_\_\_\_ Fax ( ) \_\_\_\_\_

Accounts Payable Contact: **Same as above**

Phone ( ) \_\_\_\_\_ Fax ( ) \_\_\_\_\_

Processing time for

Invoices: \_\_\_\_\_ Approval: \_\_\_\_\_ Checks: \_\_\_\_\_

Do you have a Purchase Order Number that you would like included on the invoice? No  Yes \_\_\_\_\_

PO# \_\_\_\_\_

Do your Purchase order numbers change annually? No \_\_\_\_\_ Yes  at the beginning of every fiscal year.

Processing time for new purchase orders: October 1<sup>st</sup> of every year.

LESSEE:

By: *Chris Thompson*

Title: *DIRECTOR, COMMODITIES DIV.*

Date: *12/16/10*

## ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("*Escrow Agreement*") is made as of December 16, 2010 by and among PNCEF, LLC, DBA PNC EQUIPMENT FINANCE ("*Lessor*"), State of Michigan, Department of Technology, Management and Budget ("*Lessee*") and U.S. BANK NATIONAL ASSOCIATION, as escrow agent ("*Escrow Agent*"). Lessor and Lessee have heretofore entered into that certain equipment lease; Lease with Option To Purchase Agreement dated as of December 16, 2010 (the "*Lease*") and a Schedule of Property No 141814000 thereto dated December 16, 2010 (the "*Schedule*" the "*Lease*"). The Lease contemplates that certain equipment described therein (the "*Equipment*") is to be acquired from Energy Systems Group, LLC for an energy performance contract ("*Vendor*"). After acceptance of the Equipment by Lessee, the Equipment is to be leased by Lessor to Lessee pursuant to the terms of the Lease.

The Lease further contemplates that Lessor will deposit an amount equal to the anticipated aggregate acquisition cost of the Equipment (the "*Purchase Price*"), being \$10,840,078.00, with Escrow Agent to be held in escrow and applied on the express terms set forth herein. Such deposit, together with all interest (hereinafter the "*Escrow Fund*") is to be applied to pay the Vendor its invoice cost (a portion of which may, if required, be paid prior to final acceptance of the Equipment by Lessee); and, if applicable, to reimburse Lessee for progress payments already made by it to the Vendor of the Equipment.

The parties desire to set forth the terms on which the Escrow Fund is to be created and to establish the rights and responsibilities of the parties hereto.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. (a) Escrow Agent hereby agrees to serve as escrow agent upon the terms and conditions set forth herein. (b) The moneys and investments held in the Escrow Fund are irrevocably held in trust for the benefit of Lessee and Lessor, and such moneys, together with any income or interest earned thereon, shall be expended only as provided in this Escrow Agreement, and shall not be subject to levy or attachment or lien by or for the benefit of any creditor of either Lessee or Lessor. Lessor, Lessee and Escrow Agent intend that the Escrow Fund constitute an escrow account in which Lessee has no legal or equitable right, title or interest until satisfaction in full of all conditions contained herein for the disbursement of funds by the Escrow Agent therefrom. However, if the parties' intention that Lessee shall have no legal or equitable right, title or interest until all conditions for disbursement are satisfied in full is not respected in any legal proceeding, the parties hereto intend that Lessor have a security interest in the Escrow Fund, and such security interest is hereby granted by Lessee to secure payment to the Lessor of all obligations in accordance with the Lease terms. For such purpose, Escrow Agent hereby agrees to act as agent for Lessor in connection with the perfection of such security interest and agrees to note, or cause to be noted, on all books and records relating to the Escrow Fund, the Lessor's interest therein.

2. On such day as is determined to the mutual satisfaction of the parties (the "Closing Date"), Lessor shall deposit with Escrow Agent cash in the amount of the Purchase Price, to be held in escrow by Escrow Agent on the express terms and conditions set forth herein.

On the Closing Date, Escrow Agent agrees to accept the deposit of the Purchase Price by Lessor, and further agrees to hold the amount so deposited together with all interest and other additions received with respect thereto, as the Escrow Fund hereunder, in escrow on the express terms and conditions set forth herein.

3. Escrow Agent shall at all times segregate the Escrow Fund into an account maintained for that express purpose, which shall be clearly identified on the books and records of Escrow Agent as being held in its capacity as Escrow Agent. Securities and other negotiable instruments comprising the Escrow Fund from time to time shall be held or registered in the name of Escrow Agent (or its nominee). The Escrow Fund shall not, to the extent permitted by applicable law, be subject to levy or attachment or lien by or for the benefit of any creditor of any of the parties hereto (except with respect to the security interest therein held by Lessor).

4. The cash comprising the Escrow Fund from time to time shall be invested and reinvested by Escrow Agent in one or more investments as directed by Lessee in Exhibit 1. Escrow Agent will use due diligence to collect amounts payable under a check or other instrument for the payment of money comprising the Escrow Fund and shall promptly notify Lessee and Lessor in the event of dishonor of payment under any such check or other instruments.. Interest or other amounts earned and received by Escrow Agent with respect to the Escrow Fund shall be deposited in and comprise a part of the Escrow Fund.

5. Upon request by Lessee and Lessor, Escrow Agent shall send monthly statements of account to Lessee and Lessor, which statements shall set forth all withdrawals from and interest earnings on the Escrow Fund, as well as the investments in which the Escrow Fund is invested.

6. Escrow Agent shall take the following actions with respect to the Escrow Fund:

(a) Upon Escrow Agent's acceptance of the deposit of the Purchase Price, an amount equal to Escrow Agent's set-up fee, as set forth on Exhibit 2 hereto, shall be disbursed from the Escrow Fund to Escrow Agent in payment of such fee.

(b) From time to time, Escrow Agent shall pay to the Vendor of the Equipment payments then due and payable with respect thereto upon receipt of duly executed Requisition Request and Certificate of Acceptance form attached as Exhibit 3 hereto, subject to Lessor's prior written approval of each such Requisition Request and Certificate of Acceptance.

(c) If an Event of Default or Non-Appropriation Event occurs under the Lease prior to the Lessee's acceptance of all the Equipment or to the extent that funds have not been disbursed from the Escrow Fund within the eighteen-month period identified in the Lease, funds then on deposit in the Escrow Fund shall be applied to the prepayment of Rent Payments under the Lease as instructed by Lessor.

(d) Upon receipt by Escrow Agent of written notice from Lessor that the purchase price of the Equipment has been paid in full, Escrow Agent shall apply the then remaining Escrow Fund, first, to all outstanding fees and expenses incurred by Escrow Agent in connection herewith as evidenced by its statement forwarded to Lessor and Lessee, and, second, to Lessor for application against the interest component of Rent Payments under the Lease as provided therein, unless otherwise agreed by Lessor.

(e) If the Escrow is canceled in accordance with provisions of Section 15, prior to the Lessee's acceptance of all the Equipment, or if the Escrow is canceled prior to the disbursement of all funds from the Escrow Fund, then any Funds in the Escrow Fund shall be used solely as a prepayment of Rent Payments under the Lease.

7. The fees and expenses, including any legal fees, of Escrow Agent incurred in connection herewith shall be the responsibility of Lessee. The basic fees and expenses of Escrow Agent shall be as set forth on Exhibit 2 hereto and Escrow Agent is hereby authorized to deduct such fees and expenses from the Escrow Fund as and when the same are incurred without any further authorization from Lessee or Lessor. Escrow Agent may employ legal counsel and other experts as it deems necessary for advice in connection with its obligations hereunder. Escrow Agent waives any claim against Lessor with respect to compensation hereunder.

8. Escrow Agent shall have no liability for acting upon any written instruction presented by Lessor in connection with this Escrow Agreement, which Escrow Agent in good faith believes to be genuine. Furthermore, Escrow Agent shall not be liable for any act or omission in connection with this Escrow Agreement except for its own negligence, willful misconduct or bad faith. Escrow Agent shall not be liable for any loss or diminution in value of the Escrow Fund as a result of the investments made by Escrow Agent.

9. Escrow Agent may resign at any time by giving thirty (30) days' prior written notice to Lessor and Lessee. Lessor may at any time remove Escrow Agent as Escrow Agent under this Escrow Agreement upon written notice. Such removal or resignation shall be effective on the date set forth in the applicable notice. Upon the effective date of resignation or removal, Escrow Agent will transfer the Escrow Fund to the successor Escrow Agent selected by Lessor.

10. This Escrow Agreement and the escrow established hereunder shall terminate upon receipt by Escrow Agent of the written notice from Lessor specified in Section 6(c) or Section 6(d) or Section 6(e) or terminated as provided in Section 15.

11. In the event of any disagreement between the undersigned or any of them, and/or any other person, resulting in adverse claims and demands being made in connection with or for any moneys involved herein or affected hereby, Escrow Agent shall be entitled at its option to refuse to comply with any such claim or demand, so long as such disagreement shall continue, and in so refusing Escrow Agent may refrain from making any delivery or other disposition of any moneys involved herein or affected hereby and in so doing Escrow Agent shall not be or become liable to the undersigned or any of them or to any person or party for its failure or refusal to comply with such conflicting or adverse demands, and Escrow Agent shall be entitled to continue so to refrain and refuse so to act until:

(a) the rights of the adverse claimants have been finally adjudicated in a court assuming and having jurisdiction of the parties and the moneys involved herein or affected hereby; or

(b) all differences shall have been adjusted by agreement and Escrow Agent shall have been notified thereof in writing signed by all of the persons interested.

12. All notices (excluding billings and communications in the ordinary course of business) hereunder shall be in writing, and shall be sufficiently given and served upon the other party if delivered (a) personally, (b) by United States registered or certified mail, return receipt requested, postage prepaid, (c) by an overnight delivery by a service such as Federal Express or Express Mail from which written confirmation of overnight delivery is available, or (d) by facsimile with a confirmation copy by regular United States mail, postage prepaid, addressed to the other party at its respective address stated below the signature of such party or at such other address as such party shall from time to time designate in writing to the other party, and shall be effective from the date of mailing.

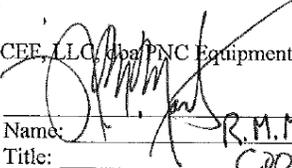
13. This Escrow Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. No rights or obligations of Escrow Agent under this Escrow Agreement may be assigned without the prior written consent of Lessor.

14. This Escrow Agreement shall be governed by and construed in accordance with the laws in the State of Michigan. This Escrow Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and no waiver, consent, modification or change of terms hereof shall bind any party unless in writing signed by all parties.

15. Statutory Obligations. Subject to the provisions of Section 6(e), Lessee shall provide written notice to Lessor and Escrow Agent of any of the following; (a) Lessor or any subcontractor, manufacturer, or supplier of Lessor appears in the register compiled by the Michigan Department of Labor pursuant to 1980 PA 278, as amended, MCL 423.321 et seq. (Employers Engaging in Unfair Labor Practices Act); (b) Lessor or any subcontractor, manufacturer, or supplier of Lessor is found liable for discrimination, pursuant to 1976 PA 453, as amended, MCL 37.2101 et seq (Elliott-Larsen Civil Rights Act) or 1976 PA 220, as amended, MCL 37.1101 et seq (Persons With Disabilities Civil Rights Act). The written notice shall provide Lessor or Escrow Agent, as appropriate, with 30 days to cure its violation of subsections (a) or (b) above to the satisfaction of Lessee. If the Lessor and if appropriate, Escrow Agent, are unable to cure the violations of subsections (a) or (b), then at that time Lessee shall be entitled to, at its option, cancel this Escrow Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be duly executed as of the day and year first above set forth.

PNCEE, LLC, dba PNC Equipment Finance, as Lessor

By   
Name: R.M. Martin  
Title: CEO

Address: 995 Dalton Avenue  
Cincinnati, OH 45203

State of Michigan, Department of Technology,  
Management and Budget, as Lessee

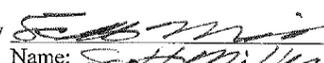
By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: 530 West Allegan  
Lansing, MI 48933

State of Michigan, Department of Corrections,  
as Lessee

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

U.S. BANK NATIONAL ASSOCIATION, as Escrow  
Agent

By   
Name: Scott Miller  
Title: Vice President

Address: 10 W. Broad St., 12<sup>th</sup> Floor  
CN OH BD12  
Columbus, OH 43215

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be duly executed as of the day and year first above set forth.

PNCEF, LLC, dba PNC Equipment Finance, as Lessor

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: 995 Dalton Avenue  
Cincinnati, OH 45203

State of Michigan, Department of Technology,  
Management and Budget, as Lessee

By Anthony J. DeZurek  
Name: ANTHONY J. DEZUREK  
Title: DIRECTOR, COMM. DIV.

Address: 530 West Allegan  
Lansing, MI 48933

State of Michigan, Department of Corrections,  
as Lessee

By B. L. Wickman  
Name: BARRY L. WICKMAN  
Title: ADMINISTRATOR

U.S. BANK NATIONAL ASSOCIATION, as Escrow  
Agent

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: 10 W. Broad St., 12<sup>th</sup> Floor  
CN OH BD12  
Columbus, OH 43215

EXHIBIT 1

INVESTMENT DIRECTION LETTER

U.S. Bank National Association  
10 W. Broad Street, 12<sup>th</sup> Floor  
CN OH BD12  
Columbus, OH 43215

Re: Escrow Agreement dated as of «Escrowdate»,  
among PNCEF, LLC, dba PNC Equipment Finance, as Lessor,  
State of Michigan, Department of Technology, Management and Budget, as Lessee, and  
U.S. Bank National Association, as Escrow Agent

Ladies and Gentlemen:

Pursuant to the above-referenced Escrow Agreement, \$10,840,078.00 will be deposited in escrow with you on or about November 18, 2010. Such funds shall be invested in one or more of the following qualified investments in the amounts indicated:

	PLEASE CHECK DESIRED QUALIFIED INVESTMENTS:	AMOUNT OF INVESTMENT
1.	<input type="checkbox"/> Direct general obligations of the United States of America;	\$ _____
2.	<input type="checkbox"/> Obligations -- the timely payment of the principal of and interest on which is fully and unconditionally guaranteed by the United States of America;	\$ _____
3.	<input type="checkbox"/> General obligations of the agencies and instrumentalities of the United States of America acceptable to Lessor;	\$ _____
4.	<input checked="" type="checkbox"/> Money market funds whose investment parameters target investments in securities as described above;	\$10,840,078.00 _

IF NONE OF THE ABOVE BOXES ARE CHECKED, INVESTMENT SHALL BE MADE IN MONEY MARKET FUNDS AS DESCRIBED IN THE FOURTH CATEGORY ABOVE, UNTIL LESSEE DIRECTS OTHERWISE.

Very truly yours,

STATE OF MICHIGAN, DEPARTMENT OF TECHNOLOGY,  
MANAGEMENT AND BUDGET, AS LESSEE

By:   
Name: ANTHONY J. DESCHENES  
Title: DIRECTOR, COMM. DIV.

**EXHIBIT 2**

**ESCROW AGENT FEES AND EXPENSES**

**SET-UP FEES**

N/A waived by Lessor - payable from the Escrow Fund upon acceptance of escrow deposit.

**EXPENSES**

Any and all out-of-pocket expenses incurred by Escrow Agent will be the responsibility of Lessee and paid from the Escrow Fund.

EXHIBIT 3

REQUISITION REQUEST AND CERTIFICATE OF ACCEPTANCE NO. \_\_\_\_\_  
(to be submitted with each requisition request for payment to the vendor)

-or-

\_\_\_\_ (v) FINAL REQUISITION REQUEST AND CERTIFICATE OF ACCEPTANCE  
(to be submitted with the final requisition request upon acceptance of the  
Equipment)

The Escrow Agent is hereby requested to pay from the Escrow Fund established and maintained under that certain Escrow Agreement dated as of December 16, 2010 (the "Escrow Agreement") by and among PNCEF, LLC, dba PNC Equipment Finance (the "Lessor"), State of Michigan, Department of Technology, Management and Budget (the "Lessee"), and U.S. Bank National Association (the "Escrow Agent"), the amount set forth below to the named payee(s). The amount shown is due and payable under a purchase order or contract (or has been paid by and not previously reimbursed to Lessee) with respect to equipment being leased under that certain Lease With Option To Purchase Agreement dated as of December 16, 2010 (the "Lease") and Lease Schedule 141814000 thereto dated December 16, 2010 (the "Schedule") and, together with the terms and conditions of the Lease incorporated therein, the "Lease"), by and between the Lessor and the Lessee, and has not formed the basis of any prior requisition request.

PAYEE	AMOUNT

Total requisition amount \$ \_\_\_\_\_

The undersigned, as Lessee under the Lease hereby certifies:

1. The items of the Equipment, as such term is defined in the Lease, fully and accurately described on the Equipment List attached hereto have been delivered and installed at the location(s) set forth therein.
2. A present need exists for the Equipment which need is not temporary or expected to diminish in the near future. The Equipment is essential to and will be used by the Lessee only for the purpose of performing one or more governmental functions of Lessee consistent with the permissible scope of Lessee's authority.
3. The estimated useful life of the Equipment based upon the manufacturer's representations and the Lessee's projected needs is not less than the Lease Term of lease with respect to the Equipment.

4. The Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes as of the date of this Certificate.

5. The Equipment is covered by insurance in the types and amounts required by the Lease.

6. No Event of Default or Non-Appropriation Event, as each such term is defined in the Lease, and no event which with the giving of notice or lapse of time, or both, would become such an Event of Default or Non-Appropriation Event has occurred and is continuing on the date hereof.

7. Sufficient funds have been appropriated by the Lessee for the payment of all Rent Payments due under the Lease during Lessee's current fiscal year.

8. Based on the foregoing, Lessor is hereby authorized and directed to fund the acquisition of the Equipment set forth on the Equipment List by paying, or causing to be paid, the manufacturer(s)/vendor(s) the amounts set forth on the attached invoices.

9. The following documents are attached hereto and made a part hereof:

(a) Original Invoice(s);

(b) Copies of Certificate(s) of Origin designating Lessor as lienholder if any part of the Equipment consists of motor vehicles, and evidence of filing; and

(c) Requisition for Payment.

10. If this is the final acceptance of Equipment, then as of the Acceptance Date stated below and as between the Lessee and the Lessor, the Lessee hereby agrees that: (a) the Lessee has received and inspected all of the Equipment described in the Lease; (b) all Equipment is in good working order and complies with all purchase orders, contracts, and specification; (c) the Lessee accepts all Equipment for purposes of the Lease "as-is, where-is"; and (d) the Lessee waives any right to revoke such acceptance.

If Lessee paid an invoice prior to the commencement date of the Lease and is requesting reimbursement for such payment, also attach a copy of evidence of such payment together with a copy of Lessee's Declaration of Official Intent and other evidence that Lessee has satisfied the requirements for reimbursement set forth in Treas. Reg. §1.150-2.

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

State of Michigan, Department of  
Technology, Management and Budget  
*as Lessee*

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

State of Michigan, Department of  
Correction,  
*as Lessee*

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

PNCEF, LLC dba PNC Equipment Finance,  
*as Lessor*

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

EXAMPLE

**U.S. BANK NATIONAL ASSOCIATION  
MONEY MARKET ACCOUNT  
DESCRIPTION AND TERMS**

The U.S. Bank Money Market account is an U.S. Bank National Association ("U.S. Bank") interest-bearing time deposit account designed to meet the needs of U.S. Bank's Corporate Trust Services Escrow Group and other Corporate Trust customers of U.S. Bank. Selection of this investment includes authorization to place funds on deposit with U.S. Bank.

U.S. Bank uses the daily balance method to calculate interest on this account (actual/365 or 366) by applying a daily periodic rate to the principal balance in the account each day. Interest is accrued daily and credited monthly to the account. Interest rates are determined at U.S. Bank's discretion, and may be tiered based on customer deposit amount.

The owner of the account is U.S. Bank as Agent for its trust customers. U.S. Bank's trust department performs all account deposits and withdrawals. The deposit account is insured by the Federal Deposit Insurance Corporation up to \$100,000.

**AUTOMATIC AUTHORIZATION**

In the absence of specific written direction to the contrary, U.S. Bank is hereby directed to invest and reinvest proceeds and other available moneys in the U.S. Bank Money Market Account.

State of Michigan, Department of Technology,  
Management and Budget

  
Signature of Authorized Directing Party

144479000  
Trust Account Number -- includes existing  
and future sub-accounts unless otherwise directed

SECRET, Comm. Div. 12/16/10  
Title/ Date

**LEASE ESCROW ADDENDUM**

Dated As of December 16, 2010

Lease with Option to Purchase No. ~~141814000~~ Dated December 16, 2010

Lessee: State of Michigan

Reference is made to the above Lease with Option to Purchase ("Lease") by and between PNCEF, LLC dba PNC Equipment Finance ("Lessor") and the above lessee ("Lessee"). This Addendum amends and modifies the terms and conditions of the Lease and is hereby made a part of the Lease. Unless otherwise defined herein, capitalized terms defined in the Lease shall have the same meaning when used herein.

NOW, THEREFORE, as part of the valuable consideration to induce the execution of the Lease, Lessor and Lessee hereby agree to amend the Lease as follows:

1. *Escrow Agreement* means the Escrow Agreement relating to a Lease, dated the Commencement Date under such Lease among Lessor, Lessee and the escrow agent therein identified, with respect to the Escrow Fund established and to be administered thereunder. *Escrow Fund* means the fund of that name established pursuant to an Escrow Agreement.
2. Lessee and Lessor together with a mutually acceptable escrow agent agree to enter into an escrow agreement (Escrow Agreement) establishing a fund ("Equipment Acquisition Fund") from which the Purchase Price of the Equipment will be paid. The terms and conditions of the Escrow Agreement shall be satisfactory in form and substance, to Lessor and Lessee.
3. In order to provide financing to pay the costs to acquire and install the Equipment ("*Total Amount Financed*") as described in a Lease, Lessor and Lessee hereby agree to execute and deliver an Escrow Agreement relating to such Lease on the date on which the funding conditions for such Lease are satisfied. If Lessee signs and delivers a Lease and an Escrow Agreement and if all funding conditions have been satisfied in full, then Lessor will deposit or cause to be deposited into an Escrow Fund under the related Escrow Agreement an amount (which may include estimated investment earnings thereon) equal to the Purchase Price for the Equipment to be financed under the related Lease.
4. Lessee shall, at its sole expense, arrange for the transportation, delivery and installation of all Equipment to the location specified in the Lease ("*Location*") by Equipment suppliers ("*Suppliers*") selected by Lessee. Lessee shall accept Equipment for purposes of the related Lease as soon as it has been delivered and is operational. Lessee shall evidence its acceptance of any Equipment by signing and delivering to Lessor a Certificate of Acceptance in the form and manner required by the applicable Escrow Agreement.
5. If a Non-Appropriation Event or an Event of Default occurs prior to Lessee's acceptance of all the Equipment under the related Lease, the amount then on deposit in the Escrow Fund shall be applied to prepay the unpaid principal component of the Rent Payments in whole on the first business day of the month next succeeding the occurrence of either such Event plus accrued interest to the prepayment date; *provided, however*, that the amount to be prepaid by Lessee pursuant to this Section 5 shall first be paid from moneys in the related Escrow Fund and then from Legally Available Funds and other moneys available for such purpose as a result of the

exercise by Lessor of its rights and remedies under the related Lease. Any funds on deposit in the Escrow Fund on the prepayment date described in this Section 5 in excess of the unpaid principal component of the Rent Payments to be prepaid plus accrued interest thereon to the prepayment date shall be paid promptly to Lessee.

6. To the extent that Lessee has not accepted items of Equipment before the eighteen-month anniversary of the Commencement Date identified on the related Lease, the amount then on deposit in the related Escrow Fund shall be applied to prepay the unpaid principal component of the Rent Payments in part, in inverse order of Rent Payments, on the first business day of the next month plus accrued interest to the prepayment date; *provided, however*, that the amount to be prepaid by Lessee pursuant to this Section 6 shall first be paid from moneys in the related Escrow Fund and then from Legally Available Funds. Notwithstanding any such partial prepayment, the related Lease shall remain in full force and effect with respect to the portion of the Equipment accepted by Lessee during such eighteen-month period, and the portion of the principal component of Rent Payments remaining unpaid after such prepayment plus accrued interest thereon shall remain payable in accordance with the terms of the related Lease. Upon Lessor's request, Lessee shall execute an amendment to the related Payment Lease that reflects the change to the Rent Payments as a result of such partial prepayment.
7. At Lessor's request, Lessee shall join Lessor in executing any necessary or appropriate Financing Statements indicating its obligation under the Lease. Notwithstanding this Section 7, the provisions of Section 1 of the Escrow Agreement remain in force.
8. The Lease Term of the Lease shall commence on the earlier of the date specified in the Payment Schedule to the Lease or the date of Lessor's deposit of funds into the Equipment Acquisition Fund. Notwithstanding the statements regarding delivery and acceptance of the Equipment in the Lease, the parties acknowledge that the Equipment will be delivered or installed as provided in the Escrow Agreement.
9. The delivery of documents and the satisfaction of any other conditions required by the Escrow Agreement or this Addendum shall be additional Funding Conditions for the Lease.
10. Upon Lessee's execution of the Escrow Agreement, Lessee hereby represents to Lessor that:
  - (a) Lessee has full power, authority and legal right to execute and deliver the Escrow Agreement and to perform its obligations under the Escrow Agreement, and all such actions have been duly authorized by appropriate findings and actions of Lessee's governing body;
  - (b) the Escrow Agreement has been duly executed and delivered by Lessee and constitutes a legal, valid and binding obligations of Lessee, enforceable in accordance with its terms; and
  - (c) the Escrow Agreement is authorized under, and the authorization, execution and delivery of the Escrow Agreement complies with, all applicable federal, state and local laws and regulations (including, but not limited to, all open meeting, public bidding and public investment (laws) and all applicable judgments and court orders.
11. The opinion of Lessee's legal counsel will include the following statements:
  - Lessee is one of the principal state departments of the State of Michigan.

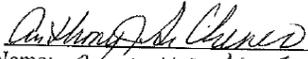
- Lessee has the requisite power and authority to lease; to acquire the Equipment with an option to purchase; to execute and deliver the Lease, and to perform its obligations under the Lease.
- The Lease has been duly authorized, executed, and delivered by and on behalf of Lessee; the Lease is a valid and binding obligation of Lessee; and enforceable in accordance with its terms.
- To the best of my knowledge, the authorization, execution, and delivery of the Lease and all other proceedings of Lessee relating to the Lease transaction have been performed in accordance with open meetings, public bidding and all other applicable state or federal laws.
- The person signing the Lease for the State of Michigan is a duly authorized representative of Lessee pursuant to 1984 PA 431.

12. It shall be an additional event of default under the Lease if lessee fails to pay or perform any of its obligations under the Escrow Agreement or this Addendum or if any of the representations of Lessee in the Escrow Agreement or this Addendum prove to be false, misleading or erroneous in any material respect.

Except as expressly amended by this Addendum and other modifications signed by Lessor, the Lease remains unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as of the date first referenced above.

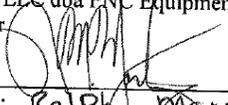
State of Michigan, Department of Technology,  
Management and Budget, as Lessee

By   
Name: ANTHONY J. DES CHENEUX  
Title: DIRECTOR, COMMODITIES DIV.

State of Michigan, Department of Corrections,  
as Lessee

By   
Name: BARRY L. WICKMAN  
Title: ADMINISTRATOR

PNCEF, LLC dba PNC Equipment Finance  
as Lessor

By   
Name: Ralph Martinez  
Title: COO

---

**TAX EXEMPTION CERTIFICATE AND AGREEMENT**

MICHIGAN DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET, AN AGENCY OF THE  
STATE OF MICHIGAN

MICHIGAN DEPARTMENT OF CORRECTIONS, AN AGENCY OF THE STATE OF MICHIGAN

RE:

LEASE WITH OPTION TO PURCHASE AND SCHEDULE OF PROPERTY NO. 1 AND PAYMENT SCHEDULE  
ATTACHED THERETO, EACH DATED DECEMBER 16, 2010,  
BETWEEN PNCEF, LLC, AS LESSOR, AND THE  
STATE OF MICHIGAN, ACTING THROUGH ITS DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND  
BUDGET, AND ITS DEPARTMENT OF CORRECTIONS, AS LESSEE

Dated: December 16, 2010

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## TAX EXEMPTION CERTIFICATE AND AGREEMENT

The undersigned are the duly qualified and acting \_\_\_\_\_ of the Michigan Department of Technology, Management and Budget, an agency of the State of Michigan, and the duly qualified and acting \_\_\_\_\_ of the Michigan Department of Corrections, an agency of the State of Michigan, and are charged, with others, with the responsibility for executing and delivering, on behalf of the State of Michigan, acting through its Department of Technology and Budget and its Department of Corrections, as lessee (collectively, the "Lessee"), that certain Lease With Option to Purchase, Schedule of Property No. 1 thereto and Payment Schedule A-1 thereto, each dated December 16, 2010 (collectively, the "Lease"), between the Lessee and PNCEF, LLC, as lessor (the "Lessor"), for the installment purchase financing of certain Equipment therein described. Certain terms are defined in Article I hereof. Terms used herein and not defined in Article I shall have the meanings given to them in the Lease.

One purpose of executing this Tax Certificate is to set forth various facts regarding the financing provided by the Lease and to establish the expectations of the Lessee as to future events regarding the Lease and the use of the proceeds derived from the Lease. The certifications, covenants and representations contained herein are made on behalf of the Lessee for the benefit of the owners from time to time of the Lessor's right, title and interest in and to the Lease.

The Lessee hereby covenants that it will not take any action, omit to take any action or permit the taking or omission of any action within its control (including, without limitation, making or permitting any use of the proceeds of the Lease) if taking, permitting or omitting to take such action would cause such Lease to be an arbitrage bond or a private activity bond within the meaning of the Code or would otherwise cause the interest portion of the Lease Payments under such Lease to be included in the gross income of the recipients thereof for federal income tax purposes. The Lessee acknowledges that, in the event of an examination by the Internal Revenue Service of the exemption from federal income taxation of the interest portion of the Lease Payments under the Lease, under present rules, the Lessee will be treated as a "taxpayer" in such examination and agrees that it will respond in a commercially reasonable manner to any inquiries from the Internal Revenue Service in connection with such an examination.

### ARTICLE I

#### DEFINITIONS

In addition to such other words and terms used and defined in this Tax Certificate and in the preambles hereto, the following words and terms used in this Tax Certificate shall have the following meanings unless, in either case, the context or use clearly indicates another or different meaning is intended:

*"Capital Expenditures"* means costs of a type that would be properly chargeable to a capital account under the Code (or would be so chargeable with a proper election) under federal

income tax principles if the Lessee were treated as a corporation subject to federal income taxation, taking into account the definition of Placed-in-Service set forth herein.

“Code” means the Internal Revenue Code of 1986, as amended.

“Commingled Fund” means any fund or account containing both Gross Proceeds and an amount in excess of \$25,000 that are not Gross Proceeds if the amounts in the fund or account are invested and accounted for, collectively, without regard to the source of funds deposited in the fund or account. An open-ended regulated investment company under Section 851 of the Code is not a Commingled Fund.

“Contractor” means Energy Systems Group LLC, in its capacity as the contractor under the Energy Services Contract.

“Control” means the possession, directly or indirectly through others, of either of the following discretionary and non-ministerial rights or powers over another entity:

- (a) to approve and to remove without cause a controlling portion of the governing body of a Controlled Entity; or
- (b) to require the use of funds or assets of a Controlled Entity for any purpose.

“Controlled Entity” means any entity or one of a group of entities that is subject to Control by a Controlling Entity or group of Controlling Entities.

“Controlled Group” means a group of entities directly or indirectly subject to Control by the same entity or group of entities, including the entity that has Control of the other entities.

“Controlling Entity” means any entity or one of a group of entities directly or indirectly having Control of any entities or group of entities.

“Delivery Costs” means the costs incurred in connection with the execution and delivery of the Lease, including counsel fees and other similar costs, fees and expenses.

“Energy Services Contract” means the Contract 071B1300090 dated December 16, 2010, between the Lessee and the Contractor, pursuant to which the Contractor will deliver and install the Equipment for purposes of the Lease.

“External Commingled Fund” means a Commingled Fund in which the Lessee and all members of the same Controlled Group as the Lessee own, in the aggregate, not more than 10% of the beneficial interests.

“Equipment” means the equipment and personal property described in Exhibit A of the Lease.

*"Escrow Agent"* means U.S. Bank National Association, in its capacity as escrow agent under the Escrow Agreement.

*"Escrow Agreement"* means the Escrow Agreement dated as of December 16, 2010, among the Lessor, the Lessee and the Escrow Agent, as amended.

*"Escrow Fund"* means the fund established and administered pursuant to the Escrow Agreement.

*"Funding Date"* means December 16, 2010, which is the date on which the Lessor deposits, or causes to be deposited, an amount into the Escrow Fund for the purpose of paying the costs to acquire and install the Equipment, which amount is to be disbursed to the Contractor in accordance with the Escrow Agreement.

*"GIC"* means (a) any investment that has specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate and (b) any agreement to supply investments on two or more future dates (e.g., a forward supply contract).

*"Gross Proceeds"* means amounts in the funds listed on *Exhibit F* hereto.

*"Lease"* is defined in the first paragraph of this Tax Certificate.

*"Lessee"* is defined in the first paragraph of this Tax Certificate.

*"Lease Payment"* means any payment required to be paid by the Lessee to the Lessor pursuant to Section 9 of the Lease.

*"Lessor"* is defined in the first paragraph of this Tax Certificate.

*"Person"* means any entity with standing to be sued or to sue, including any natural person, corporation, body politic, governmental unit, agency, authority, partnership, trust, estate, association, company or group of any of the above.

*"Placed-in-Service"* means the date on which, based on all facts and circumstances, (a) a facility has reached a degree of completion that would permit its operation at substantially its design level and (b) the facility is, in fact, in operation at such level.

*"Private Business Use"* means any use of the Equipment by any Person other than a state or local government unit, including as a result of (a) ownership, (b) actual or beneficial use pursuant to a lease or a management, service, incentive payment, research or output contract or (c) any other similar arrangement, agreement or understanding, whether written or oral, except for use of the Equipment on the same basis as the general public. Private Business Use includes any formal or informal arrangement with any Person other than a state or local governmental unit that conveys special legal entitlements to any portion of the Equipment that is available for use by the general public or that conveys to any Person other than a state or local governmental unit

any special economic benefit with respect to any portion of the Equipment that is not available for use by the general public.

*"Project"* means the acquisition and installation of the Equipment at the Parnell Correctional Institution in Jackson, Michigan, in accordance with the Energy Services Contract.

*"Qualified Tax Exempt Obligations"* means (a) any obligation described in Section 103(a) of the Code, the interest on which is excludable from gross income of any owner thereof for federal income tax purposes and is not an item of tax preference for purposes of the alternative minimum tax imposed by Section 55 of the Code; (b) an interest in a regulated investment company to the extent that at least 95% of the income to the holder of the interest is interest that is excludable from gross income under Section 103 of the Code of any owner thereof for federal income tax purposes and is not an item of tax preference for purposes of the alternative minimum tax imposed by Section 55 of the Code; and (c) certificates of indebtedness issued by the United States Treasury pursuant to the Demand Deposit State and Local Government Series program described in 31 C.F.R. part 344.

*"Rebate Fund"* means the fund, if any, identified and defined in Section 4.2 herein.

*"Rebate Provisions"* means the rebate requirements contained in Section 148(f) of the Code and in the Regulations.

*"Regulations"* means United States Treasury Regulations dealing with the tax-exempt bond provisions of the Code.

*"Reimbursed Expenditures"* means expenditures of the Lessee paid prior to the Funding Date to which Sale Proceeds or investment earnings thereon are or will be allocated.

*"Sale Proceeds"* means amounts advanced under the Lease, for the benefit of the Lessee, to pay for the costs of the Equipment and Delivery Costs and any other amounts actually or constructively received in connection with the origination and sale of the Lease.

*"Special Tax Counsel"* means Chapman and Cutler LLP or any other nationally recognized firm of attorneys experienced in matters pertaining to the tax-exempt status of interest on obligations issued by states and their political subdivisions whose opinions are generally accepted by purchasers of tax-exempt obligations and who is acceptable to the Lessor.

*"Tax Certificate"* means this Tax Exemption Certificate and Agreement.

*"Yield"* means that discount rate which when used in computing the present value of all payments of principal and interest paid and to be paid on an obligation (using semiannual compounding on the basis of a 360-day year) produces an amount equal to the obligation's purchase price (or in the case of the Lease, the issue price as established in Section 5.1 hereof), including accrued interest.

"Yield Reduction Payment" means a rebate payment or any other amount paid to the United States in the same manner as rebate amounts are required to be paid or at such other time or in such manner as the Internal Revenue Service may prescribe that will be treated as a reduction in Yield of an investment under the Regulations.

## ARTICLE II

### DESCRIPTION OF PROJECT

*Section 2.1. Purpose of Lease.* The Lease is being executed and delivered to finance the Equipment in a prudent manner consistent with the revenue needs of the Lessee. A breakdown of the sources and uses of funds is attached as *Exhibit A* hereto. At least 75% of the sum of (i) Sale Proceeds plus (ii) all investment earnings thereon, less (iii) Delivery Costs paid from Sale Proceeds or investment earnings thereon, are expected to be used for construction purposes with respect to Equipment that is subject to the Lease. The Equipment is to be financed with the proceeds from the Lease in the aggregate principal amount of \$10,840,078.00. The Lessee intends to treat, and will continue to treat, the Lease as a lease with an option to purchase agreement for federal tax purposes. The Lessee acknowledges and agrees that it has the benefits and burdens of the Equipment in accordance with the Lease.

*Section 2.2. The Project — Binding Commitment and Timing.* The Lessee has incurred a substantial binding obligation (not subject to contingencies within the control of the Lessee or any member of the same Controlled Group as the Lessee) to the Contractor to expend at least five percent of the Sale Proceeds on the Equipment. It is expected that the work of acquiring and installing the Equipment and the expenditure of amounts deposited into the Escrow Fund will continue to proceed with due diligence through February 29, 2012, at which time it is anticipated that all Sale Proceeds and investment earnings thereon will have been spent.

It is expected that the Sale Proceeds deposited into the Escrow Fund, including investment earnings thereon, will be spent to pay costs of the Equipment and Delivery Costs in accordance with the estimated drawdown schedule contained in *Exhibit B* hereto. Estimated total investment income as set forth in *Exhibit A* hereto has been calculated on the basis of an expected overall investment rate as set forth therein on amounts in the Escrow Fund, assuming that (a) costs of the Equipment are drawn down in accordance with the schedule contained in *Exhibit B* hereto and (b) Delivery Costs will be drawn down on the Funding Date. The foregoing assumptions represent the Lessee's best estimate, as of this date, of the drawdown schedule of, and investment earnings on, the Sale Proceeds and investment earnings.

*Section 2.3. Reimbursement.* None of the Sale Proceeds or investment earnings thereon will be used for Reimbursed Expenditures.

*Section 2.4. Working Capital.* All Sale Proceeds and investment earnings thereon will be used, directly or indirectly, to finance Capital Expenditures other than amounts spent for Delivery Costs. No Gross Proceeds may be spent for non-capital purposes pursuant to this Section 2.4 if the expenditure merely substitutes Gross Proceeds for other amounts that would have been used to make expenditures in a manner that gives rise to replacement proceeds.

*Section 2.5. Consequences of Contrary Expenditure.* Lessee acknowledges that if Sale Proceeds and investment earnings thereon are spent for non-Capital Expenditures other than as permitted by Section 2.4 hereof, a like amount of then available funds of the Lessee will be treated as unspent Sale Proceeds.

*Section 2.6. Investment of Sale Proceeds.* Not more than 50% of the Sale Proceeds and investment earnings thereon are or will be invested in investments (other than Qualified Tax Exempt Obligations) having a Yield that is substantially guaranteed for four years or more. No portion of the principal portion of any Rental Payments is being issued solely for the purpose of investing Sale Proceeds or investment earnings thereon at a Yield higher than the Yield with respect to the Lease.

*Section 2.7. No Grants.* None of the Sale Proceeds or investment earnings thereon will be used to make grants to any Person.

*Section 2.8. Hedges.* Neither the Lessee nor any member of the same Controlled Group as the Lessee has entered into or expects to enter into any hedge (e.g., an interest rate swap, interest rate cap, futures contract, forward contract or an option) with respect to the Lease. Lessee acknowledges that any such hedge could affect, among other things, the calculation of Yield with respect to the Lease under the Regulations. The Internal Revenue Service could recalculate Yield with respect to the Lease if the failure to account for the hedge fails to clearly reflect the economic substance of the transaction.

*Section 2.9. Internal Revenue Service Audits.* The Lessee represents that the Internal Revenue Service has not contacted the Lessee regarding any obligations issued by or on behalf of the Lessee. To the best of the knowledge of the Lessee, no such obligations of the Lessee are currently under examination by the Internal Revenue Service.

### ARTICLE III

#### USE OF PROCEEDS; DESCRIPTION OF FUNDS

*Section 3.1. Use of Proceeds.* (a) *Exhibit A* hereto describes the use of the Sale Proceeds deposited under the Escrow Agreement on the Funding Date. No Sale Proceeds will be used to pre-pay goods or services to be received over a period of years prior to the date such goods or services are to be received. No Sale Proceeds or any investment earnings thereon will be used to pay for or otherwise acquire goods or services from any entity affiliated in any manner with the Lessee.

(b) The Escrow Fund will be the only fund or account funded on the Funding Date. There are no other funds or accounts created under the Lease, other than the Rebate Fund if it is created as provided in Section 4.2 hereof. No amounts, regardless of the source, are being deposited into these other funds and accounts on the Funding Date.

(c) Delivery Costs incurred in connection with the Lease will be paid from Sale Proceeds.

(d) The costs of the Equipment will be paid from the Escrow Fund, and no other moneys are expected to be deposited therein, except for investment earnings thereon.

*Section 3.2. No Other Gross Proceeds.* (a) Other than amounts in the Escrow Fund, after the execution and delivery of the Lease, neither the Lessee nor any member of the same Controlled Group as the Lessee has or will have any property, including cash, securities or any other property held as a passive vehicle for the production of income or for investment purposes, that constitutes:

(i) Sale Proceeds;

(ii) amounts in any fund or account with respect to the Lease (other than the Rebate Fund);

(iii) amounts that have a sufficiently direct nexus to the Lease or to the governmental purpose of the Lease to conclude that the amounts would have been used for that governmental purpose if the Lease were not used or to be used for that governmental purpose (the mere availability or preliminary earmarking of such amounts for a governmental purpose, however, does not itself establish such a sufficient nexus);

(iv) amounts in a debt service fund, redemption fund, reserve fund, replacement fund or any similar fund, to the extent reasonably expected to be used directly or indirectly to pay the principal or interest portions of the Lease Payments under the Lease or any amounts for which there is provided, directly or indirectly, a reasonable assurance that the amount will be available to pay the principal or interest portions of Lease Payments under the Lease, even if the Lessee encounters financial difficulties;

(v) any amounts held pursuant to any agreement (such as an agreement to maintain certain levels of types of assets) made for the benefit of the Lessor or any other owners of the Lessor's interest in the Lease; or

(vi) amounts actually or constructively received from the investment and reinvestment of the amounts described in clause (i) or (ii) above.

(b) No compensating balance, liquidity account, negative pledge of property held for investment purposes or similar arrangement has or will exist with respect to, in any way, the Lease.

(c) The term of the Lease is not longer than is reasonably necessary for the governmental purposes of the Lease. The average reasonably expected economic life of the Equipment is at least ten years. The weighted average maturity of the Lease does not exceed 120% of the average reasonably expected economic life of the Equipment.

## ARTICLE IV

### ARBITRAGE REBATE; RECORD KEEPING; INVESTMENT DIRECTION

*Section 4.1. Compliance with Rebate Provisions.* The Lessee covenants to take such actions and make, or cause to be made, all calculations, transfers and payments that may be necessary to comply with the Rebate Provisions if applicable to the Lease. The Lessee will make, or cause to be made, rebate payments with respect to the Lease in accordance with the law. Special Tax Counsel has provided a memorandum attached hereto as *Exhibit D* concerning the principles set forth in certain Regulations regarding rebate.

*Section 4.2. Rebate Fund.* The Lessee is authorized to create and establish a special fund to be known as the "State of Michigan Parnell Correctional Institution Energy Management Project Rebate Fund" which, if created, shall be continuously held, invested, expended and accounted for in accordance with this Tax Certificate. Moneys in the Rebate Fund shall not be considered moneys held for the benefit of the owners of the Lease. Except as provided in the Regulations, moneys in the Rebate Fund (including earnings and deposits therein) shall be held in trust for payment to the United States as required by the Rebate Provisions and by the Regulations and as contemplated under the provisions of this Tax Certificate.

*Section 4.3. Records.* The Lessee agrees to keep and retain or cause to be kept and retained, until three years after the Lease Payments are paid in full, adequate records with respect to the investment of all Gross Proceeds and amounts in the Rebate Fund. Such records shall include: (a) purchase price; (b) purchase date; (c) type of investment; (d) accrued interest paid; (e) interest rate; (f) principal amount; (g) maturity date; (h) interest payment date; (i) date of liquidation; and (j) receipt upon liquidation.

If any investment becomes Gross Proceeds on a date other than the date such investment is purchased, the records required to be kept shall include the fair market value of such investment on the date it becomes Gross Proceeds. If any investment is retained after the date the last Lease Payment is paid, the records required to be kept shall include the fair market value of such investment on the date the last Lease Payment is paid. Amounts or investments will be segregated whenever necessary to maintain these records.

*Section 4.4. Fair Market Value; Certificates of Deposit and Investment Agreements.* The Lessee will continuously invest all amounts on deposit in the Escrow Fund and the Rebate Fund, together with the amounts, if any, to be transferred to the Rebate Fund, in any investment is permitted under this Tax Certificate. The Lessee shall take into account prudent investment standards and the date on which such moneys may be needed. Except as provided in the next sentence, all amounts that constitute Gross Proceeds and all amounts in the Rebate Fund shall be invested at all times to the greatest extent practicable, and no amounts may be held as cash or be invested in zero yield investments other than obligations of the United States purchased directly from the United States. In the event moneys cannot be invested, other than as provided in this sentence, due to the denomination, price or availability of investments, the amounts shall be invested in an interest bearing deposit account of a bank with a yield not less than that paid to the general public or held uninvested to the minimum extent necessary.

Gross Proceeds and any amounts in the Rebate Fund that are invested in certificates of deposit or in GICs shall be invested only in accordance with the following provisions:

(a) Investments in certificates of deposit of banks or savings and loan associations that have a fixed interest rate, fixed payment schedules and substantial penalties for early withdrawal shall be made only if either (i) the Yield on the certificate of deposit (A) is not less than the Yield on reasonably comparable direct obligations of the United States and (B) is not less than the highest Yield that is published or posted by the provider to be currently available from the provider on reasonably comparable certificates of deposit offered to the public or (ii) the investment is an investment in a GIC and qualifies under paragraph (b) below.

(b) Investments in GICs shall be made only if

(i) the bid specifications are in writing, include all material terms of the bid and are timely forwarded to potential providers (a term is material if it may directly or indirectly affect the yield on the GIC);

(ii) the terms of the bid specifications are commercially reasonable (a term is commercially reasonable if there is a legitimate business purpose for the term other than to reduce the yield on the GIC);

(iii) all bidders for the GIC have equal opportunity to bid so that, for example, no bidder is given the opportunity to review other bids (a last look) before bidding;

(iv) any agent used to conduct the bidding for the GIC does not bid to provide the GIC;

(v) at least three of the providers solicited for bids for the GIC are reasonably competitive providers of investments of the type purchased (*i.e.*, providers that have established industry reputations as competitive providers of the type of investments being purchased);

(vi) at least three of the entities that submit a bid do not have a financial interest in the Lease;

(vii) at least one of the entities that provided a bid is a reasonably competitive provider that does not have a financial interest in the Lease;

(viii) the bid specifications include a statement notifying potential providers that submission of a bid is a representation that the potential provider did not consult with any other provider about its bid, that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the Lessee or any other Person (whether or not in connection with the Lease) and that the bid is not being submitted solely as a courtesy to the

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Lessee or any other Person for purposes of satisfying the federal income tax requirements relating to the bidding for the GIC;

(ix) the determination of the terms of the GIC takes into account the reasonably expected deposit and drawdown schedule for the amounts to be invested;

(x) the highest-yielding GIC for which a qualifying bid is made (determined net of broker's fees) is in fact purchased; and

(xi) the obligor on the GIC certifies the administrative costs that it is paying or expects to pay to third parties in connection with the GIC.

(c) If a GIC is purchased, the Lessee will retain the following records with its Lease documents until three years after the Lease is paid in full:

(i) a copy of the GIC;

(ii) the receipt or other record of the amount actually paid for the GIC, including a record of any administrative costs paid, and the certification under paragraph (b)(xi) of this section;

(iii) for each bid that is submitted, the name of the Person and entity submitting the bid, the time and date of the bid and the bid results; and

(iv) the bid solicitation form and, if the terms of the GIC deviated from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose for the deviation.

Moneys to be rebated to the United States shall be invested to mature on or prior to the anticipated rebate payment date. All investments made with Gross Proceeds or amounts in the Rebate Fund shall be bought and sold at fair market value. The fair market value of an investment is the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's-length transaction. Except for investments specifically described in this section and United States Treasury obligations that are purchased directly from the United States Treasury, only investments that are traded on an established securities market, within the meaning of regulations promulgated under Section 1273 of the Code, will be purchased with Gross Proceeds. In general, an "established securities market" includes: (i) property that is listed on a national securities exchange, an interdealer quotation system or certain foreign exchanges; (ii) property that is traded on a Commodities Futures Trading Commission designated board of trade or an interbank market; (iii) property that appears on a quotation medium; and (iv) property for which price quotations are readily available from dealers and brokers. A debt instrument is not treated as traded on an established market solely because it is convertible into property which is so traded.

An investment of Gross Proceeds in an External Commingled Fund shall be made only to the extent that such investment is made without an intent to reduce the amount to be rebated to the United States Government or to create a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the rebate or Yield restriction requirements not been relevant to the Lessee. An investment of Gross Proceeds shall be made in a Commingled Fund other than an External Commingled Fund only if the investments made by such Commingled Fund satisfy the provisions of this Section 4.4.

A single investment, or multiple investments awarded to a provider based on a single bid, may not be used for funds subject to different rules relating to rebate or yield restriction.

The foregoing provisions of this Section 4.4 satisfy various safe harbors set forth in the Regulations relating to the valuation of certain types of investments. The safe harbor provisions of this Section 4.4 are contained herein for the protection of the Lessee, who has covenanted not to take any action to adversely affect the tax-exempt status of the interest portion of Lease Payments payable under the Lease. The Lessee will contact Special Tax Counsel if it does not wish to comply with the provisions of this Section 4.4 and forego the protection provided by the safe harbors provided herein. Modifications to this Tax Certificate can be made in accordance with Section 7.7 hereof.

## ARTICLE V

### YIELD AND INVESTMENT LIMITATIONS

*Section 5.1. Issue Price.* The Lease will be completely funded on the Funding Date in the amount of \$10,840,078.00, all of which will be deposited into the Escrow Fund as described in Section 2.1 hereof. The Lessor has certified in *Exhibit C* hereto that it has no present intention to resell the Lease.

*Section 5.2. Yield Limits.* Except as provided in paragraph (a) or (b), all Gross Proceeds shall be invested at market prices and at a Yield (after taking into account any Yield Reduction Payments) not in excess of the Yield with respect to the yield on the Rental Payments plus, for amounts in the Escrow Fund only if such amounts are the only amounts subject to yield restriction, 1/8 of 1%.

The following may be invested without Yield restriction:

(a) amounts on deposit in the Escrow Fund that are reasonably expected to pay for the costs of the Equipment or interest on the Lease during the three-year period beginning on the date of issue of the Lease prior to three years after the Funding Date or the completion (or abandonment) of the Project;

(b)(i) an amount not to exceed the lesser of \$100,000 or 5% of the Sale Proceeds;

- (ii) amounts invested in Qualified Tax Exempt Obligations (to the extent permitted by law);
- (iii) amounts in the Rebate Fund;
- (iv) all amounts other than Sale Proceeds for the first 30 days after they become Gross Proceeds; and
- (v) all amounts derived from the investment of Sale Proceeds or investment earnings thereon for a period of one year from the date received.

*Section 5.3. Continuing Nature of Yield Limits.* Except as provided in Section 7.7 hereof, once moneys are subject to the Yield limits of Section 5.2 hereof, such moneys remain Yield restricted until they cease to be Gross Proceeds.

*Section 5.4. Federal Guarantees.* Except for investments meeting the requirements of Section 5.2(a) hereof, investments of Gross Proceeds shall *not* be made in (a) investments constituting obligations of or guaranteed, directly or indirectly, by the United States (except obligations of the United States Treasury or investments in obligations issued pursuant to Section 21B(d)(3) of the Federal Home Loan Bank Act, as amended (*e.g.*, Refcorp Strips)); or (b) federally insured deposits or accounts (as defined in Section 149(b)(4)(B) of the Code). Except as otherwise permitted in this Section and the Regulations, no portion of the payment of the principal or interest portions of Lease Payments with respect to the Lease is or will be guaranteed, directly or indirectly (in whole or in part), by the United States (or any agency or instrumentality thereof), including a lease, incentive payment, research or output contract or any similar arrangement, agreement or understanding with the United States or any agency or instrumentality thereof. No portion of the Gross Proceeds has been or will be used to make loans the payment of principal or interest with respect to which is or will be guaranteed (in whole or in part) by the United States (or any agency or instrumentality thereof). Neither this Section nor Section 5.5 applies to any guarantee by the Federal Housing Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, the Student Loan Marketing Association or the Bonneville Power Administration pursuant to the Northwest Power Act (16 U.S.C. 839d) as in effect on the date of enactment of the Tax Reform Act of 1984.

*Section 5.5. Investments After the Expiration of Temporary Periods, Etc.* After the expiration of the temporary period set forth in Section 5.2(a), amounts in the Escrow Fund may not be invested in (i) federally insured deposits or accounts (as defined in Section 149(b)(4)(B) of the Code) or (ii) investments constituting obligations of or guaranteed, directly or indirectly, by the United States (except obligations of the United States Treasury or investments in obligations issued pursuant to Section 21B(d)(3) of the Federal Home Loan Bank Act, as amended (*e.g.*, Refcorp Strips)). Any other amounts that are subject to the yield limitation in Section 5.2 hereof because Section 5.2(a) is not applicable and amounts not subject to yield restriction only because they are described in Section 5.2(b) are also subject to the limitation set forth in the preceding sentence.

## ARTICLE VI

### PRIVATE ACTIVITY BOND REPRESENTATIONS; FORM 8038-G

*Section 6.1. Payment and Use Tests.* (a) No more than 5% of the Sale Proceeds, plus investment earnings thereon, will be used, directly or indirectly, in whole or in part, in any Private Business Use.

(b) The payment of more than 5% of the Rental Payments with respect to the Lease will not be, directly or indirectly (i) secured by any interest in (A) property used or to be used in any Private Business Use or (B) payments in respect of such property or (ii) on a present value basis, derived from payments (whether or not to the Lessee or a member of the same Controlled Group as the Lessee) in respect of property, or borrowed money, used or to be used in any Private Business Use.

(c) No more than the lesser of 5% of the sum of Sale Proceeds and investment earnings thereon or \$5,000,000 will be used, directly or indirectly, to make or finance loans to any Persons.

(d) No user of the Equipment other than a state or local governmental unit will use more than 5% of the Equipment, in the aggregate, on any basis other than the same basis as the general public.

*Section 6.2. I.R.S. Form 8038-G.* The information contained in the Information Return for Tax-Exempt Governmental Obligations, Form 8038-G, set forth as *Exhibit E* attached hereto is true and complete. The Lessee will file or cause to be filed Form 8038-G (and all other required information reporting forms) in a timely manner.

## ARTICLE VII

### MISCELLANEOUS

*Section 7.1. Termination; Interest of Lessee in Rebate Fund.* This Tax Certificate shall terminate at the later of (a) 75 days after the Lease has been fully paid and retired or (b) the date on which all amounts remaining on deposit in the Rebate Fund, if any, shall have been paid to or upon the order of the United States and any other payments required to satisfy the Rebate Provisions of the Code have been made to the United States. Notwithstanding the foregoing, the provisions of Section 4.3 hereof shall not terminate until the third anniversary of the date the Lease is fully paid and retired, and the provisions of Section 7.8 hereof shall not terminate until the third anniversary of the date the Lease is fully paid and retired.

*Section 7.2. No Common Plan of Financing.* Since November 1, 2010, neither the Lessee nor any member of the same Controlled Group as the Lessee has sold or delivered any other obligations that are reasonably expected to be paid out of substantially the same source of funds as the Lease. Neither the Lessee nor any member of the same Controlled Group as the

Lessee will sell or deliver within 15 days after the date hereof any other obligations that are reasonably expected to be paid out of substantially the same source of funds as the Lease.

*Section 7.3. No Sale of the Equipment.* (a) Neither the Equipment nor any portion thereof has been, is expected to be or will be sold or otherwise disposed of, in whole or in part, prior to the earlier of (i) the last day of the reasonably expected economic life to the Lessee of the property (determined on the date of execution and delivery of the Lease) or (ii) the last stated payment date of the Lease.

(b) The Lessee acknowledges that if Lease-financed property is sold or otherwise disposed of in a manner contrary to (a) above, such sale or disposition may constitute a "deliberate action" within the meaning of the Regulations that may require remedial actions to prevent the Lease from becoming a private activity bond. The Lessee shall promptly contact Special Tax Counsel if a sale or other disposition of Lease-financed property is considered by the Lessee.

*Section 7.4. First Optional Prepayment Date Limitation.* The period between the Funding Date and the first optional prepayment date under the Lease is not more than 10-1/2 years.

*Section 7.5. First Amendment.* The Lessee acknowledges and agrees that it will not use, or allow the Equipment to be used, in a manner that is prohibited by the Establishment of Religion Clause of the First Amendment to the Constitution of the United States of America or by any comparable provisions of the Constitution of the State.

*Section 7.6. Future Events.* The Lessee acknowledges that any changes in facts or expectations from those set forth herein may result in different Yield restrictions or rebate requirements from those set forth herein and in the letter of Special Tax Counsel attached hereto as *Exhibit D*. The Lessee shall promptly contact Special Tax Counsel and the Lessor if such changes do occur.

*Section 7.7. Permitted Changes; Opinion of Special Tax Counsel.* The yield restrictions contained in Section 5.2 or any other restriction or covenant contained herein need not be observed or may be changed if such nonobservance or change will not result in the loss of any exemption for the purpose of federal income taxation to which the interest portion of Lease Payments under the Lease is otherwise entitled and the Lessee receives an opinion of Special Tax Counsel to such effect.

*Section 7.8. Records Retention.* The Lessee agrees to keep and retain or cause to be kept and retained sufficient records to support the continued exclusion of the interest portion of Lease Payments paid under the Lease from federal income taxation, to demonstrate compliance with the covenants in this Tax Certificate and to show that all tax-exempt obligation related tax returns related to the Lease submitted or required to be submitted to the Internal Revenue Service are correct and timely filed. Such records shall include, but are not limited to, basic records relating to the Lease transaction (including this Tax Certificate and the Lease); documentation evidencing the expenditure of Lease proceeds; documentation evidencing the use of

Lease-financed property by public and private entities (including, copies of leases, management contracts and research agreements); documentation evidencing all sources of payment or security for the Lease; and documentation pertaining to any investment of Lease proceeds (including the information required under Section 4.3 and Section 4.4 hereof and in particular information related to the purchase and sale of securities, SLGS subscriptions, yield calculations for each class of investments, if any, actual investment income received from the investment of proceeds, guaranteed investment contracts and documentation of any bidding procedure related thereto and any fees paid for the acquisition or management of investments and any rebate calculations). Such records shall be kept for as long as the Lease is unpaid, plus the period ending three years after the latest of the final payment date of the Lease or the final payment date of any obligations or series of obligations issued to refund directly or indirectly all or any portion of the Lease.

*Section 7.9. Severability.* If any clause, provision or section of this Tax Certificate is ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining clauses, sections or provisions hereof.

*Section 7.10. Successors and Assigns.* The terms, provisions, covenants and conditions of this Tax Certificate shall bind and inure to the benefit of the respective successors and assigns of the Lessee.

*Section 7.11. Headings.* The headings of this Tax Certificate are inserted for convenience only and shall not be deemed to constitute a part of this Tax Certificate.

*Section 7.12. Governing Law.* This Tax Certificate shall be governed by and construed in accordance with the laws of the State of Michigan.

*Section 7.13. Expectations.* The Lessee (including the undersigned officers) has reviewed the facts, estimates and circumstances presented by the Lessee and other persons in existence on the Funding Date. Such facts, estimates and circumstances, together with the expectations of the Lessee as to future events, are set forth in summary form in this Tax Certificate. Such facts and estimates are true and are not incomplete in any material respect. On the basis of the facts and estimates contained herein and in the Certificate of Lessor attached as *Exhibit C* hereto, the Lessee has adopted the expectations contained herein. On the basis of such facts, estimates, circumstances and expectations, it is not expected that Sale Proceeds, investment earnings thereon or any other moneys or property will be used in a manner that will cause the Lease to be an arbitrage bond within the meaning of the Rebate Provisions and the Regulations. Such expectations are reasonable and there are no other facts, estimates and circumstances that would materially change such expectations.

DATED: December 16, 2010.

MICHIGAN DEPARTMENT OF TECHNOLOGY,  
MANAGEMENT AND BUDGET, AN AGENCY OF  
THE STATE OF MICHIGAN

By:   
Name: Anthony J. DesCheneaux  
Title: Director, Comm. Div.

MICHIGAN DEPARTMENT OF CORRECTIONS, AN  
AGENCY OF THE STATE OF MICHIGAN

By:   
Name: Barry L. Wickman  
Title: Administrator



EXHIBIT A

ESTIMATED SOURCES AND USES OF FUNDS\*

SOURCES:

Sale Proceeds	\$10,840,078.00
Investment earnings**	<u>5,441.65</u>
TOTAL	\$10,845,519.65

USES:

Equipment Costs	\$10,840,519.65
Equipment Costs to be Reimbursed	0.00
Delivery Costs	<u>5,000.00</u>
TOTAL	\$10,845,519.65

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\* There is no accrued interest.

\*\* Based on an assumed interest rate of 0.1% per annum.

**EXHIBIT B**

**DRAWDOWN SCHEDULE OF ESCROW FUND**

QUARTERLY PERIOD ENDED	EXPECTED EXPENDITURES
12/20/2010	\$1,284,008.00
1/15/2011	682,576.43
2/15/2011	682,576.43
3/15/2011	682,576.43
4/15/2011	682,576.43
5/15/2011	682,576.43
6/15/2011	682,576.43
7/15/2011	682,576.43
8/15/2011	682,576.43
9/15/2011	682,576.43
10/15/2011	682,576.43
11/15/2011	682,576.43
12/15/2011	682,576.43
1/15/2012	682,576.43
2/15/2012	Balance
TOTAL:	<u>\$10,845,519.65</u>

EXHIBIT C

CERTIFICATE OF LESSOR

The undersigned is an officer of PNCEF, LLC (the "Lessor") and does hereby certify as follows:

1. The Lessor is advancing funds to finance certain Equipment under the Lease described in the foregoing Tax Exemption Certificate and Agreement. The Lessor hereby acknowledges that the Lessee will rely on this Certificate in connection with its execution and delivery of the Tax Certificate and that Special Tax Counsel will rely on this Certificate in connection with the delivery of its opinion to the effect that the interest portion of the Lease Payments under the Lease is excludable from gross income of the owner thereof for federal income tax purposes.
2. The Lessor is the initial owner of and holds the Lease as an investment for its own account with no present intention to resell the Lease.
3. The purchase price of the Lease does not exceed the fair market value of the Lease as of the date the Lessor entered into the Lease with the Lessee, taking into consideration the private placement nature of the financing.
4. The Lessor hereby confirms that the weighted average maturity of the Lease Payments under the Lease is not greater than 6.4317 years.

All terms not defined herein shall have the same meanings as in the Tax Exemption Certificate and Agreement with respect to the Lease, to which this Certificate of Lessor is attached.

DATED: December 16, 2010.

PNCEF, LLC, as Lessor

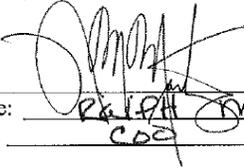
By:   
Name: RALPH MARTINEZ  
Title: COO

EXHIBIT D

MEMORANDUM

TO: State of Michigan acting through its Department of Technology, Management and Budget, and its Department of Corrections

DATE: December 16, 2010

RE: Lease With Option to Purchase, Schedule of Property No. 1 and Payment Schedule thereto, each dated December 16, 2010 (collectively, the "Lease"), between PNCEF, LLC, as Lessor, and State of Michigan acting through its Department of Technology, Management and Budget, and its Department of Corrections, as Lessee

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We have acted as Special Tax Counsel in connection with the execution and delivery on this date of the above-referenced Lease. In a Tax Exemption Certificate and Agreement delivered by you on this date (the "Tax Certificate"), you have agreed to comply with the arbitrage rebate requirements of Section 148 of the Internal Revenue Code of 1986. The purpose of this memorandum is to set out generally the rules that you must follow to comply with the Tax Certificate. This memorandum does not describe how to compute the amount to be rebated to the United States, and due to the complexity involved, the computation will, in all likelihood, require consultation with an expert.

The Internal Revenue Service has issued regulations relating to arbitrage and rebate matters. This memorandum is based upon these regulations, which are subject to change in the future. Such changes may require future recalculation of rebate amounts. For these reasons, it is very important for you and your tax advisors to keep abreast of developments in this area.

The following advice is based on factual information contained in the Tax Certificate. If the facts or expectations stated therein change, please call us to determine whether this results in a change in the following rules. Please note that the rules governing permissible Yield on investments set forth in the Tax Certificate are in addition to the rebate rules and, although you might be allowed to earn a Yield in excess of the Yield with respect to the Lease under the Yield rules, such excess may still be required to be rebated. In some cases, the payment of rebate may assist in compliance with the Yield restriction requirements. Thus, rebate compliance and Yield restriction compliance may operate together rather than independently. In any case, rebate compliance is essential to the maintenance of tax exemption even if no amounts are subject to Yield restriction. Terms not defined herein shall have the meanings set forth in the Tax Certificate.

*General Rule.* Except in the case of certain exceptions and elections as summarized below, every five years and at the final retirement of the Lease you must compute and pay (as

described below) to the United States the difference (the "*Excess Earnings*") between the amount earned on all investments and reinvestments of "Gross Proceeds" (as listed on *Exhibit F* to the Tax Certificate) of the Lease ("*Actual Earnings*") and the amount that would have been earned if Gross Proceeds of the Lease had been invested at the Yield with respect to the Lease (the "*Allowable Earnings*"). Earnings to be taken into account are *not* determined under normal tax accounting principles. In addition to taking into account earnings received (either actually or constructively), receipts with respect to investments that have not been liquidated are computed by assuming that such investments are, in essence, converted to cash as of each computation date (as such dates are described below). The "cash value" of investments determined in this manner is subject to many special rules. Under many circumstances, the "market value" of an investment may be used. The application of these rules is complex and requires a comprehensive understanding of the rebate regulations.

To properly plan for the eventual payment of rebate to the United States, we suggest that you make annual calculations estimating rebate liability. The Tax Certificate establishes a "rebate fund" into which you may also wish to deposit annual estimates of rebate liability so that the payment to the United States may be made from amounts set aside. Federal tax law does *not*, however, require such set-asides. In any event, we strongly encourage you to make an annual estimate of the rebate liability. The calculations can be lengthy and often produce surprising results. Experience in operating our rebate calculation service indicates that the calculation is far more difficult as the period of time for which the calculation is being performed increases.

*Phantom Income.* With certain exceptions, amounts paid for administrative costs are not treated as increasing earnings for purposes of rebate calculations. Administrative costs that do not increase earnings are reasonable, direct administrative costs, other than carrying costs, and generally include brokerage commissions for the purchase of investment agreements and separately stated brokerage or selling commissions, but not legal and accounting fees, record keeping, custody, and similar costs and expenses. The Regulations provide a safe harbor for determining that a broker's fee for the purchase of an investment agreement is reasonable.

*Computation Dates.* Each calculation of Excess Earnings should be made as of a "Computation Date." The Computation Date should be the same date in each calendar year (except that the final Computation Date should be the date on which the Lease actually retired). As indicated above, a Computation Date is required at least every five years. The first Computation Date must be on or before the fifth anniversary of the original execution and delivery of the Lease. Each Computation Date, other than the final Computation Date, is the end of a bond year. A bond year ends on any date within one year of the original execution and delivery of the Lease you choose. If you do not choose an ending date for a bond year, it will be the anniversary date of the original execution and delivery of the Lease.

Excess Earnings with respect to the Lease are determined by comparing Actual Earnings as of a Computation Date with Allowable Earnings as of the same date. Allowable Earnings are based on the Yield with respect to the Lease as of such Computation Date. The Yield with respect to the Lease may change, but for reasons described below under "Yield" with respect to the Lease it is unlikely to change over the life of the Lease. If the Yield with respect to the Lease

decreases as of a particular Computation Date, rebate (or additional rebate) may be due with respect to investments that have previously matured and the proceeds thereof spent.

Except as provided below, on a variable Yield issue, Excess Earnings are computed for the period of time between Computation Dates (or from the date of the original execution and delivery of the Lease in the case of the first Computation Date) by calculating Allowable Earnings based on Yield for that period of time and comparing it with Actual Earnings for the same period. Once calculated for each such period, rebate for that period cannot change—i.e., a snapshot for that period is taken and it never changes. Prior to the first date on which a rebate payment is required, you may choose to treat the end of any year as a computation date for purposes of the snapshot approach.

*Yield with Respect to Lease.* Generally, Yield with respect to the Lease is calculated based upon expected payments of principal of and interest paid pursuant to the Lease (including amounts treated as interest). The Yield with respect to the Lease is generally not required to be recalculated after the date of original execution and delivery except under certain limited circumstances. Generally, recomputation is required upon changes in hedging transactions (e.g., purchase or termination of a swap or cap agreement associated with the Lease) or the transfer of rights associated with the Lease. The actual rules for computing the Yield with respect to the Lease are quite complex and if the Yield with respect to the Lease must be calculated or recalculated, an expert should be consulted.

*Gross Proceeds.* Based upon the facts and expectations presented in the Tax Certificate, the Gross Proceeds of the Lease are all moneys and investments in the Escrow Fund described in the Tax Certificate. If, contrary to the expectations described in the Tax Certificate, moneys or investments are pledged or otherwise set aside for payment of principal or interest distributable with respect to the Lease, such amounts may also constitute Gross Proceeds.

*Universal Cap.* Gross proceeds will cease to be allocated to the Lease (and will therefore be treated as if spent) to the extent that the amount of Gross Proceeds exceeds the outstanding amount of the aggregate principal portion of Rental Payments under the Lease (the "*Universal Cap*"). Although special rules are applicable in the case of discount bonds, the outstanding amount of bonds is roughly equal to the outstanding principal amount. Generally, but not always, the market value of investments is used to test the amount of Gross Proceeds. The Universal Cap may cause allocations on the second anniversary of the issue date and as of the first day of each bond year thereafter.

*Commingled Funds.* Funds allocated to two or more issues, or containing amounts that are not Gross Proceeds of the Lease and amounts that are Gross Proceeds of the Lease in which amounts are invested collectively without regard to source of funds must be treated as commingled funds. Investment earnings on commingled funds must be allocated to the Gross Proceeds of the Lease according to a consistently applied reasonable allocation method. Such method, for example, may be based on average daily balances. Investments in commingled funds must be valued annually to properly allocate unrealized gain or loss to the Gross Proceeds of the Lease. This mark to market requirement will not apply if the weighted average maturity of

all investments held in the commingled fund during a particular fiscal year does not exceed 18 months and does not apply to commingled debt service and debt service reserve funds.

*Six-Month Exception to the General Rule.* If all Gross Proceeds of the Lease (including earnings thereon) are spent within six months of the date the Lease is executed and delivered, no rebate is required except as described below in the case of unexpected Gross Proceeds arising after the Funding Date. If all proceeds (including earnings thereon) required to be spent are so spent within this six-month period, except for 5% of the Lease proceeds, and you spend the 5% (plus earnings thereon), within one year from the Funding Date, no rebate is required. To qualify for the six-month exception, there must be no other amounts that are treated as Gross Proceeds of the Lease. Even if you qualify for this exception, you may have to rebate with respect to any amounts that arise or are pledged to the payment of the Lease at a later date.

*Eighteen-Month Exception to the General Rule.* If all Gross Proceeds of the Lease, other than those in a reasonably required reserve or replacement fund or a bona fide debt service fund, are expended in accordance with the spend-down requirements set forth below, then rebate will only be required with respect to a reasonably required reserve or replacement fund or unexpected Gross Proceeds arising after the Funding Date, if any.

PERIOD	SPEND-DOWN REQUIREMENT
6 months	15%
12 months	60%
18 months	100%
	(except for reasonable retainages up to 5%)
30 months	All reasonable retainages must be spent

To test these percentages for the six-month and 12-month periods, earnings reasonably expected on the Funding Date are used to calculate the total to which the percentages are applied. Actual earnings are used for the 18-month period test. If you exercise due diligence to complete the financed Project and an amount not exceeding the lesser of 3% of the issue price of the Lease or \$250,000 remains unspent as of the end of the 18th month, you will be treated as satisfying the final expenditure requirement. If the issue is secured by a reasonably required reserve fund, rebate is required on the reserve fund from the date the Lease is originally executed and delivered, but not on the other funds. To qualify for the 18-month exception, there must be no other amounts that are treated as Gross Proceeds of the Lease, other than a reasonably required reserve or replacement fund or a bona fide debt service fund. Even if you qualify for this exception, you may have to rebate with respect to any amounts that arise or are pledged to the payment of the Lease at a later date.

*Two-Year Construction Expenditure Exception to the General Rule.* Rebate can also be avoided in the case of an issue (or, if an appropriate election is made on the Funding Date, the portion of an issue) 75% of the "available construction proceeds" of which are expected to be used for construction expenditures (with respect to property that is owned by a governmental unit or a 501(c)(3) organization) and the proceeds of which are spent in accordance with the spend-down requirements set forth below, except as described below. In general, amounts in a

CHAPMAN AND CUTLER LLP

reasonably required reserve fund are subject to rebate as of the earlier of substantial completion of construction or the date two years from the date of issuance of the Lease. Please see our memorandum concerning elections.

PERIOD	SPEND-DOWN REQUIREMENT
6 months	10%
12 months	45%
18 months	75%
24 months	100%
	(except for reasonable retainages up to 5%)
36 months	All reasonable retainages must be spent

In addition, if you exercise due diligence to complete the Project, an amount not exceeding the lesser of 3% of the issue price of the issue or \$250,000 may be disregarded in testing compliance with the 24 month spend-down requirement if the reasonable retainage is not used, or the 36 month spend-down requirement if the reasonable retainage is used.

Gross proceeds used to pay Delivery Costs are not available construction proceeds and expenditures for Delivery Costs do not count towards meeting the spending requirements. If, however, the requirements are met, and all Delivery Costs are paid within two years, no rebate is required on amounts used to pay such costs.

Available construction proceeds include earnings on other available construction proceeds. For the first three periods you must use reasonable expectations regarding future investment earnings in calculating such expenditure requirements. You may have elected to use actual facts rather than reasonable expectations as to future earnings.

You may have elected to base the 75% construction rule on actual facts rather than reasonable expectations as of the Funding Date. If so, actual lesser use for construction will prevent use of this exception.

Even if you qualify for this exception, you may have to rebate with respect to any amounts that arise or are pledged to the payment of the Lease at a later date.

*Qualified Tax-Exempt Obligation Exception to the General Rule.* To the extent that any Gross Proceeds are invested in Qualified Tax Exempt Obligations (as defined in Article I of the Tax Certificate, generally not including as Qualified Tax-Exempt Obligations those obligations subject to the individual alternative minimum tax), the earnings thereon would not be considered when calculating Excess Earnings. To the extent that 100% of Gross Proceeds are continually invested in Qualified Tax Exempt Obligations, there would be no rebate requirement.

*Investment of Rebate Fund and Other Funds.* Investments of moneys in the Rebate Fund and any other fund must be made in arm's-length transactions in a manner that does not reduce the amount to be rebated to the United States. Investment decisions (other than the decision to invest in Qualified Tax Exempt Obligations to avoid rebate) must be made on the basis of normal

investment criteria of safety, Yield and when the money will be needed. All interest rates and Yields must be market rates and Yields. Money must not be allowed to remain uninvested except for small amounts or for short periods of time, as provided in 4.4 of the Tax Certificate. Specific rules exist for certificates of deposit and investment agreements (including repurchase agreements) as set forth in Section 4.4 of the Tax Certificate.

*Rebate Payments.* Within 60 days after the Computation Date that is the end of the fifth bond year and every fifth bond year thereafter, at least 90% of the Excess Earnings and all earnings on the Excess Earnings (net of an appropriate credit depending on whether unexpended Gross Proceeds continue to exist) must be paid to the United States. Within 60 days of final payment of all Rental Payments with respect to the Lease to the owners thereof, all Excess Earnings and all earnings on the Excess Earnings (net of the credit) must be paid to the United States. All payments to the United States must be mailed to the address provided in the instructions to Form 8038-T or such other form specified by the Internal Revenue Service. Form 8038-T or such other form specified by the Internal Revenue Service must be signed by the Lessee.

Respectfully submitted,

DRLarsen; MLee

**EXHIBIT E**  
**[FORM 8038-G]**

**EXHIBIT F**

**GROSS PROCEEDS\***

Escrow Fund

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\* If, contrary to the expectations described in the Tax Certificate, moneys or investments are pledged or otherwise set aside for payment of Rental Payments under the Lease, any amounts are derived from the sale of any right that is part of the terms of the Lease or is otherwise associated with the Lease (e.g., a prepayment right) or the Lessee enters into any agreement to maintain certain levels of types of assets for the benefit of a holder of the Lease or any credit enhancement with respect to the Lease, such amounts may also constitute Gross Proceeds. Further, if any Lease financed property is sold or otherwise disposed of, contrary to the expectations described in the Tax Certificate, any amounts received from such sale or other disposition may also constitute Gross Proceeds. Please call us if any of these events occur.

## EXHIBIT G

### ACCEPTANCE OF ESCROW AGENT

U.S. Bank National Association, as Escrow Agent (the "*Escrow Agent*"), under the Escrow Agreement, dated as of December 16, 2010 (the "*Escrow Agreement*"), among the State of Michigan acting through its Department of Technology, Management and Budget and its Department of Corrections (collectively, the "*Lessee*"), PNCEF, LLC, as lessor (the "*Lessor*") and the Escrow Agent, related to that certain Lease With Option to Purchase, Schedule of Property No. 1 and Payment Schedule thereto, each dated December 16, 2010 (collectively, the "*Lease*"), between the Lessee and the Lessor, hereby agrees as follows:

1. The Escrow Agent hereby acknowledges receipt of a Tax Exemption Certificate and Agreement (the "*Tax Certificate*"), dated December 16, 2010, from the Lessee, including *Exhibits A* through *F* thereto.
2. Other than the Escrow Fund and the Rebate Fund (if any), the Escrow Agent will not establish any other fund or account with respect to or relating to the Lease or the payment of the principal or interest portions of Lease Payments under the Lease.
3. The Escrow Agent shall make or cause to be made (but solely from amounts held in the Escrow Fund or otherwise provided by the Lessee) rebate payments in accordance with the written instructions of the Lessee.
4. The Escrow Agent agrees to keep and retain the records referred to in Sections 4.3 of the Tax Certificate until three years after the Lease is paid in full and the records referred to in Section 7.8 of the Tax Certificate until three years after Lease is paid in full.
5. The Escrow Agent will take, or cause to be taken, such further action as the Lessee may direct in writing in order to comply with the rebate requirements contained in Section 148(f) of the Internal Revenue Code of 1986.
6. The Escrow Agent will perform the agreed actions only upon and subject to the express terms and conditions set forth in the Escrow Agreement.

All terms not defined herein shall have the same meanings as in the Tax Certificate.

Dated: December 16, 2010

U.S. BANK NATIONAL ASSOCIATION, as Escrow  
Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*[Signature Page to Acceptance of Escrow Agent]*