

BOARD OF EDUCATION OF THE BOROUGH OF PAULSBORO,  
IN THE COUNTY OF GLOUCESTER, NEW JERSEY  
PROPOSAL/PROPOSAL SPECIFICATIONS

**I) GENERAL INFORMATION**

**ISSUER:** The Board of Education of the Borough of Paulsboro, in the County of Gloucester, New Jersey (the "Board" when referring to the governing body, and the "School District" when referring to the territorial boundaries governed by the Board).

**OBLIGATION:** Tax Exempt Lease Purchase to finance approximately **\$3,445,000** ("Lease Purchase"). The Project costs for the ECMs is approximately \$8,600,000. The Lease Purchase amount is net of grant funds (approximately \$4,600,000) and funds of the School District (approximately \$560,000).

**PURPOSE:** The proceeds will provide funds to install and/or retrofit energy conservation measures "ECM" or "ECMs") for certain facilities located throughout the School District. The Board has determined that the energy savings generated from reduced energy use from the program will be sufficient to cover the cost of the program's energy conservation measures set forth in the energy savings plan, and, therefore, has determined to implement the plan pursuant to NJ.S.A. 18A: 18A-4.6 et seq. and to finance the program through the issuance of energy savings obligations authorized as a Lease Purchase pursuant to NJ.S.A. 18A:18A-4.6(1)(c)(3) and 18A:24-61.1 et seq. The term of the lease will be approximately Twenty (20) years.

**PROPOSAL OPENING:** The proposal opening will be held at **2:00 p.m., on November 15, 2023** (the "Proposal Date") at the offices of the Board of Education. See "Proposal Submission" herein.

**SETTLEMENT:** Settlement is scheduled to occur on or about **December 5, 2023**.

**II) TERMS/STRUCTURE**

**AMORTIZATION** The Lease Purchase will have a Twenty (20) year amortization structure, based on a 360 Day Year/30 Day Month, with principal and interest to be repaid semi-annually on **March 1st and September 1st. The first payment shall commence on September 1, 2024.**

**REDEMPTION:** Please indicate prepayment options/prices in your proposal, if any.

**GUARANTY & SECURITY:** The Project described above is essential to the Board and to the services the Board provides to the citizens of the School District. Such Project will not be used for any other purpose except for performing functions of the Board and the School District. The Board has an immediate need for such Project and expects to make immediate use of such Project. The Board will fund all future rent payments for the Lease Purchase within the budgets of the future budgetary periods. Should the Board fail to budget such future rent payments or otherwise make available funds to pay rental payments, the Lease Purchase shall be terminated at the end of that current fiscal year and the Board shall not be responsible for making any further rental payments. Should the Lease Purchase be terminated, the Board shall deliver the Project to the Purchaser. The Board will require the Purchaser to comply with this and all **other relevant** state and **federal** statutes.

**ISSUER STATUS:** The Board does not intend to issue more than \$10,000,000 in debt during calendar year 2023, therefore the Lease Purchase **will be considered Bank Qualified.**

### **III) PROPOSALS**

**SUBMISSION REQUIREMENTS:** All submitters must complete the attached proposal sheet and provide an amortization schedule for the proposal detailing payment number, principal balance, interest amount, principal amount and Purchase Option Penalty for each payment to the financing. All costs, including any escrow fees, must be included in the submission. The completed proposal must be signed as an original copy. All submitters must also have completed and returned with their proposal the attached Non-Collusion Affidavit, Stockholder's Statement, Affirmative Action Questionnaire and Iran Disclosure. These documents are attached hereto as Exhibit A. In accordance with P.L. 2004, c.57, all submitters must be registered with the State of New Jersey and the Board must have a copy or a submitter must include a New Jersey Business Registration Certificate with the submitter's submission. If a submitter submits a proposal and the Board does not have a copy of the submitter's certificate on file or a copy is not included in the proposal submission package, the submitted proposal will not be considered for award. See Exhibit A.

**PRIVATE PLACEMENT:** The successful submitter (the "Purchaser") may not sell to more than 35 persons (to comply with Rule 15c2-12 of the Securities and Exchange Commission), each of whom the Purchaser believes (i) has such knowledge and experience in financial and business matters that the Purchaser is capable of evaluating the merits and risks of the prospective investment, and (ii) the Purchaser is not purchasing for more than one account or with the view to distribute the obligations. The Board will not be preparing a Preliminary Official Statement or any other offering document for this Lease Purchase. Certain financial information of the Board accompanies this proposal invitation, however the Purchaser must perform their own independent review and evaluation of the financial position of the Board. Upon submission of a proposal, the submitter recognizes that the Board will be requiring that the Purchaser will give notice to the Board of the assignment and sale of the Lease Purchase and provide the name and address of each assignee or owner in addition to the street name owner for registration purposes and will provide the Board with a certificate as it relates to that matter.

**FUNDING AND ESCROW:** The Board reserves the right to fund the Lease Purchase into an interest bearing escrow account. The Board will realize any interest income from the escrow account and such interest income will not be considered as a part of the proposal. The Board reserves the right to direct the deposit and investment of the Lease Purchase proceeds in the escrow account. This proposal will allow for any associated costs of the Project and of the proposal to be included in the amount financed. Any additional fees or expenses of the Purchaser shall be disclosed and will be considered in the selection process.

**INDEX OF PROPOSED RATES:** Rates will be held for a period of sixty (60) days from the date of the proposal opening. If the Lease Purchase does not fund within sixty (60) days of the proposal opening, the interest the interest rate may be adjusted. Please include a proposal rate adjustment formula on your submission form.

**AWARD CRITERIA:** The award of a proposal will be to the respondent that submits the overall lowest borrowing cost to the School District.

#### **OTHER INFORMATION AVAILABLE VIA DISTRICT WEBSITE:**

Audited Financial Statements - Year Ending June 30, 2021  
Audited Financial Statements - Year Ending June 30, 2022  
Audited Financial Statements - Year Ending June 30, 2023  
School District Budget for Fiscal Year Ending June 30, 2024

**DOCUMENTATION:** All documents relating to the lease purchase will be reviewed by the Board's auditor and ESIP provider. A form of Lease Purchase Agreement is attached hereto as Exhibit B. The School District will consider any suggested changes and revisions to the form of Lease Purchase Agreement in its sole and absolute discretion.

**FEES AND EXPENSES:** The Board does not anticipate additional Fees and Expenses associated with the lease purchase. Any fees that the submitter would require must be listed and should be calculated into determining the low submitter as set forth herein.

**POLITICAL CONTRIBUTIONS:** The respondent is advised of the responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission pursuant to N.J.S.A. 19:44A-20.13 (P.L. 2005, c.271, s.3) if the respondent receives contracts in excess of \$50,000 from public entities in a calendar year. It is the respondent's responsibility to determine if filing is necessary. Additional information in this requirement is available from ELEC at 888-313-3532 or at [www.elec.state.nj.us](http://www.elec.state.nj.us).

**PROPOSAL SUBMISSION:** Written proposals are due **November 15, 2023, at 2:00 p.m. and should be forwarded via Federal Express or any form of delivery in which tracking can be performed on the package to:**

**Anisah Coppin, Business Administrator/Board Secretary**  
**Borough of Paulsboro Public Schools**  
**662 North Delaware Street**  
**Paulsboro, NJ 08066**  
**Telephone: (856) 423-5515 ext. 1234**

**The proposals must be clearly marked on the envelope "ESIP Lease Purchase Proposal", name of respondent, date and hour of the proposal opening.**

**Please deliver an email copy to:**

**Kimberly Albertson, Director - Finance**  
**Schneider Electric**  
**[Kimberly.albertson@se.com](mailto:Kimberly.albertson@se.com)**  
**Telephone: (207) 607-9511**

**OTHER LAWS AND EXHIBITS:** The respondent agrees that the language contained in Exhibits A and B will become part of any contract with the Board.

**THE BOARD OF EDUCATION OF THE BOROUGH OF PAULSBORO  
COUNTY OF GLOUCESTER, NEW JERSEY  
PROPOSAL SHEET**

**SECTION I. – INTEREST RATE<sup>(1)</sup>**

**PROPOSAL TO:**

**Anisah Coppin, Business Administrator/Board Secretary  
Borough of Paulsboro Public Schools  
662 North Delaware Street  
Paulsboro, NJ 08066  
Telephone: (856) 423-5515 ext. 1234**

**Name of Respondent:**

**Address of Respondent:**

**Contact Person:**

**Contact Phone:**

**Contact Facsimile:**

**Contact E-Mail:**

**a) Interest Rate Quoted for 20-year term: %**

**b) Additional Costs associated with this financing other than escrow fees: YES or NO** If “yes” please state the amount of additional charges \$ and attach a separate page detailing such charges.

**c) Rate Adjustment Formula:**

Please attach separate page if necessary, detailing formula.

Proposal Submitted by:

Authorized Signature of Respondent Date:

Printed Name Title:

**(1) INSTRUCTIONS TO RESPONDENT:**

All proposals must be submitted on this form and must include the attached documentation (executed) and a sample amortization schedule. Failure to follow these instructions will be grounds for rejection. Failure to disclose any of the information requested may be grounds for rejection. The Board will accept no substitutions for this proposal sheet. Respondents need not provide escrow services. SECTION I: Provide a rate of interest and additional charges for the Lease Purchase as requested in the Request For Proposal. Interest Rate must be held for 30 days from proposal opening and adjustments after 30 days will hold to specifications provided in the Request For Proposal.

**SECTION II. – ESCROW (1)**

**PROPOSAL TO:**

**Anisah Coppin, Business Administrator/Board Secretary  
Borough of Paulsboro Public Schools  
662 North Delaware Street  
Paulsboro, NJ 08066  
Telephone: (856) 423-5515 ext. 1234**

**Name of Escrow Agent:**

**Address of Escrow Agent:**

**Contact Person:**

**Contact Phone:**

**Contact Facsimile:**

**Contact E-Mail:**

**a) Escrow Information:**

Current escrow investment effective annual yield: (%)

- b) Additional Costs associated with this financing other than escrow fees: YES or NO** If “yes” please state the amount of additional charges \$ and attach a separate page detailing such charges. The School District would like to capitalize the cost of the escrow account and pay such fee through the proceeds of the lease.

Proposal Submitted by:

Authorized Signature of:

Respondent Date:

Printed Name Title:

(1) INSTRUCTIONS TO RESPONDENT:

All proposals must be submitted on this form and must include the attached documentation (executed) and a sample amortization schedule. Failure to follow these instructions will be grounds for rejection. Failure to disclose any of the information requested may be grounds for rejection. The Board will accept no substitutions for this proposal sheet. Respondents need not provide escrow services. SECTION II: If proposing investment services for the Lease Purchase proceeds, please furnish the above information. If unable to provide investment services, type “None Proposed” and execute the form. The Board reserves the right to the deposit and investment of the Lease Purchase proceeds.

**EXHIBIT A AFFIRMATIVE ACTION QUESTIONNAIRE**

**Proposal Date:**

This form is to be completed and returned with the proposal. However, the Board will accept in lieu of the Questionnaire, Affirmative Action Evidence stapled to the page.

1. Our company has a federal Affirmative Action Plan approval. YES or NO

A. If yes, a Photostat copy of said approval shall be submitted to the Board of Education within seven (7) working days of the notice of intent to award the contract of the signing of the contract.

2. Our company has a New Jersey State Certificate of Approval. YES or NO

A. If yes, a copy of the New Jersey State Certificate shall be submitted to the Board of Education within seven (7) working days of the notice of intent to award the contract or the signing of the contract.

3. If you answered NO to both questions above, an affirmative action Employee Information Report (AA-302) will be mailed to you. Complete the form and forward it to the Affirmative Action Office, Department of Treasury, CN 209, Trenton, NJ 08625. A copy shall be submitted to the Board of Education within Seven (7) days of the notice of the intent to award the contract of the signing of the contract.

I certify that the above information is correct to the best of my knowledge.

Name of Company/Firm:

Name of Authorized Agent Title:

**SIGNATURE**

Date

**MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE**  
**N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127) N.J.A.C. 17:27 GOODS, PROFESSIONAL SERVICE**  
**AND GENERAL SERVICE CONTRACTS**

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to employ minority and women workers consistent with the applicable county employment goals established in accordance with N.J.A.C. 17:27-5.2, or a binding determination of the applicable county employment goals determined by the Division, pursuant to N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court

decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the applicable employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval

Certificate of Employee Information Report

Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at [www.state.nj/treasury/contract\\_compliance](http://www.state.nj/treasury/contract_compliance))

The contractor and its subcontractors shall furnish such reports or other documents to the Div. of Contract Compliance & EEO as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Div. of Contract Compliance & EEO for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.



**NONDISCRIMINATION IN EMPLOYMENT ON PUBLIC CONTRACTS (N.J.S.A. 10:2-1 through 10:2-4, with all amendments) CONTRACT REQUIREMENTS: PENALTIES FOR VIOLATIONS**

Every contract for or on behalf of the state or any county or municipality or other political subdivision of the state, or any agency of or authority created by any of the foregoing, for the construction, alteration or repair of any public building or public work or for the acquisition of materials, equipment, supplies or services, shall contain provisions by which the contractor agrees that:

- a. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall by reason of race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;
- b. No contractor, subcontractor, nor any person on his/her behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, material status, affectional or sexual orientation or sex;
- c. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$50.00 per each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and
- d. This contract may be canceled or terminated by the contracting public agency and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

## **NEW JERSEY BUSINESS REGISTRATION REQUIREMENTS**

The contractor shall provide written notice to its subcontractors of the responsibility to submit proof of business registration to the contractor.

Before final payment on the contract is made by the contracting agency, the contractor shall submit an accurate list and the proof of business registration of each subcontractor or supplier used in the fulfillment of the contract, or shall attest that no subcontractors were used.

For the term of the contract, the contractor and each of its affiliates and a subcontractor and each of its affiliates [N.J.S.A 52:32-44(g)(3)] shall collect and remit to the Director, New Jersey Division of Taxation, the use tax due pursuant to the Sales and Use Tax Act on all sales of tangible personal property delivered into this State, regardless of whether the tangible personal property is intended for a contract with a contracting agency.

A business organization that fails to provide a copy of a business registration as required pursuant to section 1 of P.L.2001, c.134 (C.52:32-44 et al.) or subsection e. or L of section 92 of P.L.1977, c.110 (C'.5: 12-92), or that provides false business registration information under the requirements of either of those sections, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration copy not properly provided under a contract with a contracting agency,"

**THE BOARD OF EDUCATION OF THE BOROUGH OF PAULSBORO  
COUNTY OF GLOUCESTER, NEW JERSEY**

**STOCKHOLDERS STATEMENT**

In accordance with New Jersey Statutes Title 52:25-24.2, all corporate and partnership respondents for State, county, municipal or school district contracts are required to submit a list of the names and addresses of all stockholders owning 10% or more of their stock or 10% or more of the stock of their corporate stockholders or in the case of a partnership, the names and addresses of those partners owning a 10% or greater interest therein.

NAME

ADDRESS

Signature

Company

Date

**THE BOARD OF EDUCATION OF THE TOWNSHIP OF FRANKLIN  
COUNTY OF GLOUCESTER, NEW JERSEY**

**NON-COLLUSION AFFIDAVIT**

State of

County of

I, \_\_\_\_\_, of the City of \_\_\_\_\_ of the County of \_\_\_\_\_ and the State of \_\_\_\_\_ of full age, being duly sworn according to law on my oath depose and say that:

I am of the firm of and respondent making the proposal for the above named project, and that I executed the said Proposal with full authority so to do; that said respondent has not, directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive proposalding in connection with the above named project, and that all statements contained in said Proposal and this affidavit are true and correct, and made with full knowledge that the Board relies upon the truth of the statements contained in said Proposal and in the statements contained in this affidavit in awarding the contract for the said project.

Signature

Subscribed and sworn to before me this  
Day of , 2019

My Commission expires

## DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN

### Proposer:

Pursuant to Public Law 2012, c. 25, and N.J.S.A. 40A:11-2.1, any person or entity that submits a proposal or proposal or otherwise proposes to enter into or renew a contract must complete the certification below to attest, under penalty of perjury, that the person or entity, or one of the person or entity's parents, subsidiaries, or affiliates, is not identified on a list created and maintained by the New Jersey Department of the Treasury as a person or entity engaging in investment activities in Iran. If the Director finds a person or entity to be in violation of the principles which are the subject of this law, s/he shall take action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the person or entity.

**I certify, pursuant to Public Law 2012, c. 25, and N.J.S.A. 40A:11-2.1, that the person or entity listed above for which I am authorized to submit a proposal:**

( ) is not providing goods or services of \$20,000,000 or more in the energy sector of Iran, including a person or entity that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran,

**AND**

( ) is not a financial institution that extends \$20,000,000 or more in credit to another person or entity, for 45 days or more, if that person or entity will use the credit to provide goods or services in the energy sector in Iran.

**In the event that a person or entity is unable to make the above certification because it or one of its parents, subsidiaries, or affiliates has engaged in the above-referenced activities, a detailed, accurate and precise description of the activities must be provided in part 2 below to the Board under penalty of perjury. Failure to provide such will result in the proposal being rendered as non-responsive and appropriate penalties, fines and/or sanctions will be assessed as provided by law.**

PART 2: PLEASE PROVIDE FURTHER INFORMATION RELATED TO INVESTMENT ACTIVITIES IN IRAN

**You must provide a detailed, accurate and precise description of the activities of the proposer, or one of its parents, subsidiaries or affiliates, engaging in the investment activities in Iran outlined above by completing the boxes below.**

Name: Relationship to Proposer:

Description of Activities: Duration  
of Engagement:

Proposer Contact Name:

Anticipated Cessation Date: Contact

Phone Number:

**Certification: I, being duly sworn upon my oath, hereby represent and state that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I attest that I am authorized to execute this certification on behalf of the above-referenced person or entity. I acknowledge that the Board is relying on the information contained herein and thereby acknowledge that I am under a continuing obligation from the date of this certification through the completion of any contracts with the Board to notify the Board in writing of any changes to the answers of information contained herein. I acknowledge that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I recognize that I am subject to criminal prosecution under the law and that it will also constitute a material breach of my agreement(s) with the Board and that the Board at its option may declare any contract(s) resulting from this certification void and unenforceable.**

Full Name (Print):

Title:

Signature:

Date:

**EXHIBIT B**

**ENERGY SAVINGS IMPROVEMENT PLAN LEASE PURCHASE AGREEMENT  
by and between \_\_\_\_\_ as Lessor and THE BOARD OF EDUCATION  
OF THE BOROUGH OF PAULSBORO, IN THE COUNTY OF GLOUCESTER,  
NEW JERSEY as Lessee Dated as of: November 1, 2023**

<b>TABLE OF CONTENTS</b>	<b>PAGE</b>
ARTICLE I. DEFINITIONS AND EXHIBITS .....	2
Section 1.01. Definitions. ....	2
Section 1.02. Exhibits. ....	5
ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES, DISCLAIMERS. ....	6
Section 2.01. Representations, Covenants and Warranties. ....	6
Section 2.02. Representations, Covenants and Warranties of Lessor. ....	8
Section 2.03. Disclaimer of Lessor. ....	9
ARTICLE III LEASEHOLD ESTATE; TERM OF THE LEASE. ....	9
Section 3.01. Lease of Project. ....	10
Section 3.02. Term of the Lease. ....	10
Section 3.03. Termination of the Lease Term. ....	10
Section 3.04. Quiet Possession and Enjoyment .....	11
Section 3.05. Lessor Access to the Project .....	11
ARTICLE IV. RENT AND OTHER REQUIRED PAYMENTS. ....	11
Section 4.01. Payment of Rent. ....	11
Section 4.02. Basic Rent; Principal Portion. ....	13
Section 4.03. Basic Rent; Interest Portion. ....	13
Section 4.04. Budgetary Procedure in Respect to Rent. ....	13
Section 4.05. Rental Payments to be Unconditional; No Abatement or Set-Off. ....	13
Section 4.06. Termination of Lease Upon Occurrence of Event of Non-Appropriation. ....	13
Section 4.07. Return of the Land and Project. ....	14
Section 4.08. Non-Appropriation. ....	14
Section 4.09. Effect of Termination. ....	14
ARTICLE V. ACQUISITION OF THE PROJECT; PAYMENT OF COSTS. ....	15
Section 5.01. Specifications of the Project. ....	15
Section 5.02. Acquisition of the Project. ....	15
Section 5.03. Default In Vendor's Performance. ....	15
ARTICLE VI. OPERATION USE AND MAINTENANCE OF THE PROJECT; INSURANCE.....	15
Section 6.01. Maintenance and Repair; Compliance with Laws. ....	15
Section 6.02. Lessee's Negligence. ....	15
Section 6.03. Liability Insurance. ....	16
Section 6.04. Property Insurance. ....	17
Section 6.05. Other Insurance and Requirements for Insurance. ....	17
Section 6.06. Title to the Project. ....	17
Section 6.07. Lessor Indemnification. ....	18
<b>PAGE</b> ARTICLE VII. DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET	

PROCEEDS. ....	18
Section 7.01. Damage, Destruction and Condemnation. ....	18
Section 7.02. Insufficiency of Net Proceeds. ....	18
Section 7.03. Cooperation of Lessor. ....	19
Section 7.04. Casualty to Other Property Owned by the Lessee. ....	19
ARTICLE VIII. TAX COVENANTS. ....	19
Section 8.01. Basic Tax Covenants. ....	19
Section 8.02. Additional Tax Covenants. ....	19
ARTICLE IX. OPTIONS TO PURCHASE. ....	20
Section 9.01. Options to Purchase Project; When Exercisable; Payment Sources. ....	20
Section 9.02. Exercise of Option. ....	20
ARTICLE X. ASSIGNMENT; SUBLEASING, MORTGAGING AND SELLING. ....	20
Section 10.01. Assignment by Lessor. ....	21
Section 10.02. Assignment and Subleasing by Lessee. ....	21
Section 10.03. Restriction on Mortgage or Sale of the Project by the Lessee. ....	21
Section 10.04. Lessee or Lessor Reorganization. ....	21
ARTICLE X. EVENTS OF DEFAULT; REMEDIES. ....	21
Section 11.01. Events of Default. ....	21
Section 11.02. Remedies Upon Default. ....	22
Section 11.03. Determination of Taxability. ....	22
Section 11.04. Return of Project. ....	22
Section 11.05. No Remedy Exclusive. ....	22
Section 11.06. Delay; Notices. ....	23
Section 11.07. Agreement to Pay Fees and Expenses. ....	23
Section 11.08. No Additional Waiver Implied by One Waiver. ....	23
Section 11.09. Late Charges. ....	23
Section 11.10. Opinion of Counsel. ....	23
ARTICLE XII. ADMINSTRATIVE PROVISIONS. ....	23
Section 12.01. Notices. ....	23
Section 12.02. Severability. ....	24
Section 12.03. Amendments, Changes and Modifications. ....	24
Section 12.04. Further Assurances and Corrective Instruments. ....	24
Section 12.05. Applicable Law. ....	24
Section 12.06. Captions. ....	24
Section 12.07. Multiple Counterparts. ....	24
Section 12.08. Time Is of the Essence. ....	24
Section 12.09. Inspections Permitted. ....	24
Section 12.10. No Personal Liability. ....	25
Section 12.11. Gender. ....	25
Section 12.12. Receipt of Lease. ....	25
Exhibit A Description of Items of Equipment A-1	
Exhibit B Basic Rent Payment Schedule B-1	
Exhibit C Acceptance Certificate C-1	

## **LEASE PURCHASE AGREEMENT**

**THIS LEASE PURCHASE AGREEMENT**, made and entered into this \_\_\_th day of November, 2023 ("Lease" or "Lease Purchase Agreement") by and between The Board of Education of the Borough of Paulsboro, in the County of Gloucester, New Jersey, a type II school district of the state of New Jersey ("Board" when referring to the governing body and "School District" when referring to the legal entity governed by the Board or "Lessee"), and \_\_\_\_\_ ("Lessor" or "Company") with its principal corporate office at \_\_\_\_\_.

### **WITNESSETH**

**WHEREAS**, the State of New Jersey ("State"), in order to carry out its responsibility under Article 8, Section 4, paragraph 1 of the State Constitution to provide and maintain a thorough and efficient system of public education has, inter alia, created various boards of education and conferred upon said boards the power necessary to meet said constitutional mandate; and

**WHEREAS**, the School District is authorized by law, including, inter alia, N.J.S.A. 18A:18A42, and the related regulations, as each may be amended and supplemented on the date hereof (collectively, the "Governing Law") to acquire furnishings and equipment by a lease purchase financing of duration no greater than five (5) years; and

**WHEREAS**, during the Lease Term (as hereinafter defined), title to the equipment and furnishings comprising the Project will be vested in the Lessor; and upon the expiration of the terms of the Lease Purchase Agreement, the School District shall purchase all right, title and interest in and to the equipment and furnishings comprising the Project for a nominal fee; and

**WHEREAS**, the parties desire hereby to set the terms and conditions under which the Project is to be leased to the School District and Rent is to be paid by the School District to the Lessor.

**NOW THEREFORE, THE PARTIES HERETO, IN CONSIDERATION OF THE MUTUAL COVENANTS HEREIN CONTAINED AND OTHER GOOD AND VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, EACH INTENDING TO BE LEGALLY BOUND, HEREBY AGREE AS FOLLOWS:**



## ARTICLE I DEFINITIONS AND EXHIBITS

**Section 1.01 Definitions.** Unless the context otherwise specifically requires or indicates to the contrary, the following terms as used in this Lease shall have the respective meanings as set forth below.

"Acceptance Certificate" or "Acceptance" shall mean a certificate in the form attached hereto and made a part hereof as Exhibit "C" executed by the Lessor and the Lessee stating that: (a) the Project (or a designated portion thereof) has been accepted in accordance with the Lease; and (b) the Project (or a designated portion thereof) has been accepted by and is available for use by the Lessee. "Acceptance Date" shall mean the date upon which the Lessor and the Lessee execute the Certificate of Acceptance which, together with any such certificates theretofore delivered by them, evidences acceptance of the Project.

"Authorized Representative" shall mean: (i) with respect to the Lessor, the President, Vice President, Assistant Vice President, Secretary, Assistant Secretary or any duly appointed officer of the Lessor authorized by the articles of incorporation and/or by-laws to execute documents on behalf of the Lessor; and (ii) with respect to the School District, Board President, Board Vice President, Assistant Superintendent for Business/Board Secretary or any person authorized by law to act on the School District's behalf under or with respect to this Lease, as evidenced by a resolution of the Board.

"Available Revenues" shall mean with respect to the Project: (i) all sums appropriated by the School District in its annual budget for the payment of Basic Rent and Supplemental Rent, and as may otherwise become legally available by resolution of the Lessee for the purpose of making Basic Rent or Supplemental Rent payments due or to become due hereunder with respect to the Project; (ii) any investment earnings or moneys held in the funds and accounts of the Lessee to the extent not subject to rebate to the United States Treasury pursuant to applicable federal tax laws; and (iii) proceeds from the enforcement of the provisions hereof in an Event of NonAppropriation or an Event of Default.

"Basic Rent" shall mean the amounts as may be denominated in Article IV hereof consisting of a Principal Portion and an Interest Portion, and, upon acceleration or prepayment, shall mean the payment of all or a portion of the Purchase Option Price determined as provided in Article IX hereof.

"Basic Rent Payment" shall mean the payments of Basic Rent, including with respect to any portion of the Basic Rent, the (i) Interest Portion thereof as set forth pursuant to Section 4.03 of this Lease, and (ii) the Principal Portion thereof as may be adjusted from time to time pursuant to Section 4.02 hereof.

"Basic Rent Payment Date" shall mean with respect to any portion of Basic Rent, the \_\_\_th days of \_\_\_\_\_ and \_\_\_\_\_, commencing \_\_\_\_\_, 20\_\_, or if such date is not a Business Day, the Business Day next preceding any such date.

"Board" shall mean The Board of Education of the Township of Franklin, in the County of Gloucester, New Jersey.

"Business Day" shall mean each Monday, Tuesday, Wednesday, Thursday, or Friday that is not a day on which a State or federally chartered banking or trust institution in the State is authorized or obligated by law or executive order to close.

"Closing Date" shall mean December 5, 2023

"Code" shall mean the Internal Revenue Code of 1986, as amended, and the regulations, revenue rulings and procedures issued or made applicable to the Lease or the proceeds thereof from time to time.

"Costs" or "Project Costs" shall mean all costs that under generally accepted accounting principles constitute capital costs of designing, acquiring and constructing the Project, financing costs, including capitalized interest, if any, and reimbursement to the School District of any costs theretofore advanced by it with respect to the Project in contemplation of Leasing the Project.

"Costs of Issuance" shall mean all items of expense directly or indirectly payable by or reimbursable to the Lessee and/or Lessor and related to the authorization, execution and delivery of this Lease Purchase Agreement; including, but not limited to, advertising and printing costs, costs of preparation and reproduction of documents, filing and recording fees, initial fees, expenses and charges of the Lessor, legal fees, financial advisory fees and disbursements of parties to the transaction and all other fees, charges and disbursements contemplated by this Lease Purchase Agreement.

"Determination of Taxability" shall mean any one of the following situations: (i) The Internal Revenue Service ("IRS") issues a Final or Proposed Notice of Determination that the Interest Portion of the Lease is includible in gross income of the Lessor; or (ii) the delivery of written notice to Lessor and Lessee declaring that the IRS has issued a proposed deficiency letter, the effect of which is to assert that the Interest Portion of Basic Rent is included in the gross income of the Lessor, or a successor lessor, such taxability notice to be effective 30 days after the giving of the same.

"Energy Conservation Measure" means an improvement that results in reduced energy use, including, but not limited to, installation of energy efficient equipment; demand response equipment; combined heat and power systems; facilities for the production of renewable energy; water conservation measures, fixtures or facilities; building envelope improvements that are part of an energy savings improvement program; and related control systems for each of the foregoing.

"Energy Savings" shall mean a measured reduction in fuel, energy, operating or maintenance costs resulting from the implementation of one or more energy conservation measures services when compared with an established baseline of previous fuel, energy, operating or maintenance costs, including, but not limited to, future capital replacement expenditures avoided as a result of equipment installed or services performed as part of an energy savings plan.

"Energy Savings Improvement Program" shall mean an initiative of the School District to implement energy conservation measures in existing facilities, provided that the value of the energy savings resulting from the program will be sufficient to cover the cost of the program's energy conservation measures.

"Energy Savings Plan" shall mean the document prepared by Schneider Electric, dated October \_\_\_, 2023, in accordance with ESIP, describing the actions to be taken to implement the Energy Savings Improvement Program.

"Escrow Agent" shall mean \_\_\_\_\_, its successors and assigns.

"ESIP Law" shall mean N.J.S.A. 18A:18A-4.6 et seq., as amended.

"Escrow Fund" shall mean the fund held by the Escrow Agent established by the Escrow Agreement, into which the Lessor shall deposit the Lease Proceeds.

"Event of Default" shall mean an Event of Default as described in Section 11.01 hereof.

"Event of Taxability" shall mean a change in law or fact, or the interpretation thereof, or the occurrence or recognition of a fact, circumstance or situation which causes or could cause the loss of the exclusion from gross income provided under the Internal Revenue Code of 1986, as Amended ("Code") of interest on the Rental Payments made under the Lease.

"Event of Non-Appropriation" shall mean an Event of Non-Appropriation as described in Section 4.08 hereof.

"Final Payment Date" shall mean \_\_\_\_\_, 20\_\_.

"Fiscal Year" shall mean the twelve-month period beginning July 1 of any year and ending on June 30.

"Interest Portion" shall mean, with respect to each Basic Rent Payment, the portion thereof that is designated as interest in the amounts set forth in Exhibit "B" attached hereto as the sum may be adjusted in accordance with the provisions hereof.

"Lease" or "Lease Purchase Agreement" shall mean this Lease Purchase Agreement, by and between the School District and the Lessor, dated as of December 5, 2023.

"Lease Term" shall mean the applicable period specified in Section 3.02 hereof.

"Permitted Encumbrances" shall mean, as of any particular times: (a) determined liens and charges incident to acquiring the Project now or hereafter filed on record that are being contested in good faith and have not proceeded to judgment provided, in the case of the Lessee, that the Lessee shall have set aside adequate reserves with respect thereto; (b) the lien of taxes and assessments that are not due and payable; (c) the liens of taxes and assessments that are delinquent but the validity or amount of which are being contested in good faith and with respect to which the Lessee shall have set aside adequate reserves unless the Lessor shall notify the Lessee that in the opinion of Lessor, by nonpayment of any such items, the Project and/or the interest of the Lessor therein may be in danger of being lost or forfeited; and (d) UCC-1 Financing Statement, in favor of Lessor only, filed with the County of Gloucester, Clerk's office.

"Principal Portion" shall mean with respect to each Basic Rent Payment, the portion thereof that is designated as principal in the amounts set forth in Exhibit "B" attached hereto, as the sums may be adjusted in accordance with the provisions hereof.

"Project" shall mean the financing of the costs of acquisition, construction, and installation of certain capital equipment and improvements to be installed at the School District described in the School District's Energy Savings Plan and as more specifically set forth and described in Exhibit "A", attached hereto and made a part hereof.

"Purchase Option Price" shall mean the amount constituting the purchase option price as computed in Article IX hereof.

"Rent" shall mean, collectively, Basic Rent and Supplemental Rent.

"Rent Payments" or "Rental Payments" shall mean the payments of Rent as set forth in Exhibit "B" hereto.

"State" shall mean the State of New Jersey.

"State and Federal Law or Laws" shall mean the Constitution and laws of the State, and any ordinance, rule or regulation of any agency or political subdivision of the state; and any law of the United States, and any rule or regulation of any federal agency.

"Supplemental Rent" shall mean all amounts due hereunder other than Basic Rent, as further described in section 4.01 hereof.

"Vendor" shall mean the manufacturer, constructor and/or supplier of the Project as well as the agents and dealers of the manufacturer and/or supplier.

"Verification Agreement" shall mean that certain Agreement between the School District and Schiller and Hersh Associates, Inc., with respect to the verification of the Energy Savings after acquisition and installation of the Items of Equipment.

**Section 1.02 Exhibits.** The following Exhibits are attached to and by reference made a part of this Lease pursuant to which the Project is to be leased by the Lessee:

Exhibit A: Description of the Project.

Exhibit B: Basic Rent Payment Schedule and Purchase Option Prices. Exhibit

C: Form of Acceptance Certificate.

## **ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES; DISCLAIMERS**

**Section 2.01 Representations, Covenants and Warranties.** The School District, as Lessee hereunder, represents, covenants and warrants as follows:

- (a) the School District is a political subdivision of the State, governed by the Constitution and laws of the State;
- (b) the Constitution and the laws of the State authorize the Lessee to lease and purchase the Project as contemplated hereby, and to use, operate and maintain the same; to enter into this Lease and the transactions contemplated hereby; and to carry out its obligations under this Lease;
- (c) the Board has duly authorized the execution and delivery of this Lease by proper action at a meeting duly called, regularly convened and attended throughout by the requisite quorum of the members thereof, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Agreement;
- (d) the officers of the Lessee executing this Lease, have been duly authorized to execute and deliver this Lease by valid formal action of the Board;
- (e) the Lessee has complied with all open meeting laws and all other State and federal laws applicable to this Lease and the acquisition of the Project through lease-purchase hereunder by the Lessee;
- (f) this Lease constitutes the legal, valid and binding contract of the Lessee enforceable in accordance with its terms (subject to limitations in bankruptcy and similar laws relating to the enforcement of creditors rights and to remedies and rights in equity which may be limited by judicial discretion), and Lessee will do or cause to be done all things necessary or advisable to keep and preserve this Lease in full force and effect;

- (g) neither the execution and delivery of this Lease, nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby conflicts with or results in a breach of the terms, conditions or provisions of any restriction, any agreement or any instrument to which the Lessee is now a party or by which or its property are or may be bound; or constitutes a default under any of the foregoing;
- (h) except as provided under the terms of this Lease, the Lessee shall not transfer, lease, assign, mortgage or encumber the Project;
- (i) the acquisition of the Project is essential for the Lessee to perform its governmental purpose of providing for the School District. The Lessee shall use the Project during the Lease Term only to perform its essential governmental functions;
- (j) the Lessee, by execution of one or more Acceptance Certificates for the Project shall represent that the Project has been accepted in accordance with the Lease;
- (k) the Lessee shall, subject to the provisions of Section 4.08 and Article IX hereof, continue this Lease for its entire Lease Term and pay all Rent required hereunder. Those officers of Lessee responsible for preparing and presenting to the Board Lessee's budget request for each Fiscal Year shall include in such budget request for each Fiscal Year during the Lease Term the Rent to become due in such Fiscal Year, and shall use all reasonable and lawful means to secure the appropriation of moneys for such Fiscal Year sufficient to pay the Rent coming due therein. The Lessee reasonably believes that moneys in an amount sufficient to pay all such Rent can and shall be lawfully be appropriated and made available for this purpose;
- (l) there are no lawsuits, administrative or other proceedings pending, or to the best of Lessee's knowledge threatened, which contest the authority for, authorization or performance of, or expenditure of funds as contemplated by this Lease, or that may adversely affect Lessee's financial condition or impair its ability to perform its obligations hereunder;
- (m) information supplied and statements made by the Lessee in any financial statements delivered prior to or contemporaneously with the execution and delivery of this Lease present such information fairly and accurately, in accordance with generally accepted accounting principles (as the same may be modified by State law), applied consistently with prior periods, and any budget materials so delivered are true and accurate;
- (n) the Lessee shall, within sixty (60) days after the preparation thereof, provide to the Lessor copies of: (i) the Lessee's audited fiscal year-end financing statements; and (ii) the Lessee's approved annual operating budget, respectively;
- (o) the Lessee shall not authorize any actions or act in a way that would cause any lien, charge or claim to exist on the Project or the Available Revenues other than Permitted Encumbrances;

- (p) the Lessee hereby incorporates in this Lease Purchase Agreement its representations, warranties and covenants found in the Tax Certificate of the School District dated currently with the delivery of this Lease Purchase Agreement;
- (q) the Lessee has experienced no material change in its financial condition since July 30, 2019;
- (r) no event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the date hereof;
- (s) Pursuant to ESIP Law, Lessee has heretofore adopted its Energy Savings Plan and submitted it to the New Jersey Board of Public Utilities. Lessee has also posted its Energy Savings Plan on its own website at **www.paulsboro.k12.nj.us**. Prior to adoption of such Energy Savings Plan, Lessee contracted with DLB Associates, Inc. to verify that the projected Energy Savings to be realized from the proposed Energy Savings Improvement Program have been calculated as required by ESIP Law;
- (t) As required by the ESIP Law, Lessee has entered into the Verification Agreement pursuant to which Vendor will verify the Energy Savings at such time as the Items of Equipment are placed into service or commissioned to ensure that the savings projected in the Energy Savings Plan are achieved;
- (u) Each of the Items of Equipment constitutes an Energy Conservation Measure and was included within the Energy Savings Plan as a part of the Energy Savings Improvement Program;
- (v) Lessee has determined that the Energy Savings resulting from the reduced energy use from its Energy Savings Improvement Program will be sufficient to cover the cost of the Items of Equipment comprising the Energy Conservation Measures set forth in its Energy Savings Plan;
- (w) Lessee has complied, and will comply, with all requirements of the ESIP Law relating to its Energy Savings Improvement Program including, but not limited to, all necessary actions related to the Energy Audit, the Energy Savings Plan and the installation of the Items of Equipment, including such public proposaling, proposal security, performance guarantees, insurance and other public contracting requirements as are applicable to the selection of an energy auditor and an energy savings company, and the selection and retention of Vendor (and any other vendors) relating to the acquisition and installation of the Items of Equipment. Lessee selected Vendor in compliance with traditional public proposaling or competitive contracting procedures set forth in *N.J.S.A. 18A18A-4.1 et seq*; and
- (x) Lessee shall immediately notify Lessor of any non-compliance with any aspect of ESIP Law, or any other applicable State law, regarding its Energy Savings Improvement Program.

**Section 2.02 Representations, Covenants and Warranties of Lessor.** The Lessor represents, covenants and warrants as follows:

- (a) the Lessor is a \_\_\_\_\_ duly organized, validly existing and in good standing under the laws of the United States and is authorized to do business in the State; has full and complete power to enter into this Lease, and to enter into and carry out the transactions contemplated hereby and thereby, and to carry out its obligations under this Lease and the Ground Lease; is possessed of full power to own and hold personal property and to lease the same in the capacity of lessor; and has duly authorized the execution and delivery of this Lease and the Ground Lease;
- (b) this Lease constitutes the legal, valid and binding contract of the Lessor enforceable in accordance with its terms (subject to limitations in bankruptcy and similar laws relating to the enforcement of creditors rights and to remedies and rights in equity which may be limited by judicial discretion), and it will do or cause to be done all things necessary or advisable to keep and preserve this Lease in full force and effect;
- (c) neither the execution and delivery of this Lease, nor the fulfillment of or compliance with the terms and conditions hereof and thereof, nor the consummation of the transactions contemplated hereby and thereby conflicts with or results in a breach of the terms, conditions or provisions of any restriction, any agreement or any instrument to which the Lessor is now a party or by which or its property are or may be bound; or constitutes a default under any of the foregoing, results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Lessor, or upon the Project, except Permitted Encumbrances;
- (d) upon exercise by the Lessee of its option to purchase the Project pursuant to Article IX hereof, and so long as Lessee is not otherwise in default herein, the Lessor shall deliver to the Lessee, at the sole expense of the Lessee, all documents and instruments that are or may be reasonably necessary to vest all of the Lessor's right, title and interest in and to the Project in the Lessee, and will release all liens and encumbrances created under this Lease with respect to the Project, as provided in Article IX hereof;
- (e) the Lessor will continue municipal leasing in the State until the Certificate of Acceptance is filed and the Project has been accepted by the School District; and
- (f) Lessor has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment in the Lease and agrees that any future sale or transfer by it of all or part of its interest in the Lease will be made in accordance with applicable securities law and any such future sale or transfer will be made without the need of any disclosure or disclosure undertaking by the Lessee.

**Section 2.03 Disclaimer of Lessor.** (a) Lessee acknowledges that Lessor is not the manufacturer of the Project, nor the manufacturer's or vendor's agent, or the vendor an agent of Lessor. Lessee has selected the Project based upon Lessee's own judgment. Lessee disclaims any reliance upon



any statements or representations made by Lessor and acknowledges that representations made by Vendor, unless specifically contained in this Agreement shall not be binding upon Lessor.

LESSOR HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER DIRECT OR INDIRECT, EXPRESS OR IMPLIED, WITH RESPECT TO THE SUITABILITY, MATERIALS, DURABILITY, DESIGN, WORKMANSHIP, OPERATION, OR CONDITION OF THE PROJECT OR ANY PART THEREOF, ITS MERCHANTABILITY, FITNESS FOR USE FOR THE PARTICULAR PURPOSES AND USES OF LESSEE. Lessor shall not be liable to Lessee for any loss, damage or expense of any kind or nature caused directly or indirectly by the Project or for any damages based on strict or absolute tort liability or Lessor's or Vendor's negligence, or due to the repair, service or adjustment of the Project, or by any delay or failure to provide any maintenance, repair, service or adjustment, or by any interruption of service, or for any loss of business however caused. NO DEFECT OR UNFITNESS OF THE PROJECT OR THE FACT THAT THE PROJECT SHALL NOT OPERATE OR THAT IT SHALL OPERATE IMPROPERLY SHALL RELIEVE LESSEE OF ANY OBLIGATION UNDER THE LEASE. Lessee agrees that the signing of the Acceptance Certificate supplied by Lessor, attached hereto as Exhibit "C" herein, constitutes full and unconditional acceptance of the Project and commencement of the Lease as to that Project.

### **ARTICLE III LEASEHOLD ESTATE; LEASE TERM**

**Section 3.01 Lease of Project.** (a) The Lessee hereby requests Lessor to finance the acquisition of all or a portion of the Project described in Exhibit "C", attached hereto and made a part hereof. Subject to the terms and conditions hereof, Lessor agrees to deposit the sum of \$\_\_\_\_\_ ("Lease Proceeds") with the Escrow Agent (as defined herein) for deposit in the Escrow Fund (as defined herein) and lease to Lessee, and Lessee agrees to lease from Lessor the Project described in Exhibit "A", attached hereto, and described in a Requisition (as defined herein) fully executed by Lessor and Lessee, together with all replacement parts, repairs, additions and accessories incorporated therein or affixed thereto to be located as described in Exhibit "A", attached hereto, provided, however, the Project financed hereunder may not have an aggregate purchase price in excess of \$\_\_\_\_\_, plus investment earnings on amounts in the Escrow Fund. During the Lease Term, Lessee agrees not to sell, assign, sublet, pledge, hypothecate or otherwise encumber or suffer a lien upon or against any interest in this Lease, or the Project or to alter or remove the Project from its place of installation. If Lessor shall request, and after notice and consultation with the Lessee, the Lessee shall provide Lessor waivers of interest or liens, from anyone claiming any interest in the real estate on which any item of Project is located.

(b) The payment of Project Costs will be provided by the Escrow Agent from amounts on deposit (including interest earned thereon) in the Escrow Fund upon the Escrow Agent's receipt of a Requisition, a copy of which is attached as Schedule "1" to the Escrow Agreement ("Requisition").

(c) Lessee shall deliver to Lessor original invoices and bills of sale (if title to Equipment has passed to Lessee), or copies thereof, relating to Equipment constituting part of the Project and accepted by Lessee.

**Section 3.02 Lease Term.** This Lease shall be and remain in effect with respect to the Project for a Lease Term commencing on the date of execution of this Lease and continue until terminated as provided in Section 3.03 hereof.

**Section 3.03 Termination of the Lease Term.** The Term of this Lease shall terminate upon the occurrence of the first of the following events:

- (a) the termination by the Lessee of its obligation to pay any further Rent in accordance with Section 4.06 hereof;
- (b) the exercise by Lessee of its option to purchase the Lessor's entire interest in the Project pursuant to Section 9.01 hereof and so long as Lessee is not in default at the time Lessee elects to exercise its option to purchase;
- (c) the occurrence and continuation of an Event of Default hereunder and Lessor's election to terminate this Lease pursuant to Section 11.02 hereof; or
- (d) the payment by Lessee of all Rent required to be paid by Lessee hereunder, which requirement (unless sooner terminated or extended in accordance with the provisions hereof) shall be met in full by \_\_\_\_\_, 20\_\_\_. Upon payment by the Lessee of all Rent due hereunder, the Lessee's option to purchase the Project shall be deemed to have been exercised and the Lessor shall comply with the requirements of Section 9.02 hereof.

**Section 3.04 Quiet Possession and Enjoyment.** From and after the Acceptance Date, Lessor hereby covenants with respect to the Project to provide Lessee during the Lease Term quiet use and enjoyment of the Project, and Lessee shall during such Lease Term peaceably and quietly have and hold and enjoy the Project, without suit, trouble, molestation or hindrance from Lessor or any party claiming under or through Lessor, except as expressly set forth in this Lease. The Lessor shall, at the request of Lessee and at Lessee's cost, join in any legal action to which Lessee asserts its right to such possession and enjoyment to the extent Lessor may lawfully do so, and in addition Lessee, while not in default hereunder, may in its discretion and at its sole cost and expense bring any such action in the name of the Lessor.

**Section 3.05 Lessor Access to the Project.** The Lessor shall have the right during Lessee's normal working hours, on Lessee's normal working days, to enter on and examine and inspect the Project for the purpose of assuring that the Project is being properly maintained, preserved and kept in good repair and condition. The Lessor shall also have such rights in access to the Project as may be reasonably necessary to cause the proper, maintenance, preservation and keeping in good repair of the Project if the Lessee shall fail to perform its obligations hereunder. The Lessor shall have the right, but not the obligation, to monitor the Lessee's compliance with environmental laws and regulations.

## ARTICLE IV RENT AND OTHER REQUIRED PAYMENTS

**Section 4.01 Payment of Rent.** The Lessee agrees to pay solely from Available Revenues as Rent for the Project: (i) Basic Rent as set forth in Exhibit "B" hereto; and (ii) from time to time as provided herein as Supplemental Rent, all other amounts, costs, liabilities and obligations that the Lessee assumes or agrees to pay to Lessor or to others hereunder; and interest on any such overdue amounts. **THE OBLIGATION OF THE LESSEE TO MAKE BASIC RENT PAYMENTS UNDER THIS LEASE IS SUBJECT TO ANNUAL APPROPRIATION, PAYABLE SOLELY FROM AVAILABLE REVENUES. THE OBLIGATION OF THE LESSEE TO MAKE ANY SUCH BASIC RENT PAYMENTS DOES NOT CONSTITUTE A DEBT OR LIABILITY OF THE LESSEE, OR OF ANY OTHER AGENCY, DEPARTMENT OR POLITICAL SUBDIVISION OF THE STATE OF NEW JERSEY.** All Basic Rent Payments shall be made on the Basic Rent Payment Dates at the address specified by the Lessor in writing or to the Lessor's assignee pursuant to the terms hereof. Any Supplemental Rent is to be paid as directed by the Lessor. The payment of Project Costs will be provided by the Escrow Agent from amounts on deposit (including interest earned thereon) in the Escrow Fund upon the Escrow Agent's receipt of a Requisition (which Requisition, shall, among other things, either evidence the prior payment from the Lessee to the Project Vendor for such Project or a request for payment to the Project Vendor for such Project) fully executed by Lessor and Lessee. The aggregate costs of the Project subject to this Lease shall not exceed \$\_\_\_\_\_. Requisitions for Project acquisition costs shall include the Lessor's consent for any Project being financed hereunder. The Lessor shall be deemed to have granted its consent to Requisitions submitted to it for which no approval or denial action is taken by the close of business (5 p.m. EST) on the fifth (5th) Business Day after receipt by the Lessor of any such form of Requisition duly signed by the Lessee provided (i) such Requisition requests payment for Project described in Exhibit "C" to this Lease, as it may be amended from time to time by a writing signed by Lessor, and (ii) Lessee and the Escrow Agent have not received notice from Lessor that an Event of Default has occurred under the Lease or that Lessor has declined to approve the Requisition. \_\_\_\_\_, duly created and validly existing and having corporate trust powers in the State of New Jersey is hereby appointed escrow agent (including any successors, the "Escrow Agent") for all purposes of this Lease. By its acknowledgment and consent hereof, the Escrow Agent agrees to accept and be bound by the provisions of all its rights, duties and obligations hereunder and thereunder. The Escrow Agent hereby represents that it is legally empowered and has taken all corporate action to act as a fiduciary in the capacity of Escrow Agent under this Lease, including, without limitation, its ability to conduct business in the State. For its services hereunder, the Escrow Agent shall receive the initial sum of \$\_\_\_\_\_ (\_\_\_\_\_ Dollars) payable directly by Lessor. The Escrow Agent shall not be entitled to reimbursement for any other fees, charges or expenses. The Escrow Agent initially appointed to said office or any successor thereto, shall serve as Escrow Agent under this Lease until the earlier of (i) the expiration of the Lease Term, (ii) all funds held by it have been disbursed, (iii) the Lessor and Lessee shall have issued in writing a notice to the Escrow Agent removing said Escrow Agent (with or without cause) and appointing a successor, whereupon the outgoing Escrow Agent shall continue to serve until the successor Escrow Agent has consented to and commenced acting as Escrow Agent and the outgoing Escrow Agent has transferred to the Successor Escrow Agent any monies or securities remaining in the Escrow Fund,

or (iv) the Escrow Agent shall have issued a notice in writing to the Lessor and Lessee resigning the office of Escrow Agent, whereupon the outgoing Escrow Agent shall continue to serve until a new Escrow Agent has been appointed by the Lessor and Lessee and the successor Escrow Agent has consented to and commenced acting as Escrow Agent and the outgoing Escrow Agent has transferred to the successor Escrow Agent any monies or securities remaining in the Escrow Fund. The Escrow Agent shall receive a copy of all notices otherwise required to be sent by either the Lessor or Lessee or to any other party under this Lease. On the earliest of (a) \_\_\_\_\_, 20\_\_, (b) the date Lessee delivers a certificate to Lessor and Escrow Agent that no additional Project costs will be required, or (c) the date Lessor delivers notice to Escrow Agent and Lessee that an Event of Default has occurred under the Lease, Escrow Agent shall immediately liquidate the investments in the Escrow Fund and disburse all sums in the Escrow Fund as follows. First, upon receipt by Lessor and Escrow Agent of a certificate of the Lessee to the effect that a rebate liability may or does exist in accordance with the terms of the Arbitrage Certificate, to the Lessee in an amount to satisfy any such rebate liability, and the balance, to the Lessor for reduction in the principal balance owed under this Lease in next occurring order of maturity or, upon receipt of a certificate of an authorized officer of the Lessee, in such a manner as directed by the Lessee that will not adversely affect the federal income tax status of interest on the Lease obligation, and in either case, shall deliver an amended Exhibit "B" to Lessee that reflects such application. Any amounts paid over to the Lessee for transfer to the federal government to satisfy any such rebate liability that are no longer needed at the time of actual transfer to the federal government (including interest thereon) shall be immediately paid over to the Lessor and applied as set forth in the prior sentence. Lessee hereby covenants to transfer on a timely basis to the appropriate federal government agency all rebate liability payments received by it in the aforementioned manner.

**Section 4.02 Basic Rent; Principal Portion.** The Principal Portion of the Basic Rent Payments shall be due on the dates and in the amounts shown in Exhibit "B" attached hereto and made a part hereof. The Principal Portion of the Basic Rent may be restated upon the option to purchase as provided in Article IX hereof.

**Section 4.03 Basic Rent; Interest Portion.** The Interest Portion of the Basic Rent Payments shall be due on the dates and in the amounts shown in Exhibit "B" attached hereto and made a part hereof. The Interest Portion of the Basic Rent may be restated upon the option to purchase as provided in Article IX.

**Section 4.04 Budgetary Procedure in Respect of Rent.** The Lessee intends on the date hereof, subject to the provisions of Section 4.08 and Article IX hereof, to pay all Rent required hereunder during the entire Lease. Those officials of Lessee responsible for preparing and presenting to the Board the Lessee's budget request for each Fiscal Year shall include in each such budget request, for each Fiscal Year during the Lease Term hereof, the Rent to become due in such Fiscal Year, and shall use all reasonable and lawful means to secure the appropriation of moneys for such Fiscal Year sufficient to pay the Rent coming due therein. The Lessee's liability for Rent hereunder is limited solely to payments of sums appropriated as current expenses therefore and to the application of other Available Revenues thereto and neither the State nor any agency, department or political subdivision thereof, shall have additional liability except to the extent of any sums lawfully payable by them in respect of the Rent as an approved current expense of the Lessee.

**Section 4.05 Rental Payments to be Unconditional; No Abatement or Set-off.** Except as otherwise provided in Section 4.06 hereof, LESSEE'S OBLIGATION TO PAY RENT IS ABSOLUTE AND UNCONDITIONAL AND IS NOT SUBJECT TO CANCELLATION, DEFENSE, DEDUCTION, RECOUPMENT, REDUCTION, SETOFF, CLAIM OR COUNTERCLAIM. THIS AGREEMENT IS NON-CANCELABLE. Notwithstanding any dispute between the Lessee and the Lessor, the Lessee shall make all Rent payments required hereunder when due and shall not withhold any Rent payment pending final resolution of such dispute, nor shall the Lessee assert any right of set-off or counterclaim against its obligation to make such Rent payments required under this Lease. The Lessee's obligation to make Rent payments during the Lease Term shall not be abated through accident or unforeseen circumstances; including, without limitation, frustration of purpose. However, nothing herein shall be construed to release the Lessor from the performance of its obligations hereunder and if the Lessor shall fail to perform any such obligations, the Lessee may institute such legal action against the Lessor as the Lessee may deem necessary to compel the performance of such obligation or to recover damages therefor. In the event a bankruptcy petition is filed by or against the Lessor, the Lessee shall continue to make Rent Payments required hereunder, when due, regardless of whether the Lessor assumes or rejects this Lease pursuant to Section 365 of the Bankruptcy Code and regardless of whether the Lessor performs its obligation under the Lease. The Lessee shall not be entitled to exercise any right of settlement pursuant to Section 365(b)(2) of the Bankruptcy Code.

**Section 4.06 Termination of Lease Upon Occurrence of Event of Non-Appropriation.** The Lessee shall have the right to cancel and terminate this Lease; in whole, but not in part, at the end of any Fiscal Year of Lessee, in the manner and subject to the terms specified in this Section and Section 4.08 if the Lessee is not authorized by law to appropriate or does not appropriate moneys sufficient to pay the Rent coming due in the next Fiscal Year, which failure so to appropriate moneys shall constitute the occurrence of an Event of Non-Appropriation as further described in Section 4.08 hereof. Lack of a sufficient appropriation shall be evidenced by a specific provision in Lessee's budget for the Fiscal Year in question so stating. The Lessee may effect such termination by giving to the Lessor, a written notice of Non-Appropriation and termination and by paying to Lessor any Rent that is due and has not been paid at or before the end of its thencurrent Fiscal Year. The Lessee shall give notice of termination as hereinabove provided not less than sixty (60) days prior to the end of such Fiscal Year. In the Event of a Non-appropriation, Lessee agrees, to the extent permitted by law and applicable public policy, not to purchase, lease or rent any other functionally similar Project to that previously acquired by the Lessor in connection with the Project.

**Section 4.07 Return of the Project.** In the event of termination of this Lease as provided in Section 4.06, the Lessee shall surrender possession of the Project to Lessor in accordance with Section 11.04 hereof in the condition required by Section 6.01 hereof. Lessor or any assignee of the interest of Lessor in the Lease may lease or sublease its interests in the same in such manner as it deems fit, not inconsistent with the terms of the Lease. If the Project or any part thereof shall be leased or subleased, and sufficient amounts are received from such lease or sublease than all further proceeds of any such lease or sublease shall be the property of Lessee.

**Section 4.08 Non-Appropriation.** Notwithstanding anything in this Lease Purchase Agreement to the contrary, the cost and expense of the performance by the School District of its obligations under this Lease Purchase Agreement and the incurrence of any liabilities of the School District under this Lease Purchase Agreement including, without limitation, the payment of all Lease Payments and all other amounts required to be paid by the School District under this Lease Purchase Agreement, shall be subject to and dependent upon appropriations being made from time to time by the School District. The School District's obligations hereunder shall not in any way constitute "debt" of the School District, and this Lease Purchase Agreement does not and shall not constitute a pledge of the credit or taxing power of the School District. An "Event of Non-Appropriation" shall be determined to have occurred if (i) the temporary or final budget adopted by the Board for the ensuing Fiscal Year does not include sufficient appropriation to pay the Lease Payments scheduled to become due in such Fiscal Year or (ii) the School District shall determine not to include in its proposed budget for the ensuing Fiscal Year sufficient appropriation to pay such Lease Payments. Upon the occurrence of an Event of Non-Appropriation, the Lease Term shall terminate effective upon the expiration of the last Fiscal Year for which Lease Payments were appropriated. Notwithstanding the termination of the Lease Term, upon an Event of Non-Appropriation the School District shall be obligated to make payments of Lease Payments beyond said Fiscal Year; provided, however, that the obligation to make such Lease Payments shall be limited to Available Revenues.

**Section 4.09 Effect of Termination.** Upon termination of Lessee's obligation to make payments of Rent as provided in Section 4.06, the Lessee shall not be responsible for the payment of any Rent coming due with respect to succeeding Fiscal Years except as set forth in paragraph 4.08.

**Section 4.10 Non-Substitution.** The Lessee acknowledges and agrees that the nonappropriation provisions of Section 4.08 hereof are not intended to be used as a substitute for convenience termination nor for the purpose of replacing the Equipment with other substantially identical property. The Lessee, to the extent permitted by applicable law, acknowledges and agrees not to utilize such provisions for such purposes for a period not-to-exceed two (2) years.

## **ARTICLE V ACQUISITION OF THE PROJECT; PAYMENT OF COSTS**

**Section 5.01 Specifications of the Project.** The Lessor shall approve the specifications for the Project.

**Section 5.02 Acquisition of the Project.** The Lessee shall procure the Project, in accordance with applicable State law. All contracts related to the Project shall be competitively proposal pursuant to N.J.S.A. 18A:18A-1 et seq. and any regulations promulgated thereunder. Lessee shall not encumber or place any lien on the Project, except for Permitted Encumbrances.

**Section 5.03 Default in Vendor's Performance.** In the event of default of the Vendor(s) or any subcontractor under any contract made in connection with the Project including, without limitation,

the contract(s), the Lessee, either separately or in conjunction with others, may bring an action against the Vendor(s) or any subcontractor so in default and against each surety for the performance of such Vendor(s) or subcontractor. All such actions shall be construed to be Costs of the Project for purposes of this Lease, inasmuch as the same shall be necessary to enable the Project to be constructed and acquired in accordance with the terms of the contract(s) and hereof. Any amount recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing shall be paid to the Lessee.

## **ARTICLE VI OPERATION USE AND MAINTENANCE OF THE PROJECT; INSURANCE**

**Section 6.01 Maintenance and Repair; Compliance with Laws.** This being an absolute net lease, the Lessee shall at all at its own cost and expense and not at the cost or expense of the Lessor, maintain, preserve and keep the Project in good repair, condition and working order, normal wear and tear excepted, and shall from time to time, as necessary or prudent, make all repairs, replacements and improvements necessary to keep and maintain the same in such condition, and shall at all times use and operate the same in compliance with the requirements of all applicable federal, State and local laws, rules and regulations and in accordance the requirements of any manufacturer's or Vendor's warranties applicable thereto and of any insurance policies covering any part of the Project. Any property for which a substitution or replacement is made pursuant to this Section 6.01 may be disposed of in such manner and on such terms as Lessee shall determine. LESSEE ACKNOWLEDGES THAT LESSOR IS NOT RESPONSIBLE FOR PROVIDING ANY REQUIRED MAINTENANCE AND/OR SERVICE FOR THE PROJECT. LESSEE WILL MAKE ALL CLAIMS FOR SERVICE AND/OR MAINTENANCE SOLELY TO THE SUPPLIER AND/OR MANUFACTURER AND/OR VENDOR AND SUCH CLAIMS SHALL NOT AFFECT LESSEE'S OBLIGATION TO MAKE ALL REQUIRED RENT PAYMENTS.

**Section 6.02 Lessee's Negligence.** From and after the Acceptance Date, the Lessee assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Project and for injury to, or death of, any person or damage to any property, which is proximately caused by the gross negligence of Lessee, its officers, employees and agents. Lessee hereby assumes responsibility for and agrees to reimburse Lessor and its officers, employees and agents for all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorneys' fees and costs) of whatsoever kind and nature, imposed on, incurred by or asserted against Lessor or its officers, agents, and employees that in any way relate to or arise out of a claim, suit or proceeding based in whole or in part upon: (i) the use, operation and maintenance of the Project; (ii) the ownership, construction, possession, operation, condition, sale, rental, sub-rental, or return of the Project; or (iii) this Lease, or any other agreement related to the Project, or the enforcement thereof or the negligence or willful misconduct of Lessee, its officers, employees and agents, to the maximum extent permitted by law, provided that Lessee will not be liable to the Lessor for the gross negligence or willful misconduct of Lessor, or its agents or employees.

**Section 6.03 Liability Insurance.** From and after the Acceptance Date the Lessee shall procure and maintain continuously in effect, with respect to the Project, insurance as set forth herein. All

such policies of insurance shall designate the Lessee and Lessor as named insured as their respective interests may appear. Lessee hereby specifically indemnifies Lessor, and agrees to hold Lessor harmless, from all loss and damages Lessor may sustain or suffer because (a) the failure of Lessee to maintain the Project as agreed and provided herein, (b) the loss of, damage to or destruction of the Project or any portion thereof because of (i) fire, theft, (ii) collision, lightning, flood, windstorm, explosion or any other casualty, risk or peril whatsoever, or (c) the death of, injury to, or damage to the property of any person as a result of, in whole or in part, the use or maintenance of the Project or any thereof during the Lease Term, while in the custody, possession or control of Lessee or anyone claiming by through or under Lessee. In the event of a collision or hazard specified in (b) which results in the loss, damage to or destruction of the Project, Lessee shall pay to Lessor the actual cash value thereof as determined by Lessor which determination shall be conclusive immediately prior to the loss, damage or destruction of the Project and notify Lessor in writing that such loss, damage or destruction has occurred to the Project. Lessee shall remain a full insurer of the Project. Such indemnification as set forth in this paragraph shall survive the termination or expiration of the Lease. Lessee further agrees to procure, at Lessee's sole cost and expense, maintain for the entire term of this Lease or any extensions therefore, and deliver to Lessor, simultaneously with or prior to delivery to Lessee of the Project, a policy or policies of insurance issued by a company, and in a form satisfactory to Lessor with premiums prepaid thereon, insuring the Lessee against the hazards specified in paragraph 6.03 (a) and (b) above to the extent of the full cash value of the Project and against the hazards specified in paragraph 6.03 (c) above in minimum amount of \$1,000,000.00 Combined Single Limit personal injury and property liability. The policy(s) shall name Lessor as loss payee and/or additional insured as applicable and shall provide for at least thirty (30) days written notice to Lessor before cancellation can be affected. It is understood that Lessee's procurement of insurance as herein provided, or Lessee's failure to procure, maintain and deliver to Lessor a policy(s) thereof as herein provided, shall not, and does not affect Lessee's covenants, obligations, and indemnities under the Lease. The theft, disappearance, damage to, or destruction of the Project, or any thereof, shall not terminate the Lease and rental and other charges therefore shall continue unless and until Lessor is actually compensated by Lessee's insurer or Lessee, and then to the extent and Lessor as well as Lessee's insurance company, immediately by telephone and thereafter as soon as practicable to report to Lessor and Lessee's insurance company in writing, all information relevant thereto. Lessee, its agents and employees shall cooperate fully with Lessor and Lessee's insurance company in the investigation, prosecution and/or defense of any claim or suit and shall do nothing to impair or invalidate any applicable insurance coverage. Lessor shall not be obligated to undertake by litigation or otherwise the collection of any claim against any person, Company or other entity for loss or damage to the Project.

**Section 6.04 Property Insurance.** From and after the Acceptance Date, the Lessee shall have and assume the risk of loss with respect to the Project, and shall procure and maintain continuously in effect during the term of this Lease with respect to the Project, to the extent of the full insurable value of the Project, all-risk insurance, subject only to the standard exclusions contained in the policy, in such amounts as shall be at least sufficient so that a claim may be made for the full replacement cost of any part thereof damaged or destroyed or to pay the applicable Purchase Option Price. All policies (or endorsements or riders) evidencing insurance required in this Section



shall be carried in the name of Lessee and Lessor as their respective interests may appear. The net proceeds of insurance required by this Section shall be applied as provided in Article VII.

**Section 6.05 Other Insurance and Requirements for Insurance.** Lessee shall during each Lease Term maintain or cause to be maintained worker's compensation coverage as required by the laws of the State. All insurance required by this Article VI may be carried under separate policy or a rider or endorsement; shall be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State; shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to all parties at least thirty (30) days before the cancellation or revision becomes effective, if such notice period is able to be obtained, but in no event less than ten (10) days; and shall name Lessee and Lessor as insured parties as their respective interests may appear. Lessee shall deposit with Lessor policies evidencing any such insurance procured by it, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any such policy, the Lessee shall furnish to the Lessor evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article VI. If commercial insurance of the types required above are not at the time obtainable, Lessee, if at the time permitted by law, shall self-insure as to any such coverage with the prior written consent of the Lessor, which consent shall not be unreasonably withheld. Lessee shall not cancel or modify such insurance or self-insurance coverage in any way that would affect the interests of Lessor without first giving written notice thereof to Lessor at least 30 days in advance of such cancellation or modification.

**Section 6.06 Title to the Project.** Legal title to the Project shall be in the Lessor. The Lessor may assign all of its rights, title and interest in and to the Project, but so long as no Event of Default shall have occurred and be continuing hereunder and no Event of Non-Appropriation shall have occurred, Lessor shall not otherwise sell, assign or otherwise alienate all or any part of The Project or any interest herein to any other party, other than Lessee pursuant to Article IX hereof, it being the purpose and intent hereof that Lessee shall have the option to purchase the Project during or upon the termination, of the Lease, with credit toward such purchase price of the Principal Portions of the Rent paid to the time of such purchase. Lessee assumes all responsibility and expense for such licenses, registrations, titles, permits and other certificates as may be required for lawful operation of the Project, agrees that all certificates of title or registrations applicable to the Project leased hereunder shall be applied for, issued and maintained in the name of Lessor, as owner and Lessee agrees to pay, or reimburse Lessor for, all costs in relation thereto, in addition to rental, taxes, insurance and other costs provided for elsewhere herein, Lessee shall, if applicable, do all things necessary, as the agent of Lessor, to effect the licensing, titling, or registration of the Project in the name of Lessor in the state of its home base and in any other jurisdiction where any shall be required thereof by the nature of the Lessee's use, all at the cost and expense of Lessee, including expenses, fees, or charges of any nature in connection therewith, and if applicable, Lessee shall promptly deliver the original of such license, title or registration to the Lessor.

**Section 6.07 Lessor Indemnification.** To the extent and subject to limits permitted by applicable laws of the State as in effect from time to time during the Lease Term, the Lessee shall (a) indemnify and save harmless the Lessor and its agents, employees, officers and directors from and against any and all liabilities; including, without limitation, all claims, demands, damages, losses, costs, penalties, charges and expenses (including; but not limited to, reasonable attorneys' fees and disbursements) in any way relating to or arising from: (i) the ownership, construction, possession, operation, condition, sale, rental, sub-rental, or return of the Project; (ii) this Lease, or any other agreement related to the Project, or the enforcement thereof; and (b) reimburse the Lessor for all losses, costs, charges, and expenses (including reasonable attorneys' fees and disbursements) that the Lessor may incur or be subject to as a consequence, directly or indirectly, of involvement in any legal proceeding or action relating to the foregoing; provided, however, that no indemnification or reimbursement shall be due to the extent that the Lessor has acted with gross negligence or willful misconduct in connection with the liabilities for which the Lessor is seeking indemnification or reimbursement.

## **ARTICLE VII DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS**

**Section 7.01 Damage, Destruction and Condemnation.** If (i) the Project or any portion thereof is destroyed or damaged by fire or other casualty, or (ii) title to or the temporary use of the Project or any part thereof, or the interest of Lessee or Lessor in the Project or any part thereof, shall be taken under a valid exercise of the power of eminent domain by any governmental body or by any person, firm or Company acting under governmental authority, any net proceeds received by the Lessee shall be immediately deposited in the appropriate funds and the Lessee shall thereafter have the right to: (A) apply such net proceeds to the prompt repair, restoration, modification or improvement of the Project by Lessee, but Lessee shall be obligated to continue to pay the Rent due with respect to the Project; or (B) the Lessee shall exercise its option to purchase the Project in whole or in part, by paying all or a portion, as applicable, of the then applicable Purchase Option Price, and shall apply the net proceeds thereto. (A) and (B) above shall not be mutually exclusive, and Lessee shall have the right to partially restore the Project and partially pay down the Purchase Option Price from any such net proceeds. In the event the Lessee determines to exercise its option under subsection (B), it shall deliver a Certificate of an Authorized Officer of the Lessee concurrently therewith stating: (i) the Project has been restored to its original condition prior to the damage; or (ii) such damage has not impaired the Lessee's use of the Project for its intended purpose.

**Section 7.02. Insufficiency of Net Proceeds.** If the net proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement of the Project so damaged or taken, the Lessee shall either: (i) complete the work and pay any cost in excess of the amount of the net proceeds, and if by reason of any such insufficiency of the net proceeds, Lessee shall make any payments pursuant to the provisions of this Section 7.02(i), Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the Rent hereunder due with respect to the Project; or (ii) Lessee shall exercise its option to purchase the Project in whole or in part, by paying all or a portion, as applicable, of the then-applicable Purchase

Option Price, and shall apply the net proceeds thereto. Subsections (i) and (ii) above shall not be mutually exclusive, and Lessee shall have the right to partially restore the Project and partially pay down the Purchase Option Price from any such net proceeds.

**Section 7.03. Cooperation of Lessor.** The Lessor shall cooperate fully with Lessee at the sole expense of Lessee in filing any proof of loss with respect to any insurance policy covering the casualties described in Section 7.01 hereof and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Project, or any part thereof and shall, to the extent it may lawfully do so, permit Lessee to litigate in any proceeding resulting there from in the name of and on behalf of Lessor. In no event shall Lessee voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim or any prospective or pending condemnation proceeding with respect to the Project or any part thereof without the prior written consent of Lessor. Any and all insurance proceeds received, with respect to the Project only, shall be remitted to Lessor as loss payee as long as there remains any sum due and owing to Lessor under this Lease. All sums payable as insurance proceeds in excess of sums owed to Lessor pursuant to this lease shall be payable to Lessee.

**Section 7.04. Casualty to Other Property Owned by the Lessee.** The Lessor shall have no interest in, and the Lessee shall be entitled to the net proceeds of any insurance or condemnation award made for destruction of, damage to or taking of its property not constituting the Project.

## ARTICLE VIII TAX COVENANTS

**Section 8.01 Basic Tax Covenants.** It is the intention of the Lessee and the Lessor that the Interest Portion of the Rental Payments received by the Lessor be and remain exempt from federal income taxation. Lessee covenants that it will take any and all reasonable action necessary to maintain the exemption from federal income taxation of the Interest Portion of the Rental Payments, and that it will not intentionally perform any act or enter into any agreement or use or permit the use of the Project 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 Rental

Payments, including (without limitation) leasing all or any portion of the Project or contracting to a third party for the use or operation of all or any portion of the Project if entering into such lease or contract would have such effect.

**Section 8.02 Additional Tax Covenants.** The Lessee hereby covenants as follows: (i) it will not abandon, sell or otherwise dispose of any Project (except through normal retirement) financed directly or indirectly through this Lease Purchase Agreement; (ii) it does not intend to, during the Lease Term to abandon, sell or otherwise dispose of any Project or improvement (except through normal retirement) financed directly or indirectly through this Lease Purchase Agreement; (iii) it shall timely file with the Ogden, Utah Service Center of the Internal Revenue Service, such information report or reports, if any, as may be required by Section 148(f) and 149(e) of the Code; (iv) it shall take no action that would cause the Rental Payments to be "federally guaranteed" within the meaning of Section 149(b) of the Code; (v) it will not employ a device in connection with this Lease Purchase Agreement which will enable it to obtain a material financial advantage (based on

arbitrage) apart from the savings that may be realized as a result of the lower interest rates on the Lease Payments.

## **ARTICLE IX OPTIONS TO PURCHASE**

### **Section 9.01 Options to Purchase Project; When Exercisable; Payment Sources.**

The Lessee shall have the option prior to \_\_\_\_\_, 20\_\_ to purchase the Lessor's interest in the Project as follows: (a) In whole at any time; (b) In whole in or part at any time, after the occurrence of a casualty loss to the Project which results in the receipt of net proceeds greater than \$50,000, and the determination of the Lessee not to repair, reconstruct or restore the Project or any part thereof affected by such loss or taking as provided in Sections 7.01(B) and 7.02(ii) hereof; (c) Any purchase by Lessee in part of Lessor's interest in the Project pursuant to Section 9.01(b) shall be made from net proceeds, and if necessary, available revenues of the Lessee; (d) Upon the expiration of the Lease Term and payment in full of all Basic Rent payments then due and all other amounts then owing under the Lease, and the payment of \$1.00 to Lessor.

**Section 9.02 Exercise of Option.** (a) The Lessee, as long as it is not otherwise in default herein, shall provide written notice to Lessor of its intention to exercise any of its purchase options set forth in Section 9.01 above not less than forty-five (45) days prior to the date on which the option is to be exercised, and shall deposit with the Lessor on the date of such exercise an amount equal to all Rent and any other amounts then due or past due which, together with any applicable Available Revenues permitted to be applied to the purpose, shall equal the then applicable Purchase Option Price as set forth in Exhibit "B" or such portion thereof as shall be stated in the aforesaid notice on a partial purchase. The closing of such sale and purchase shall be on the date on which the option is to be exercised. The foregoing notwithstanding, the deposit by the Lessee of the final scheduled payment of Basic Rent hereunder on \_\_\_\_\_, 20\_\_, shall constitute the full and complete exercise of Lessee's option to Purchase the Project at which time Lessor shall waive payment by Lessee of any residual value in the Project; (b) On any partial purchase by Lessee of Lessor's interest the Project, the remaining Rent to be paid hereunder and the remaining Purchase Option Price set forth in Exhibit "B" shall be recomputed by a nationally recognized independent financial advisory firm experienced in providing such advisory services to municipal governments or a firm of independent certified public accountants licensed to practice in the State, as selected by the Lessee, and acceptable to the Lessor. The nationally recognized independent financial advisory firm shall be paid for by Lessee.

## **ARTICLE X ASSIGNMENT; SUBLEASING, MORTGAGING AND SELLING**

**Section 10.01 Assignment by Lessor.** The Lessor shall not assign its obligations under this Lease except as contained in paragraph 6.06 without the Lessee's prior written consent, and no purported assignment thereof shall be effective except as provided below.

**Section 10.02 Assignment and Subleasing by Lessee.** This Lease may not be assigned or subleased by the Lessee without the prior written consent of the Lessor, in Lessor's sole and absolute discretion.

**Section 10.03 Restriction on Mortgage or Sale of the Project by the Lessee.** The Lessee will not mortgage, sell, assign, transfer or convey the Project or any portion thereof during the Lease Term without the prior written consent of the Lessor, in Lessor's sole and absolute discretion. It shall not be unreasonable to withhold such consent if such mortgage, sale, assignment, transfer or conveyance shall cause the Interest Portion of the Basic Rent Payments to become subject to federal income taxation.

**Section 10.04 Lessee or Lessor Reorganization.** It is understood and agreed by the parties hereto that reorganization of the Lessee or Lessor shall not constitute an assignment under this Article X, provided that no reorganization of Lessor shall cause the Interest Portion of the Basic Rent Payments to become subject to federal income taxation.

## **ARTICLE XI EVENTS OF DEFAULT; REMEDIES**

**Section 11.01 Events of Default.** An Event of Default hereunder means the occurrence of any one or more of the following events:

- (a) The Lessee fails to make, for any reason other than Event of Non-Appropriation as set forth in Section 4.08 hereof, payment of any component of Rent as it becomes due;
- (b) The Lessee fails, for any reason other than an Event of Non-Appropriation as set forth in Section 4.08 hereof, to observe or perform any other covenant, condition, representation, warranty or agreement on its part to be observed or performed hereunder, for a period of thirty (30) days after receipt of written notice from Lessor specifying such failure; provided, however, that if such observance or performance requires work to be done, actions to be taken or conditions to be remedied, which by their nature cannot reasonably be accomplished within such thirty (30) day period, if Lessee shall commence such observance or performance within such period and shall be proceeding diligently and without interruption or discontinuance of the work to be done then the fact that the same shall not have been corrected during such period shall not constitute an Event of Default;
- (c) The Lessee becomes insolvent or admits in writing its inability to pay its debts as they mature or applies for, consents to, or acquiesces in the appointment of a trustee, receiver, custodian, conservator, liquidator or other judicial officer (similar or dissimilar) for the Lessee or a substantial part of its property; or in the absence of such application, consent or acquiescence, a trustee, receiver, custodian, conservator, liquidator or other judicial officer (similar or dissimilar) is appointed for the Lessee or a substantial part of its property and is not discharged within sixty (60) days; or any bankruptcy, reorganization, debt arrangement, moratorium or any proceeding under bankruptcy or insolvency law, or any dissolution or liquidation proceeding, is instituted by or, if permitted by law, against the Lessee and, if instituted against the Lessee, is consented to or acquiesced in by the Lessee or is not dismissed within sixty (60) days.

(d) Determination of an Event of Taxability.

**Section 11.02 Remedies upon Default.** Upon the occurrence and continuation of an Event of Default, Lessor may, without further demand or notice, take one or more of the following actions:

(a) With or without terminating this Lease, reenter and take possession of the Project and exclude Lessee therefrom, provided, however, that if this Lease has not been terminated, the Lessor shall return possession of the Project to the Lessee when the Event of Default is cured and late charges or other costs due and payable are paid and; provided further, that Lessee shall continue to be responsible for the rent due during the Fiscal Year then in effect; or

(b) With or without terminating this Lease, re-enter Lessee's premises and take possession of the Project, and sell Lessors' interest in, lease or sublease the Project or any part thereof at the time governed hereby; or

(c) With or without terminating this Lease, and subject only to an Event of Non-Appropriation as set forth in Section 4.08 declare all Rent due or to become due during the Fiscal Year of Lessee in which the Event of Default occurs to be immediately due and payable by Lessee, whereupon such Rent shall be immediately due and payable;

(d) Proceed against the Escrow Agent for any amounts held by the Escrow Agent in the Escrow Fund; or

(e) Take whatever action at law or in equity may appear necessary or desirable to collect the Rent then due and thereafter to become due during the then-current Fiscal Year, subject only to an Event of Non-Appropriation as set forth in Section 4.08 with respect to the Project, or enforce the performance and observance of any obligation, agreement or covenant of Lessee under this Lease.

**Section 11.03 Determination of Taxability.** If for any reason the interest on any Rental Payments made under the Lease lose their exclusion from gross income under federal income tax laws as a result of a Determination of Taxability, then Lessee agrees to pay to Lessor an additional amount which, together with the amount of interest to be paid by Lessee under this Lease, puts Lessor in the same after-tax position that it would have had, had such payments been excluded from gross income under the Code.

**Section 11.04 Return of Project.** Upon the expiration or termination of this Lease prior to the payment of all Rent in accordance hereof, the Lessee shall deliver possession of the Project to the Lessor in the condition, repair, and working order required in Section 6.01.

**Section 11.05 No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Lessor shall be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity.

**Section 11.06 Delay; Notices.** No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. To entitle any party to exercise any remedy reserved to it in the Lease, it shall not be necessary to give any notice other than as may be specifically required in this Lease.

**Section 11.07 Agreement to Pay Fees and Expenses.** In the event that either party to this Lease should default under any of the provisions hereof and the defaulting party shall employ attorneys or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the Lessee shall on demand therefore pay to the Lessor all such fees and expenses so incurred by Lessor (including attorneys' fees).

**Section 11.08 No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Lease should be breached by either party and thereafter waived in writing by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder, and shall not be construed to be an implied term hereof of a course of dealing between the parties.

**Section 11.09 Late Charges.** Whenever any Event of Default referred to in Section 11.01(a) hereof shall have occurred and be continuing, the Lessor shall have the right, at its sole option and without any further demand or notice period, to require a late payment charge equal to ten percent (5%) of the delinquent Rent, and the Lessee shall be obligated to pay the same as Supplemental Rent immediately upon receipt of Lessor's written invoice therefor; provided, however, that this Section 11.09 shall not be applicable if or to the extent that the application thereof would affect the validity of this Lease.

**Section 11.10 Opinion of Counsel.** The Lessee's obligation to enter into the Lease is subject to receipt by the Lessor of an opinion of Counsel for the Lessee, dated the Closing Date, addressed to the Lessee and the Lessor, and satisfactory in form and substance to the Lessee and the Lessor, to the effect that: (i) interest income on the Lease is exempt from inclusion as gross income under the Code; and (ii) the has been duly authorized, issued and delivered by the Lessee.

## **ARTICLE XII ADMINISTRATIVE PROVISIONS**

**Section 12.01 Notices.** Unless otherwise provided in writing, any notices to be given or to be served upon any party hereto, in connection with this Lease, must be in writing and may be delivered personally or by certified or registered mail and, if so mailed, shall be deemed to have been given and received forty-eight (48) hours after a registered or certified letter containing such notice, postage prepaid, is deposited in the United States mail, and if given otherwise shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such notice shall be given to the parties at their following respective addresses or at such other addresses as each party may hereafter designate to the other parties in writing:

If to Lessor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Lessee:

The Board of Education of the Borough of Paulsboro  
662 N. Delaware Street  
Paulsboro, New Jersey 08066  
Attention: Business Administrator/Board Secretary

**Section 12.02 Severability.** In the event any Article, Section or provision of this Lease shall be held invalid or unenforceable by any Court of competent jurisdiction, such a holding shall not invalidate or render unenforceable any other Article, Section, or provision hereof.

**Section 12.03 Amendments, Changes and Modifications.** This Lease may be amended by the Lessor and the Lessee or any of its terms modified only by written amendment authorized and executed by the Lessee and the Lessor.

**Section 12.04 Further Assurances and Corrective Instruments.** The Lessor and the Lessee shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project hereby leased or intended so to be; or to correct any inconsistent or ambiguous term hereof.

**Section 12.05 Applicable Law.** This Lease shall be interpreted and enforced in accordance with the laws of the State.

**Section 12.06 Captions.** The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

**Section 12.07 Multiple Counterparts.** The Lease may be executed in multiple counterparts, each of which shall constitute an original instrument and all of which taken together shall constitute one and the same instrument.

**Section 12.08 Time is of the Essence.** Time is of the essence with respect to this Lease and no covenant or obligation hereunder to be performed by the Lessee may be waived except with the prior written consent of the Lessor. A waiver of any such covenant or obligation or a forbearance to invoke any remedy on any occasion shall not constitute or be treated as a waiver of such covenant or obligation or any other covenant or obligation as to any other occasion and shall not preclude the Lessor from invoking a breach or such remedy at any later time prior to the Lessee's



cure of the condition giving rise to such remedy. Each of the Lessee's rights hereunder are cumulative to its other rights hereunder and not alternative thereto.

**Section 12.09 Inspections Permitted.** The Lessee shall, whenever requested, advise the Lessor of the exact location and condition of the Project. The Lessor may enter upon the premises of the Project for the purpose of inspection at all reasonable times and, upon reasonable notice enter upon the job, building or place where the Project and the books and records of the Lessee with respect thereto are located.

**Section 12.10 No Personal Liability.** No covenant, condition or agreement contained in this Lease shall be deemed to be the covenant, condition or agreement of any past, present or future officer, director, member, agent or employee of the Lessee, the Lessor or the State, in his or her individual capacity, and neither the officers, agents or employees of the Lessee, the Lessor or the State nor any official executing this Lease shall be liable personally on this Lease by reason of the execution hereof by such person or arising out of any transaction or activity relating to this Lease.

**Section 12.11 Gender.** Use of the masculine, feminine, or neuter gender herein is solely for the purpose of convenience and shall be deemed to mean and include the other genders whenever and wherever appropriate.

**Section 12.12 Receipt of Lease.** The parties hereto acknowledge receipt of a signed and executed copy of the Lease.

**IN WITNESS WHEREOF**, the Lessor has caused this Lease Agreement to be executed in its corporate name by a duly authorized officer; and Lessee has caused this Lease to be executed in its name by the Board President, all as of the day and year first above written.

---

**as Lessor By:**  
**[SEAL] ATTEST:**  
**Authorized Officer**

**THE BOARD OF EDUCATION OF THE  
BOROUGH OF PAULSBORO, IN THE COUNTY  
OF GLOUCESTER, NEW JERSEY, as Lessee**

**[SEAL]**

**By:**  
**Mr. Joseph Lisa,**  
**Board of Education President**

**ATTEST:**  
**Anisah Coppin, Business Administrator/Board Secretary**

**Agreed to and Accepted this \_\_\_\_ day of**  
**November, 2023 \_\_\_\_\_, as**  
**Escrow Agent By:**  
**Name: \_\_\_\_\_, [TITLE]**

STATE OF NEW JERSEY )  
) SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of November, 2023, before me, a Notary Public in and for the State of New Jersey, personally appeared \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_ known to me as the person whose name is subscribed to within Lease Purchase Agreement, and acknowledged to me that he executed the same as a voluntary act and the voluntary act of \_\_\_\_\_, pursuant to authorization duly given.

Notary Public

STATE OF NEW JERSEY )  
) SS  
COUNTY OF GLOUCESTER)

On this \_\_\_\_ day of November, 2023, before me, a Notary Public of the State of New Jersey, personally appeared Joseph Lisa, President of The Board of Education of the Borough of Paulsboro, in the County of Gloucester, New Jersey, known to me to be the person whose name is subscribed to the within Lease Purchase Agreement, and acknowledged to me that he executed the same, as his voluntary act and the voluntary act of the School District pursuant to authorization duly given.

Notary Public

**EXHIBIT "A"**  
**DESCRIPTION OF ITEMS OF EQUIPMENT**

**EXHIBIT "B"**  
**BASIC RENT PAYMENT SCHEDULE**

**EXHIBIT "C" FORM OF ACCEPTANCE  
CERTIFICATE**