

MARYLAND STATE TREASURER'S OFFICE

**Louis L. Goldstein Treasury Building
80 Calvert Street, Room 109
Annapolis, Maryland 21401**

INVITATION FOR BIDS

FOR

**JANUARY 2011 ENERGY PERFORMANCE CONTRACT
LEASE-PURCHASE FINANCING**

IFB #ENERGY-12162010

Due Date: January 20, 2011

**Private Placement
Equipment and Facility Improvements
Financing of up to \$25,587,813.00**

NOTICE: Prospective bidders who received this document from a source other than the Issuing Office should immediately contact the Issuing Office and provide their name and mailing address in order that amendments to the IFB or other communications can be sent to them. Any prospective bidder who fails to provide the Issuing Office with this information assumes complete responsibility in the event that they do not receive amendments to the solicitation from the Issuing Office prior to the Bid due date.

Issued: December 16, 2010

KEY INFORMATION SUMMARY SHEET

Maryland State Treasurer's Office

**Invitation For Bids
For
January 2011 Energy Performance Contract
Lease-Purchase Financing**

IFB # ENERGY-12162010

Procurement Officer: Anne Jewell
Tel.: (410)260-7903
Fax: (410)974-3530
Email: procurement@treasurer.state.md.us

Submit Bids to: Maryland State Treasurer's Office
Attn: Procurement Officer
Louis L. Goldstein Treasury Building
80 Calvert Street, Room 109
Annapolis, Maryland 21401

IFB Release Date: December 16, 2010

Deadline for Questions January 3, 2011 at 11:00 a.m. Eastern Time

Bid Due Date and Opening: January 20, 2011 at 11:00 a.m. Eastern Time

**Board of Public Works Meeting
Approval of Award:** January 26, 2011

Closing of Financing: February 9, 2011

NOTICE

Prospective bidders who received this document from a source other than the Issuing Office should immediately contact the Issuing Office and provide their name and mailing address in order that amendments to the IFB or other communications can be sent to them. Any prospective bidder who fails to provide the Issuing Office with this information assumes complete responsibility in the event that they do not receive amendments to the solicitation from the Issuing Office prior to the Bid due date.

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SECTION I. OBJECTIVE

1.01. Summary Statement

The Maryland State Treasurer's Office (the "Office"), which is issuing this Invitation For Bids ("IFB"), is requesting bids for tax-exempt financing, under a lease-purchase financing arrangement (the "EPC Lease"), the acquisition by the State Highway Administration ("SHA") and Maryland Transit Administration ("MTA") in the Department of Transportation of the State of Maryland (the "Lessee" or the "State") of certain energy systems or equipment under Energy Performance Contracts ("EPCs"). The successful bidder (the "Lessor") will provide tax-exempt financing for up to \$25,587,813.00 in equipment purchases and related facility energy improvements. The financing is expected to close on February 9, 2011 (the "financing date") as further described on Appendix A hereto. The purchases will be consolidated and the financing shall be provided as described in Section III of this IFB.

1.02. Issuing Office; Procurement Officer

State Treasurer's Office
Louis L. Goldstein Treasury Building
80 Calvert Street, Room 109
Annapolis, Maryland 21401

Procurement Officer: Anne Jewell
(410) 260-7903
E-mail: procurement@treasurer.state.md.us

The sole point of contact for purposes of this procurement is the Procurement Officer. The Procurement Officer may designate others to act on her behalf. The Office may change the Procurement Officer or change the limits of her authority at its discretion.

Prospective bidders who have received this document from a source other than the Issuing Office should immediately contact the Issuing Office and provide their name and mailing address so that any amendments to the IFB and other communications may be sent to them.

This IFB is also available on the State Treasurer's website in PDF format at www.treasurer.state.md.us by clicking on "Procurement Information" and then "IFB for January 2011 Energy Performance Contract Lease-Purchase Financing," and on the State of Maryland's eMaryland Marketplace at www.emarylandmarketplace.com.

1.03. Procurement Method

This contract will be awarded in accordance with the competitive sealed bidding process under COMAR 21.05.02.

1.04. Contract Officer

The Contract Officer monitors the daily activities of the EPC Lease and provides technical guidance to the Lessor. The State Contract Officer is:

Patti Konrad
Director of Debt Management
Maryland State Treasurer’s Office
Louis L. Goldstein Treasury Building
80 Calvert Street, Room 109
Annapolis, Maryland 21401

Tel: (410)260-7920
Email: pkonrad@treasurer.state.md.us

1.05. Use of eMaryland Marketplace

In order to receive a contract award, a vendor must be registered on eMaryland Marketplace. Vendor registration information can be found on the eMaryland Marketplace website at www.emarylandmarketplace.com.

1.06. Schedule of Events

<u>Event</u>	<u>Date:</u>
Notice in “eMaryland Marketplace”	December 16, 2010
IFB Release Date	December 16, 2010
Deadline for Receipt of Questions	January 3, 2011 by 11:00 a.m. Eastern Time
Submission Deadline for Bids and Bid Opening	January 20, 2011 by 11:00 a.m. Eastern Time
Date of Contract Award	January 26, 2011
Funding/Closing Date	February 9, 2011

1.07. Pre-Bid Conference

There will be no pre-bid conference.

1.08 Questions and Inquiries

All questions and inquiries should be directed to the Procurement Officer identified in Section I. 1.02 above. Questions must be submitted in writing by mail or via email and received by the Issuing Office no later than 11:00 a.m., Eastern Time on Monday, January 3, 2011. Oral questions will not be permitted. If the questions or inquiries pertain to a specific section of the IFB, the page and section number(s) must be referenced.

1.09. Submission Deadline

To be considered, the bid must arrive at the Issuing Office no later than 11:00 a.m. Eastern Time on Thursday, January 20, 2011. Requests for extension of this bid date or time will not be granted. Bidders mailing bids should allow sufficient mail and internal delivery time to ensure the timely receipt of the bids at the Issuing Office. Bids arriving in the Issuing Office after the closing date and time, regardless of the method of their transmission, will not be considered. Bids submitted by electronic means (facsimile or e-mail) will not satisfy the submission deadline and will not be considered.

1.10. False Statements

Bidders are advised that section 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland provides as follows:

- (a) *In general.* - In connection with a procurement contract a person may not willfully:
 - (1) falsify, conceal, or suppress a material fact by any scheme or device;
 - (2) make a false or fraudulent statement or representation of a material fact; or
 - (3) use a false writing or document that contains a false or fraudulent statement or entry of a material fact.

- (b) *Aiding or conspiring with others.* – A person may not aid or conspire with another person to commit an act under subsection (a) of this section.

- (c) *Penalty.* – A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding 5 years or both.

1.11. Duration of Offer

Bids submitted in response to this IFB are irrevocable until February 9, 2011. This period may be extended at the Procurement Officer's request only by a bidder's written agreement.

1.12. Electronic Distribution

This IFB is available for distribution by e-mail. Potential bidders wishing to receive copies of the written document should contact the Procurement Officer identified in Section I.1.02., above.

SECTION II. GENERAL INFORMATION

2.01. Purpose

The overall purpose of this IFB is to provide information to bidders interested in submitting bids to meet the State's needs for energy performance lease-purchase financing for up to \$25,587,813.00. The financing is expected to close February 9, 2011.

2.02. Revisions to the IFB

The Office reserves the right to amend this IFB at any time prior to the bid due date and time. If it becomes necessary to revise this IFB at any time prior to the bid due date and time, amendments will be provided to all prospective bidders that were sent this IFB or otherwise are known by the Procurement Officer to have obtained this IFB. Written acknowledgment of the receipt of all amendments will be required. In addition, amendments to the IFB will be posted on the Office's Procurement Web Page at www.treasurer.state.md.us, (select "Procurement Information" under "IFB for January 2011 Energy Performance Contract Lease-Purchase Financing"), and also on eMaryland Marketplace at www.eMarylandMarketplace.com. Amendments made after the due date for bids will be sent only to those bidders who submitted a timely bid.

2.03. Cancellation of the IFB; Rejection of All Bids

The Office may cancel this IFB, in whole or in part, or may reject all bids submitted in response to this solicitation whenever this action is determined to be fiscally advantageous to the State or otherwise in its best interests.

2.04. Bid Acceptance; Discussions

The Office reserves the right to accept or reject any and all bids, in whole or in part, received in response to this IFB, to waive or permit cure of minor irregularities, and to conduct discussions with all qualified bidders in any manner necessary to serve the best interests of the State of Maryland. The Office also reserves the right, in its sole discretion, to award a contract based upon the written bids received without prior discussions or negotiations.

2.05. Incurred Expenses

The State will not be responsible for any costs incurred by a bidder in preparing and submitting a bid in response to this IFB, including costs incurred in making an oral presentation, if required.

2.06. Bid Form

Bids must be on a completed and signed (in ink) Bid Form, which is included as Appendix B-1 to this solicitation. The bidder's debt service schedule must be included with the Bid Form as Appendix B-2. Oral, telegraphic, facsimile, mailgram, or electronically transmitted bids will not be accepted.

2.07. Access to Public Records Act Notice

A bidder should give specific attention to the identification of those portions of its bid that it considers confidential, proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Access to Public Records Act, State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland. A fee may be charged for copies and search and preparation time, in accordance with COMAR 25.01.04.09. The Office may require payment of such fees before releasing the requested information.

2.08. Protests

Any protest or dispute related respectively to this solicitation or the resulting contract shall be subject to the provisions of COMAR 21.10 (Administrative and Civil Remedies).

Any protest regarding this solicitation must be filed in writing with the Procurement Officer only. If the reason for the protest is apparent before the bid opening, the protest must be filed before the bid opening. In all other cases, the protest must be filed within 7 calendar days after the reason for the protest is known or should have been known.

The term "filed" means receipt by the Procurement Officer who has issued this solicitation.

The protest must be in writing and must contain (1) the name and address of the protester; (2) the appropriate identification of the solicitation and, if a Contract has been awarded, the contract number if it is known; (3) a statement of the reasons for the protest; and (4) any supporting exhibits, evidence, or documents to substantiate any claims unless the documents are not available within the filing time, in which case the date by which the supporting documents are expected to be available is to be noted.

2.09. Bid Opening

Bids shall be opened publicly at the Maryland State Treasurer's Office, Louis L. Goldstein Treasury Bldg., 80 Calvert Street, Annapolis, Maryland 21401, 1st Floor Conference Room, on Thursday, January 20, 2011 at 11:00 a.m. Eastern Time. The name of each bidder, the financing bid rates, and such other information as is deemed appropriate shall be read aloud or otherwise made available. The bids shall be tabulated or a bid abstract made. The opened bids shall be available for public inspection at a reasonable time after bid opening but in any case before contract award except to the extent the bidder designates trade secrets or other proprietary data to be confidential.

2.10. Minority Business Enterprises

A minority business enterprise ("MBE") subcontractor participation goal has been established for this solicitation as follows:

Lessor agrees to make a good faith effort to select a qualified MBE bank to act as the escrow agent as described in Section 3.02.11 (the “Escrow Agent”). Lessor shall select a bank that is reasonably acceptable to the Lessee and offers competitive interest rates on escrowed funds, to act as Escrow Agent. The costs of the services of such Escrow Agent will be borne by the Lessor.

A current directory of MBEs is available through the Maryland State Department of Transportation Office of Minority Business Enterprise, P.O. Box 8755, B.W.I. Airport, Maryland 21240-0755. The phone number is 410-865-1244. The directory is also available at <http://www.mdot.state.md.us>. Select the “Minority/Disadvantaged Business Enterprise” label. The most current and up-to-date information on MBEs is available via the web site.

2.11. Acceptance of Terms and Conditions

1. By submitting a bid in response to this IFB, the bidder (a) accepts all of the terms and conditions set forth in this IFB, including attachments hereto, and (b) represents that it is not in arrears in the payment of any obligation due and owing the State or any department or unit thereof, including but not limited to the payment of taxes and employee benefits (the “State Obligations”).
2. If selected for award, the bidder agrees (a) that it will comply with all federal, State and local laws applicable to its activities and obligations under the contract, (b) that it shall not become in arrears under any State Obligation during the term of the contract, and (c) to all terms and conditions set forth in the form of EPC Lease documents included as Appendix G to this IFB. There will be no changes to the EPC Lease document included as Appendix G other than for the rates, amounts, and Equipment descriptions.

2.12. No Guarantee of Work

No Lessor is guaranteed any minimum amount of work or compensation.

2.13. Bid/Proposal Affidavit

All bids submitted by a bidder must be accompanied by a completed Bid/Proposal Affidavit. A copy of this Affidavit is included as Appendix C to this IFB.

2.14. Contract Affidavit

All bidders are advised that if a contract is awarded as a result of this solicitation, the successful bidder will be required to complete a Contract Affidavit. A copy of this Affidavit is included for informational purposes in Appendix D. This Affidavit need not be submitted with a bidder's bid.

2.15. Living Wage Requirements/Affidavit of Agreement

A solicitation for services under a State contract valued at \$100,000 or more may be subject to Title 18, State Finance and Procurement (SF&P) Article, Annotated Code of Maryland. Additional

information regarding the State's wage requirement is contained in this solicitation (see Appendix E., entitled Living Wage Requirements for Service Contracts). If the bidder fails to complete and submit the required documentation under State law, the State may determine a bidder to be not responsible.

Contractors and subcontractors subject to the Living Wage Law shall pay each covered employee at least \$12.28 per hour, if State contract services valued at 50% or more of the total value of the EPC Lease are performed in the Tier 1 Area. If State contract services valued at 50% or more of the total value are performed in the Tier 2 Area, a bidder shall pay each covered employee at least \$9.23 per hour. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel, and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State contract pursuant to §18-102 (d) shall assign the tier based upon where the recipients of the services are located.

The EPC Lease resulting from this solicitation has been deemed to be a Tier 1 contract.

All bids must be accompanied by a completed Living Wage – Affidavit Agreement. A copy of this Affidavit is included as Appendix F to this IFB.

2.16. Order of Precedence

The contract between the parties will be embodied in the EPC Lease documents, which will consist of the following, listed in their order of precedence:

1. the EPC Lease documents and EPC Lease modifications executed by both parties;
2. the IFB; and
3. the Lessor's bid.

Modifications to the order of precedence provision of this solicitation will not be accepted.

2.17. Payment by Electronic Funds Transfer

By submitting a response to this solicitation, the bidder agrees to accept any payments from the State by electronic funds transfer unless the State Comptroller's Office grants an exemption. The selected bidder shall register using form COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form and must include the business identification information as stated on the form and include the reason for the exemption. The COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form may be downloaded from: www.comp.state.md.us, select "General Accounting Division," then "Electronic Funds Transfer Program", and then "Form X-10."

SECTION III. SCOPE OF SERVICES AND REQUIREMENTS

3.01. General Background

The State of Maryland is a general purpose government providing a wide variety of governmental and enterprise services throughout the State. The State operates, among other activities, colleges and universities, prisons, a highway system, railroads, parks and forests, wildlife preserves, law enforcement programs, environmental protection activities, and regulatory programs.

The State authorizes expenditures either through the annual operating budget or through the capital budget. Much of the capital budget is financed by the State's General Obligation Bonds, which have the highest rating (AAA) from Moody's Investors Service, Inc., Standard & Poor's, and Fitch Ratings. In addition, a number of State agencies have authority to issue bonds for specific classes of facilities or to provide financing for individuals and businesses.

Section 4-806 of the State Finance and Procurement Article ("SF&P"), Annotated Code of Maryland, requires the average energy consumption in State buildings be reduced from 2005 levels by 5% by 2009, and 10% by 2010. Energy performance contracting, authorized by SF&P 11-101 and 12-301 through 12-303, is considered by Maryland Energy Administration ("MEA") to be the primary means by which State agencies (the "Agencies") will continue to achieve energy usage reduction.

As defined by SF&P 11-101(h), an "Energy Performance Contract" ("EPC") is an agreement for the provision of energy services pursuant to which an energy performance contractor ("EP Contractor") agrees to design, install, finance, maintain, or manage energy systems or equipment to improve the energy efficiency of a building or facility in exchange for a portion of the energy savings. Once a facility is identified by MEA as a candidate for energy efficiency improvements, an EP Contractor capable of achieving those improvements is selected following a competitive procurement. After the EPC is approved by the BPW, the EP Contractor will conduct a detailed inspection of the designated facility to identify energy savings opportunities (unless that survey shall have been completed prior to contract approval). Energy savings are anticipated to be achieved primarily through new equipment purchase and installation and related facility renovations and improvements. The EP Contractor will be responsible, either directly or through its subcontractors, for purchasing and installing equipment and making related facility improvements (the "Projects") within the State-defined scope of work.

The BPW is authorized to require an EP Contractor to provide the State with a bond or other assurance to guarantee the EP Contractor's projected energy savings; a failure to meet guaranteed performance savings will forfeit a portion of the bond or other assurance to match the shortfall in energy savings. (SF&P 12-301 (b)(3)(ii)). The EP Contractor shall guarantee that energy savings in the Agency's utility costs will cover the cost of all equipment, capital improvements, and related expenses to be financed under the EPC Lease.

Agencies are authorized to enter into energy performance contracts of up to 15 years duration. (SF&P 12-301(a) and (b)(1)). Following consultation with MEA and the EP Contractor, the term of

the proposed financing is determined.

Since about 1994, the State has financed, under EPC Leases, the acquisition by certain Agencies of energy systems or equipment under EPCs. Since the inception of the program, the State has never delayed or cancelled the closing on an Energy Performance Contract Lease-Purchase Financing. The State has also never failed to make lease payments on any EPC lease financing. Finally, the State has not prepaid any energy leases.

The State has previously financed the following amounts of Energy Performance Contracts in the Fiscal Years indicated:

FY 2005	-	\$8,005,837
FY 2006	-	\$0.00
FY 2007	-	\$2,047,727
FY 2008	-	\$19,856,475
FY 2009	-	\$50,368,065
FY 2010	-	\$16,072,950
FY 2011	-	\$31,402,890

Because of the extensive amount of lease and bond financing undertaken by the State on an annual basis, this lease-financing is **NOT A “BANK QUALIFIED LOAN”**.

The documentation included as Appendices G and H to this IFB will be used for the EPC Lease and is substantially similar to the documentation used by the State in its previous energy lease-purchase financings. The documents to be prepared by the State and Agencies and executed in connection therewith are substantially in the form attached hereto as Appendix G. There will be no changes to the documents in Appendix G other than the rates, amounts, and Equipment descriptions.

3.02. Financing Terms

1. The Office invites sealed bids for the tax-exempt financing of projects for the SHA and MTA in the aggregate principal amount of \$25,587,813.00 (the “Aggregate Principal Amount”). The principal must fully amortize with the last payment on January 1, 2026. As further described in Section 3.03 and Appendix B-1 to this IFB, a bidder shall prepare and submit a debt service schedule (the “Debt Service Schedule”) as Appendix B-2, based on the following financing terms.

Summary of Financing Terms (tax-exempt) (See also Section 3.03.)

Aggregate Principal amount of \$25,587,813.00 (SHA - \$20,147,601.00 and MTA \$5,440,212.00)

Acquisition Period and Interest Capitalization – approximately 11 months

Number of Principal and Interest Payments – 28

First Principal and Interest Payment Date – 7/1/2012

Final Principal and Interest Payment – 1/1/2026

30/360 convention

Location of Improvements - See Exhibit 1 and Exhibit 2 for list of locations.

2. This financing is expected to close on February 9, 2011. The documents to be prepared by the State and Agencies and executed in connection therewith (collectively, the "Standard Lease Documents") are substantially in the form attached hereto as Appendix G. There will be no changes to the Standard Lease Documents other than the rates, amounts, and Equipment descriptions. (The Standard Lease Documents and all other documents required to be executed under the EPC Lease are, collectively, the "EPC Lease Documents"). Prospective bidders must certify on the Bid Form that they are unconditionally and irrevocably committed to provide the Lease financing on the terms described in this IFB and in their bid as provided on Appendix B-1, if their bid is selected, and that no additional credit committee or other approvals are needed to provide the Lease financing. The Lessee will provide insurance for the Equipment only as described in Section 16 of the Lease.
3. Under the EPC Lease Documents, the Lessor will (a) acquire, directly or through a third-party lessor providing the required financial resources, designated by the Lessor and approved by the Office (the "Lessor's Designee"), the acquisition by the SHA and MTA of energy systems or equipment listed in the EPC and approved for financing by the Office and the Department of Budget and Management (the "Department"), and (b) lease such energy systems and equipment to the specified Agency. The EPC Lease Documents will provide the Lessor or its subsequent assignee (the "Assignee") the right to lease payments payable by the State under the EPC Lease.
4. The Lessor shall be required to finance all and not less than all of the equipment listed in the EPC and approved for financing by the Office and the Department in accordance with the terms stated in 3.02.1 above.
5. EPC acquisitions are consolidated to permit a single financing.
6. The Lessor shall provide sufficient funds to pay EP Contractors and/or fund an escrow account, with one sub-account for the SHA equipment and one sub-account for the MTA equipment, on the Funding/Closing Date, and the EPC lease term shall commence on such date, with lease payments (the "Lease Payments") due on the dates specified in 3.02.1. of this IFB.
7. Appendix G includes Standard Lease Documents that are completed by the State Agencies and the Office. These include the following Standard Lease Documents prepared by the Agencies: the Acceptance Certificate, the Equipment Use Certificate, and the Acknowledgement and Certification as to Appropriation (authorizing the transfer of Agency funds to the Office in an amount sufficient to make the Lease Payments to the Lessor). The Office is responsible for preparing the Energy Performance Contract Lease-Purchase Agreement (the "Lease Agreement"), the Escrow Agreement, the Certificate of the State of Maryland, each Equipment Schedule (including the financing terms and the Debt Service Schedule for the Equipment Schedules) (the "Equipment Schedule"), and the Energy Performance Contract Assignment(s). There will be no changes to the Standard Lease Documents in Appendix G other than the rates, amounts, and equipment descriptions.

8. The Lessor is responsible for preparing the following additional EPC Lease Documents, which must be in forms reasonably acceptable to the Office:

Certificate of Lessor, certifying Lessor's acquisition of its interest in the EPC Lease and/or the respective Equipment Schedules, certifying the purchase price including any payments made in respect of accrued interest, acknowledging **Section 18 – Assignment** of the Lease Agreement, and certifying the fair market value of the EPC Lease and/or the respective Equipment Schedules.

Payment Certificate, certifying the date, amounts, and recipients (e.g., escrow agent, EP Contractors, or agencies being reimbursed) of the payments made by Lessor under the EPC Lease.

Notice(s) of Assignment, in accordance with **Section 18 – Assignment** of the Lease Agreement, identifying the EPC Lease and/or Equipment Schedules being assigned, the name, address and contact information for the Assignee, the date of the assignment, and the actual consideration paid for the assignment.

9. After the award of the contract under this IFB to the successful bidder, the Office will forward the Standard Lease Documents to the Lessor or Lessor's Designee for signature. On the Funding/Closing Date, all EPC Lease Documents will be executed, and the Lessor or Lessor's Designee will make payments due directly to the EP Contractors and/or fund the escrow account. The Lessor then may file the required documents with the appropriate governmental entity to perfect its security interest.
10. The Office will administer the EPC Lease on behalf of SHA and MTA. The Office and the Department will assure, upon execution of the EPC Lease Documents, that funds for the Lease Payments during the then-current fiscal year will be encumbered or withheld from the appropriations available to the participating Agency, and will be paid by the Office on behalf of the Lessee by a single payment semi-annually on January 1 and July 1 of each year (the "Payment Dates") to the Lessor or the Assignee. The payment will be accomplished by an Electronic Funds Transfer, settling on the payment due date.
11. Lessor shall also agree to make a good faith effort to select a qualified minority business enterprise bank to act as the Escrow Agent in connection with the Escrow Agreement described above. Lessor shall select a bank, reasonably acceptable to the Lessee and offering competitive interest rates on escrowed funds, to act as Escrow Agent. The costs of the services of such Escrow Agent will be borne by the Lessor.
12. **Payments of principal and interest shall not be subject to optional prepayment, and will be subject to termination only as set forth in the EPC Lease.**

3.03. Bid Calculations and Basis for Award

Bids will be submitted using the bid form attached as Appendix B-1. The bidder should propose a single fixed bid rate in column (b). The winning bid will be awarded to the bidder with the lowest fixed bid rate. See Bid Form (Appendix B-1) for detailed instructions.

In addition to the bid rate, each bidder shall, using its bid rate, calculate and attach a single Debt Service Schedule for the consolidated EPC lease amount of \$25,587,813.00, on the terms specified in 3.02.1. Capitalized interest will be calculated based on the number of days using the 30/360 convention (142 days) from the financing date to 7/1/2011. See 3.02.1. Thereafter, interest will also be capitalized for the payment dates through 1/1/2012. Amortization will begin 7/1/2012, and debt service will be level.

3.04. Process for Determining Payments to the Lessor

Semi-annual payments to the Lessor

The Office will make payments to the Lessor in accordance with the Debt Service Schedule submitted with the bid and approved by the Office. See 3.02.1 for the Payment Dates. Should a Payment Date not be a banking business day, payment will be due on the next banking business day.

No Other Fees or Payments

Payments to the Lessor will be based solely on the fixed interest rates proposed by the Lessor in column (b) of Appendix B-1. The Lessee will not pay any breakage fees or other fees or spreads.

3.05. General Terms and Conditions

1. **Optional Prepayment/Termination:** There are no provisions for optional prepayment of this EPC Lease, and the EPC Lease is subject to termination only as set forth in the EPC Lease Documents.
2. Substitution of Security: The Lessee reserves the right to substitute equipment of equivalent or greater value in any Equipment Schedule.
3. Bond Insurance: The Lessor may not secure bond insurance on the Lease or Lease Payments or fractionalized interests or participations therein.
4. Ratings: The Lessor may not secure ratings on the Lease or Lease Payments or fractionalized interests or participations therein.
5. Restriction on Resale: The Lessor, or by acceptance of an assignment agreement from the Lessor, the Assignee(s), shall be deemed to certify that:
 - a. The Lessor or the Assignee is purchasing for its own account or, after obtaining the prior written consent of the State as required by Section 18 of the EPC Lease, intends

to sell or distribute fractionalized interests or participations in the right to receive Lease Payments only to individuals or entities that meet the requirements of subsections b. and c. below, and that have no intention of redistributing such interests or participations;

- b. The Lessor or the Assignee has knowledge and experience in financial and business matters that renders it capable of evaluating the merits and risks of the investment in the EPC Lease and has received such information as it has deemed necessary to make such an evaluation;
- c. The Lessor or the Assignee is able to bear the economic risk of investment in the EPC Lease; and
- d. If the Lessor or the Assignee, after obtaining consent of Lessee, sells or distributes, in fractionalized interests or participations, its interest in its right to receive payment of the aggregate amount of the monthly draw, it shall limit such sale or distribution to fractionalized interests or participations of \$100,000 or more, and it shall limit such sale or distribution to no more than 35 "sophisticated investors." Neither the Lessor nor the Assignee may undertake a public offering of its interest in payments due under the EPC Lease.

In addition, should the Lessor or its Assignee contemplate the sale or distribution in fractionalized interests or participations of its right to receive Lease Payments, Lessor must provide the Counsel to the Office with a copy of all offering materials thirty (30) days prior to the time any such interests or participations are offered for sale or distribution.

THE STATE HAS NOT PREPARED AN OFFICIAL STATEMENT OR OTHER OFFERING MATERIALS IN CONNECTION WITH THIS IFB OR THE EPC LEASE AND DOES NOT INTEND TO PREPARE SUCH MATERIALS.

IT IS THE STATE'S INTENT THAT THE RESTRICTIONS ON RESALE CONTAINED IN SECTION 18 OF THE LEASE AGREEMENT PRECLUDE THE USE OF CERTIFICATES OF PARTICIPATION.

6. Documents: The Lessee, from time to time, shall provide certificates of essential use, certificates of acceptance, IRS Forms 8038G, financing statements, and such other documents as reasonably may be necessary to effect the purposes of the EPC Lease.
7. Tax Opinion: Except for taxable financings, at closing, the Lessee shall provide an opinion of tax counsel as to the excludability from gross income for federal income tax purposes of interest payments under the EPC Lease.

8. Other Legal Matters: The Lessee's execution of the EPC Lease and related documents will be subject to the following:
 - a. review and approval of the EPC Lease and related documents pursuant to which Lessee may be bound by Counsel to the Office; and
 - b. delivery of an opinion of Counsel to the Office substantially in the form attached as Appendix H to this solicitation.

9. Bid Form: A bidder's failure to submit an executed Bid Form attached as Appendix B-1 to this IFB may result in rejection of the bid. The bidder's debt service schedule must also be included with the Bid Form as Appendix B-2. The State reserves the right to reject any conditional bid(s).

10. Irrevocability of Bids: Each bid submitted in response to this solicitation shall be irrevocable until February 9, 2011.

11. Availability of Funds: By submitting a bid in response to this IFB, a bidder shall be deemed to evidence its understanding that the Lessee's obligations under the EPC Lease specifically are subject to annual appropriation of funds (see Section 5 of the Energy Performance Contract Lease-Purchase Agreement).

SECTION IV. EVALUATION AND SELECTION

4.01. Bid Evaluation

All qualifying bids received from responsible bidders by the submission deadline will be evaluated by the Office.

4.02. Bidder Qualifications

1. In General. The Office may make such reasonable investigations as it deems proper and necessary to determine the ability of any bidder to meet the requirements of this solicitation. By submitting a bid in response to this IFB, a bidder shall be deemed to have agreed to provide to the Office all such information for this purpose as reasonably may be requested. The Office reserves the right to reject any bid if the information submitted by, or the investigation of, the bidder fails to satisfy the Office that such bidder is capable of meeting the requirements of this solicitation and the agreements contemplated herein. By submitting a bid in response to this IFB, a bidder shall be deemed to have agreed to provide financing in a manner consistent with the State's current program as described in this IFB, with the Standard Lease Documents attached to this IFB and the Debt Service Schedule prepared by the bidder.
2. Qualification Conditions. To be selected for award, a bidder must, in the exercise of the Office's reasonable judgment:
 - a. possess the ability, capacity, and skill to perform its obligations under the EPC Lease and the documents to be executed in connection therewith;
 - b. possess the appropriate character, integrity, reputation, judgment, and experience to fully perform all of its obligations under the EPC Lease;
 - c. possess sufficient financial resources to perform fully its obligations under the EPC Lease;
 - d. have not been terminated for default or failed to provide funding when due under any lease financing program within the last three years; and
 - e. if a bidder does not possess sufficient financial resources of its own, provide an unconditional, irrevocable commitment from a third-party lessor providing the required financial resources to the Lessor ("Lessor's Designee") to provide funding for this EPC Lease and agree to use the Standard Lease Documents, without modification, attached as Appendix G hereto. This commitment **must** be provided with the bid. The selection and use of Lessor's Designee is subject to approval of the Office.

Each bidder shall provide to the Office such information and certificates as the Office, upon the advice of counsel, shall deem sufficient to establish compliance with the conditions enumerated in subparagraphs (a) through (e), above. See Section V, Bid Format.

4.03. Selection

The award will be made to the responsible bidder, as determined pursuant to Section 4.02 above, who submitted a bid determined by the Office to represent the lowest interest cost to the State under the contemplated tax-exempt financing. Refer to the Bid Form attached as Appendix B-1 and to Section III, 3.02, 3.03 and 3.05.

Before making the final award, the Office will confirm that the Debt Service Schedule attached to the bid conforms to the terms set forth in 3.02.1 above.

Before making the final award, the State will review the total debt service for the EPC Lease to ensure that it is less than or equal to energy savings.

SECTION V. BID FORMAT

5.01. Financial Adequacy

A bidder shall demonstrate its financial ability to carry out this EPC Lease by providing copies of or links to:

- For privately-held companies, a Compilation Report by a Certified Public Accountant of the most recent Financial Statements of the bidder. If the compiled statements are more than six months old, the bidder shall also provide interim statements which include a certification by the Chief Financial Officer (or equivalent officer) that the interim statements are accurate and reliable.
- For publicly-held enterprises, an Audited Report by a Certified Public Accountant of the most recent Financial Statements of the bidder. If the audited statements are more than six months old, the bidder shall also provide interim statements which include a certification by the Chief Financial Officer (or equivalent officer) that the interim statements are accurate and reliable.

If the EPC Lease is to be assigned, the bidder must also provide similar financial statements for the proposed Assignee.

The Office may, at its discretion, obtain a financial report from Dun and Bradstreet for the bidder and any Assignee. The Office may also confirm the status of the firms with the Maryland State Department of Assessments and Taxation.

5.02. Similar Engagements/Client References

- Each bidder must submit with its bid a brief description (including terms and amounts) of similar financings that were successfully performed for other clients or for the State of Maryland in the past three years. At least three such clients must be identified by name, address, telephone number, and contract reference. The State reserves the right to contact these and any other known clients.
- Each bidder must disclose any lease financings that were terminated by either the lessor or lessee within the last three years and state the reason for the termination. This disclosure should include the client name, address and telephone number, and contract reference.
- Each bidder must disclose any instances of its failure to provide funding when due under any lease financing within the last three years and state the reason for such failure.

5.03. Bid Submission

Each bidder must submit no later than 11:00 a.m. Eastern time on Thursday, January 20, 2011, a completed and signed Bid Form (Appendix B-1) and Debt Service Schedule (Appendix B-2), a Bid/Proposal Affidavit (Appendix C), Living Wage Affidavit (Appendix F), evidence of the bidder's financial ability to carry out this Contract, and client references. The Bid Form must be signed by an individual authorized to bind the bidder to all terms and conditions of this IFB and the agreements contemplated hereunder. The State reserves the right to reject any conditional bid(s).

**APPENDIX A-1
 JANUARY 2011 ENERGY LEASE-PURCHASE FINANCING
 SUMMARY OF EQUIPMENT SCHEDULES**

<u>Schedule No.</u>	<u>Agency</u>	<u>Locations</u>	<u>Term</u>	<u>Amount Financed</u>	<u>Equipment Description</u>
11-01-#1 TAX- EXEMPT	State Highway Administration	See Exhibit 1	02/09/2011 - 1/1/2026	\$20,147,601.00	Energy Improvements
		<i>Schedule No. 1 Total</i>		\$20,147,601.00	
11-01-#2 TAX- EXEMPT	Maryland Transit Administration	See Exhibit 2	02/09/2011 - 1/1/2026	\$5,440,212.00	Energy Improvements
		<i>Schedule No. 2 Total</i>		\$5,440,212.00	
	Total Leases			\$25,587,813.00	

APPENDIX A-2
JANUARY 2011 ENERGY LEASE-PURCHASE FINANCING
SAMPLE FINANCING SCHEDULE

		Days		\$ 142					
		Finance Account		\$25,587,813.00					
		Highest Balance		\$25,817,186.42					
		Closing		2/9/2011					
		Payment Frequency		2 times a year					
		Convention		30/360					\$25,587,813
		Interest Rate		1.000%					\$ 229,373
		Pyt		(\$990,390.29)					<u>\$25,817,186</u>
		Term		28					
Years	Pyts			Starting Balance	Principal	Interest Accrued	Ending Balance		
							\$25,587,813.00		
		7/1/2011	Capitalized interest			\$100,929.71	\$25,688,742.71		
		1/1/2012	Capitalized interest	\$25,688,742.71	\$ -	\$128,443.71	\$25,817,186.42		
1	1	7/1/2012	Amtz. Starts	\$25,817,186.42	\$861,304.36	\$129,085.93	\$24,955,882.06		
	2	1/1/2013		\$24,955,882.06	\$865,610.88	\$124,779.41	\$24,090,271.18		
2	3	7/1/2013		\$24,090,271.18	\$869,938.93	\$120,451.36	\$ 23,220,332.25		Interest during construction
	4	1/1/2014		\$23,220,332.25	\$874,288.63	\$116,101.66	\$22,346,043.62		\$229,373
3	5	7/1/2014		\$22,346,043.62	\$878,660.07	\$111,730.22	\$21,467,383.55		
	6	1/1/2015		\$21,467,383.55	\$883,053.37	\$107,336.92	\$20,584,330.18		
4	7	7/1/2015		\$20,584,330.18	\$887,468.64	\$102,921.65	\$19,696,861.54		
	8	1/1/2016		\$19,696,861.54	\$891,905.98	\$ 98,484.31	\$18,804,955.55		
5	9	7/1/2016		\$18,804,955.55	\$896,365.51	\$ 94,024.78	\$17,908,590.04		
	10	1/1/2017		\$17,908,590.04	\$900,847.34	\$ 89,542.95	\$17,007,742.70		
6	11	7/1/2017		\$17,007,742.70	\$905,351.58	\$ 85,038.71	\$16,102,391.13		
	12	1/1/2018		\$16,102,391.13	\$909,878.33	\$ 80,511.96	\$15,192,512.79		
7	13	7/1/2018		\$15,192,512.79	\$914,427.73	\$ 75,962.56	\$14,278,085.07		
	14	1/1/2019		\$14,278,085.07	\$918,999.86	\$ 71,390.43	\$13,359,085.20		
8	15	7/1/2019		\$13,359,085.20	\$923,594.86	\$ 66,795.43	\$12,435,490.34		
	16	1/1/2020		\$12,435,490.34	\$928,212.84	\$ 62,177.45	\$11,507,277.50		
9	17	7/1/2020		\$11,507,277.50	\$932,853.90	\$ 57,536.39	\$10,574,423.60		
	18	1/1/2021		\$10,574,423.60	\$937,518.17	\$ 52,872.12	\$ 9,636,905.42		
10	19	7/1/2021		\$ 9,636,905.42	\$942,205.76	\$ 48,184.53	\$ 8,694,699.66		
	20	1/1/2022		\$ 8,694,699.66	\$946,916.79	\$ 43,473.50	\$ 7,747,782.87		
11	21	7/1/2022		\$ 7,747,782.87	\$951,651.38	\$ 38,738.91	\$ 6,796,131.49		
	22	1/1/2023		\$ 6,796,131.49	\$956,409.63	\$ 33,980.66	\$ 5,839,721.86		
12	23	7/1/2023		\$ 5,839,721.86	\$961,191.68	\$ 29,198.61	\$ 4,878,530.18		
	24	1/1/2024		\$ 4,878,530.18	\$965,997.64	\$ 24,392.65	\$ 3,912,532.54		
13	25	7/1/2024		\$ 3,912,532.54	\$970,827.63	\$ 19,562.66	\$ 2,941,704.91		
	26	1/1/2025		\$ 2,941,704.91	\$975,681.77	\$ 14,708.52	\$ 1,966,023.15		
14	27	7/1/2025		\$ 1,966,023.15	\$980,560.17	\$ 9,830.12	\$ 985,462.98		
	28	1/1/2026		\$ 985,462.98	\$985,462.98	\$ 4,927.31	\$ (0.00)		
Total					\$25,817,186.00	\$1,913,742.00			

**APPENDIX B-1
 BID FORM
 PRIVATE PLACEMENT
 JANUARY 2011 ENERGY PERFORMANCE CONTRACT
 LEASE-PURCHASE FINANCING
 of \$25,587,813.00**

A. Bid Table

Type of Lease	Term	Amount Expected to be Financed	(b) Fixed Rate
TAX-EXEMPT	2/9/2011 through 1/1/2026	\$25,587,813.00	%

*Instructions to Complete the Bid Table (See Section 3.03 of the IFB).
 Column (b) To be completed by bidder.*

The winning bid will be the lowest fixed interest rate.

B. In addition to proposing its bid rate, each bidder shall, using its bid rate, calculate and attach a single debt service schedule in a format similar to that shown in Appendix A-2 for the consolidated EPC Lease amount of \$25,587,813.00 on the terms specified in 3.02.1. The first capitalized interest payment will be calculated based on the number of days using the 30/360 convention (142) from the financing date to 7/1/2011. Thereafter, interest will also be capitalized for the payment dates through 1/1/2012. Amortization will begin on 7/1/2012, and debt service will be level.

C. Please check off each item “Yes” or “No”:

<u>YES</u>	<u>NO</u>	
		1. We have completed the Bid Table (Appendix B-1) and attached a single consolidated debt service schedule (Appendix B-2) beginning on 2/9/2011 and ending no later than 1/1/2026.
		2. We agree to the State’s lease documentation without changes except for rates, amounts and equipment descriptions.
		3. We certify that we possess sufficient financial resources to perform the Lease obligations, OR we have provided a <u>current</u> , unconditional, irrevocable commitment from a third party to provide lease funding with repayments as set forth in the debt service schedule, and the third party’s agreement to use the State’s current lease documentation without modification. (Section 4.02.2.e).

<u>YES</u>	<u>NO</u>	
		4. We certify that we are unconditionally and irrevocably committed to provide the Lease financing described in the IFB in accordance with the terms of the IFB and our Bid, as provided in Appendix B, and no additional credit committee or other approvals are needed to provide the Lease financing.
		5. We have attached a copy of (or a link to) our most recent Audited Financial Statements, or a Compilation Report of our most recent Financial Statements as required by Section 5.01.
		6. We have attached the information required by Section 5.02 relating to similar engagements and client references.
		7. We have completed and attached the following Affidavits: Living Wage Affidavit and Bid/Proposal Affidavit

Failure to properly respond and fully comply with the requirements for this Invitation for Bids may result in your bid being eliminated from consideration.

In compliance with the IFB and with all terms and conditions set forth therein, the undersigned represents that he/she has full authority to submit the above bid and to bind his/her principal to the obligations contemplated thereunder.

Firm Name: _____

By: _____
(signature)

Name: _____
(typed name)

Title: _____

**APPENDIX B-2
DEBT SERVICE SCHEDULE**

**PRIVATE PLACEMENT
JANUARY 2011 ENERGY PERFORMANCE CONTRACT
LEASE-PURCHASE FINANCING
of \$25,587,813.00**

The Bidder must submit

**A single tax-exempt debt service schedule for \$25,587,813.00 as
Appendix B-2.**

APPENDIX C
BID/PROPOSAL AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the (title) _____ and the duly authorized representative of (business) _____ and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned bidder hereby certifies and agrees that the following information is correct: In preparing its bid on this project, the bidder has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in §19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. "Discrimination" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. "Discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid. As part of its bid or proposal, the bidder herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the bidder discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder agrees to comply in all respects with the State's Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

B-1. Certification Regarding Minority Business Enterprises.

The undersigned bidder hereby certifies and agrees that it has fully complied with the State Minority Business Enterprise Law, State Finance and Procurement Article, §14-308(a)(2), Annotated Code of Maryland, which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a bid or proposal and:

- (1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority proposal;
- (2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the bid or proposal;
- (3) Fail to use the certified minority business enterprise in the performance of the contract; or
- (4) Pay the certified minority business enterprise solely for the use of its name in the bid or proposal.

Without limiting any other provision of the solicitation on this project, it is understood that if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid.

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, §6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

_____.

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

- (1) Been convicted under state or federal statute of:
 - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
 - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, §14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of §11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract; or
- (9) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§B and C and

subsections D(1)—(8) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

(1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

G. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

I. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

J. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, §§14-101—14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$100,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

K. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
 - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
 - (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
 - (c) Prohibit its employees from working under the influence of drugs or alcohol;
 - (d) Not hire or assign to work on the contract anyone whom the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
 - (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
 - (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
 - (i) The dangers of drug and alcohol abuse in the workplace;

- (ii) The business' policy of maintaining a drug and alcohol free workplace;
- (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
- (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
- (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §K(2)(b), above;
- (h) Notify its employees in the statement required by §K(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
- (i) Notify the procurement officer within 10 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
- (j) Within 30 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
 - (i) Take appropriate personnel action against an employee, up to and including termination; or
 - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
- (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §K(2)(a)—(j), above.
- (3) If the business is an individual, the individual shall certify and agree as set forth in §K(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.
- (4) I acknowledge and agree that:
 - (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
 - (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and
 - (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

L. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

(1) The business named above is a (domestic ___) (foreign ___) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:

Name: _____
 Address: _____

(If not applicable, so state).

(2) Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

M. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the Contract.

N. Repealed.

O. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

By: _____
(Authorized Representative and Affiant)

APPENDIX D
CONTRACT AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the (title) _____ and the duly authorized representative of (business) _____ and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

B. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

(1) The business named above is a (domestic____) (foreign____) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:

Name: _____

Address: _____.

(2) Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

C. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated _____, 20____, and executed by me for the purpose of obtaining the contract to which this Appendix is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

By: _____
(Authorized Representative and Affiant)

APPENDIX E

Living Wage Requirements for Service Contracts

- A. This contract is subject to the Living Wage requirements under Title 18, State Finance and Procurement Article, Annotated Code of Maryland and the regulations proposed by the Commissioner of Labor and Industry. The Living Wage generally applies to a Contractor or Subcontractor who performs work on a State contract for services that is valued at \$100,000 or more. An employee is subject to the Living Wage if he/she is at least 18 years old or will turn 18 during the duration of the contract; works at least 13 consecutive weeks on the State Contract and spends at least one-half of the employee's time during any work week on the State Contract.
- B. The Living Wage Law does not apply to:
- (1) A Contractor who:
 - (A) has a State contract for services valued at less than \$100,000, or
 - (B) employs 10 or fewer employees and has a State contract for services valued at less than \$500,000.
 - (2) A Subcontractor who:
 - (A) performs work on a State contract for services valued at less than \$100,000,
 - (B) employs 10 or fewer employees and performs work on a State contract for services valued at less than \$500,000, or
 - (C) performs work for a contractor not covered by the Living Wage Law as defined in B(1)(B) above, or B (3) or C below.
 - (3) Service contracts for the following:
 - (A) services with a Public Service Company;
 - (B) services with a nonprofit organization;
 - (C) services with an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement ("Unit"); or
 - (D) services between a Unit and a County or Baltimore City.
- C. If the Unit responsible for the State contract for services determines that application of the Living Wage would conflict with any applicable Federal program, the Living Wage does not apply to the contract or program.

- D. A Contractor must not split or subdivide a State contract for services, pay an employee through a third party, or treat an employee as an independent contractor or assign work to employees to avoid the imposition of any of the requirements of Title 18, State Finance and Procurement, Annotated Code of Maryland.
- E. Each Contractor/Subcontractor, subject to the Living Wage Law, shall post in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.
- F. The Commissioner of Labor and Industry shall adjust the wage rates by the annual average increase or decrease, if any, in the Consumer Price Index for all urban consumers for the Washington/Baltimore metropolitan area, or any successor index, for the previous calendar year, not later than 90 days after the start of each fiscal year. The Commissioner shall publish any adjustments to the wage rates on the Division of Labor and Industry's Website. An employer subject to the Living Wage Law must comply with the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate, required by the Commissioner, automatically upon the effective date of the revised wage rate.
- G. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of the health insurance premium, as provided in §18-103(c), State Finance and Procurement Article, Annotated Code of Maryland, shall not lower an employee's wage rate below the minimum wage as set in §3-413, Labor and Employment Article, Annotated Code of Maryland. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of health insurance premium shall comply with any record reporting requirements established by the Commissioner of Labor and Industry.
- H. A Contractor/Subcontractor may reduce the wage rates paid under §18-103(a), State Finance and Procurement, Annotated Code of Maryland, by no more than 50 cents of the hourly cost of the employer's contribution to an employee's deferred compensation plan. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's contribution to an employee's deferred compensation plan shall not lower the employee's wage rate below the minimum wage as set in §3-413, Labor and Employment Article, Annotated Code of Maryland.
- I. Under Title 18, State and Finance Procurement Article, Annotated Code of Maryland, if the Commissioner determines that the Contractor/Subcontractor violated a provision of this title or regulations of the Commissioner, the Contractor/Subcontractor shall pay restitution to each affected employee, and the State may assess liquidated damages of \$20 per day for each employee paid less than the Living Wage.
- J. Information pertaining to reporting obligations may be found by going to the DLLR Website <http://www.dllr.state.md.us/> and clicking on Living Wage.

APPENDIX F

**Affidavit of Agreement
Maryland Living Wage Requirements-Service Contracts**

Contract No. _____

Name of Contractor _____

Address _____

City _____ State _____ Zip Code _____

If the Contract is Exempt from the Living Wage Law

The Undersigned, being an authorized representative of the above named Contractor, hereby affirms that the Contract is exempt from Maryland's Living Wage Law for the following reasons: (check all that apply)

- Bidder/Offeror is a nonprofit organization
- Bidder/Offeror is a public service company
- Bidder/Offeror employs 10 or fewer employees and the proposed contract value is less than \$500,000
- Bidder/Offeror employs more than 10 employees and the proposed contract value is less than \$100,000

If the Contract is a Living Wage Contract

A. The Undersigned, being an authorized representative of the above named Contractor, hereby affirms our commitment to comply with Title 18, State Finance and Procurement Article, Annotated Code of Maryland and, if required, to submit all payroll reports to the Commissioner of Labor and Industry with regard to the above stated contract. The Bidder/Offeror agrees to pay covered employees who are subject to living wage at least the living wage rate in effect at the time service is provided for hours spent on State contract activities, and to ensure that its Subcontractors who are not exempt also pay the required living wage rate to their covered employees who are subject to the living wage for hours spent on a State contract for services. The Contractor agrees to comply with, and ensure its Subcontractors comply with, the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate established by the Commissioner of Labor and Industry, automatically upon the effective date of the revised wage rate.

Attachment D (continued)
Affidavit of Agreement
Maryland Living Wage Requirements-Service Contracts

B. _____ (initial here if applicable) The Bidder/Offeror affirms it has no covered employees for the following reasons: (check all that apply)

- All employee(s) proposed to work on the State contract will spend less than one-half of the employee's time during every work week on the State contract;
- All employee(s) proposed to work on the State contract will be 17 years of age or younger during the duration of the State contract; or
- All employee(s) proposed to work on the State contract will work less than 13 consecutive weeks on the State contract.

The Commissioner of Labor and Industry reserves the right to request payroll records and other data that the Commissioner deems sufficient to confirm these affirmations at any time.

Name of Authorized Representative: _____

Signature of Authorized Representative Date

Title

Witness Name (Typed or Printed)

Witness Signature Date

APPENDIX G
DRAFT
JANUARY 2011 ENERGY PERFORMANCE CONTRACT
LEASE-PURCHASE AGREEMENT

THIS JANUARY 2011 ENERGY PERFORMANCE CONTRACT LEASE-PURCHASE AGREEMENT dated as of January 20, 2011 (the "EPC Lease"), by and between _____, having a principal place of business at _____, ("Lessor") and the **STATE OF MARYLAND** ("Lessee" or the "State"), acting by and through the **STATE TREASURER'S OFFICE** (the "Office") on behalf of certain departments and units of the State (such departments and units shall be collectively referred to herein as the "Agencies"). The Office has a principal place of business at Louis L. Goldstein Treasury Building, Room 109, 80 Calvert Street, Annapolis, Maryland 21401.

WITNESSETH

WHEREAS, Lessee has determined that a present need exists for the acquisition of certain Equipment (hereinafter defined), and that Lessee is authorized under the Constitution and laws of the State to enter into this EPC Lease for the purposes hereinafter set forth; and

WHEREAS, Lessor has agreed to finance the acquisition of the Equipment and to lease such Equipment to Lessee upon the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. Agreement to Lease. Upon the terms and conditions contained in (a) this Lease, (b) the Office's Invitation for Bids IFB #ENERGY-12162010 released on December 16, 2010, (the "IFB"), which is incorporated by reference herein and made a part hereof including without limitation Appendix B-1 to the IFB, and (c) in Lessor's Bid dated _____, which is incorporated by reference herein and made a part hereof, Lessor shall provide funds in the aggregate amount of \$25,587,813 .00 ("Amount") to permit Lessee's acquisition of Equipment in accordance with the Lease and Equipment Schedules Nos. 11-01-#1 and 11-01-#2 (the "Equipment Schedules" or "Schedules") to the Lease, attached hereto, and described summarily on Attachment 1A hereto. The debt service schedule (the "Debt Service Schedule") portion of Lessor's Bid is attached hereto as Exhibit A. Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor for the respective EPC Lease Term (hereinafter defined), the one or more items of energy conservation systems or equipment (the "Equipment") described in the applicable Equipment Schedules executed and delivered by Lessor and Lessee in connection herewith.

2. EPC Lease Term.

- (a) This EPC Lease will become effective upon the execution hereof by Lessee and Lessor as of the date first above written. Lessor's period of performance for providing lease-financing under this EPC Lease shall be from January 20, 2011 to February 9, 2011. The term of this EPC Lease (the "EPC Lease Term") with respect to each item of Equipment will commence on the date the Equipment is accepted pursuant to Section 3 and the respective Equipment Schedule, and unless earlier terminated as expressly provided for in this EPC Lease, will continue for the period set forth in the applicable Equipment Schedule. The EPC Lease Term with respect to the Equipment leased under a separate Equipment Schedule will terminate (a) if applicable, upon the purchase of the Equipment by the Lessee; (b) upon payment by Lessee of the EPC Lease Payments (hereinafter defined) required to be paid by Lessee hereunder with respect to the Equipment; or (c) as otherwise provided in this EPC Lease. Upon termination of the EPC Lease Term as to the Equipment leased under a separate Equipment Schedule as a result of the occurrence of either of the events specified in (a) or (b), above, the EPC Lease will terminate with respect to the Equipment leased under such Equipment Schedule, the security interest, if any, of the Lessor in such Equipment shall terminate, Lessee will acquire full and unencumbered title to such Equipment free and clear of all liens and encumbrances created by or arising through or under Lessor.

3. Cost of Equipment; Delivery of Equipment; and Payment of Equipment Costs.

- (a) The Agencies on behalf of Lessee have or will enter into certain energy performance contracts ("EPCs") with one or more energy performance contractors (the "EP Contractors") for various items of energy conservation systems or equipment to be purchased from the respective EP Contractors and leased hereunder. Such EPCs shall provide for the delivery, installation, and purchase of the Equipment. Lessee does hereby assign to Lessor all of Lessee's rights, but none of its obligations, under the EPCs, including without limitation, the right to purchase the Equipment in accordance with the terms thereof. When used herein, the term "Equipment Costs" means the net purchase price payable to the respective EP Contractors under the respective EPCs, which shall not exceed the amount set forth in the respective Equipment Schedules of \$25,587,813.00 in the aggregate, and shall not be payable prior to the respective acquisition dates (the "Acquisition Dates") stated on the respective Equipment Schedules. Each Equipment Schedule shall represent Equipment Costs of no less than \$10,000, unless authorized by special written exception issued by the Contract Officer.
- (b) Lessor agrees to finance all and not less than all of the Equipment approved for financing by the office and the Department of Budget and Management (the "Department") at the terms in the Debt Service Schedule.

- (c) The EPCs shall provide that the Equipment is to be delivered to Lessee at the location (the "Equipment Location") specified in the applicable Equipment Schedule. Lessee will accept the Equipment as soon as it has been installed and is operational, or in the event that the EP Contractor allows a pre-acceptance test period, as soon as the test period has expired (the "Acceptance Date"). Lessee will evidence its acceptance of the Equipment by executing and delivering to Lessor an Acceptance Certificate (herein so called).
- (d) Lessor agrees to make moneys available to fund an Escrow Account with two sub-accounts to pay the EP Contractors specified on the accompanying Equipment Schedules when required. Lessor and Lessee shall enter into an Escrow Agreement to provide for such payments. Lessor shall select a bank, reasonably acceptable to Lessee and offering competitive interest rates on escrowed funds, to act as escrow agent and to make payments to the EP Contractors, specified on the accompanying Equipment Schedules, in accordance with the payment instructions specified in the Escrow Agreement. Lessor agrees to make a good faith effort to select a qualified minority business enterprise bank to act as the escrow agent. The cost of the services of such escrow agent will be borne by Lessor.

4. EPC Lease Payments.

- (a) Subject to Section 5 hereof, Lessee agrees to pay to Lessor or its assignee pursuant to Section 18 hereof the EPC Lease Payments (herein so called), equal to the amounts specified in Exhibit B to the applicable Equipment Schedule. A portion of each semi-annual EPC Lease Payment is paid as, and represents payment of interest, all as set forth in the applicable Equipment Schedule. The EPC Lease Payments will be payable without notice or demand, except for the invoices hereinafter provided, at the office of Lessor (or such other place as Lessor or its assignee may from time to time designate in writing), and will commence on the first EPC Lease Payment due date (the "Due Date") as set forth in Exhibit B to the applicable Equipment Schedule. Lessor shall prepare and submit to Lessee in accordance with the Office's instructions semi-annual invoices for the EPC Lease Payments reflected on Exhibit B to each Equipment Schedule. Each consolidated invoice submitted for payment shall include on its face the Lessor's or the Lessor's assignee's Federal Tax Identification Number, the Lessor's complete address, and the date and amount that are included in the total invoice. Consolidated payments will be made within thirty (30) days of receipt by the Office of approved invoices or the invoice due date, whichever is later. The Office may make a consolidated payment of any number or all EPC Lease Payments due to Lessor (or to the assignee of Lessor to whom such EPC Lease Payments are due) on the same date. Any payments received after the Due Date may bear interest from the Due Date in accordance with Section 15-104 of the State Finance and Procurement Article, Annotated Code of Maryland. Except as specifically provided in Section 5, Section 25, and Section 26 hereof, Lessee's obligation to pay the EPC Lease Payments will be absolute and unconditional in all events and, except for the provisions of Section 7-222 of the State Finance and

Procurement Article, Annotated Code of Maryland, will not be subject to any set-off, defense, abatement, reduction, counterclaim, or recoupment for any reason whatsoever.

- (b) Lessor and Lessee understand and intend that the obligation of Lessee to pay the EPC Lease Payments required hereunder shall constitute a current expense of Lessee, subject to appropriated funds, and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds, or moneys of Lessee beyond those appropriated for the purpose of acquiring the Equipment.
- (c) The Office, the Department through its acknowledgment and acceptance of this EPC Lease, and the Agencies on behalf of Lessee reasonably believe that legally available funds can be obtained sufficient to make all EPC Lease Payments during the EPC Lease Term, and hereby covenant that they will do all things lawfully within their power to obtain, maintain, and pursue funds from which the EPC Lease Payments may be made, including making provision for such payments to the extent necessary in each budget proposed for the purpose of obtaining funding, and that they will use their bona fide best efforts to obtain appropriation of the necessary funds to avoid termination pursuant to Section 5 hereof by taking all appropriate action to seek adequate budgeted funds to maintain this EPC Lease in force. It is the intent of the Office and the Agencies on behalf of Lessee to make the EPC Lease Payments for the full EPC Lease Term if funds are legally available therefor, and in that regard, Lessee represents that the use of the Equipment is essential to its proper, efficient, and economic operation.

5. Nonappropriation of Funds; Substitution.

- (a) In the event sufficient funds are not appropriated in any fiscal period for EPC Lease Payments due hereunder, then Lessee will immediately notify the Lessor or its assignee of such occurrence and the EPC Lease Term for the Equipment under an Equipment Schedule for which funds were not appropriated shall terminate on the last day of the fiscal period for which appropriations were authorized, without penalty or expense to Lessee of any kind whatsoever. In the event of such termination, Lessee agrees to peaceably surrender possession of such Equipment to Lessor or its assignee on the date of such termination. Lessor will have all legal and equitable rights and remedies to take possession of the Equipment upon such termination.

- (b) In the event that funds are not appropriated with respect to Equipment under one or more Equipment Schedules or for any other reason whatsoever, with the consent of the Lessor or its assignee with respect to such Equipment Schedule, Lessee shall have the right to substitute therefor other equipment of equivalent value so as to prevent termination of the Equipment Schedule.

6. Limitation on Warranties.

- (a) Lessee acknowledges and agrees and shall confirm its acknowledgement and agreement on each Equipment Schedule, that the Equipment is of a size, design, and capacity selected by the Lessee; that Lessee is satisfied that the Equipment is suitable for its purpose; that Lessor is neither a manufacturer nor a vendor of the Equipment; and that **LESSOR HAS NOT MADE, AND DOES NOT HEREBY MAKE, ANY REPRESENTATION, WARRANTY, OR COVENANT, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, QUALITY, DURABILITY, DESIGN, OPERATION, FITNESS FOR USE, OR SUITABILITY OF THE EQUIPMENT IN ANY RESPECT WHATSOEVER OR IN CONNECTION WITH OR FOR THE PURPOSES AND USES OF LESSEE, OR ANY OTHER REPRESENTATION, WARRANTY, OR COVENANT OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT THERETO, AND LESSOR SHALL NOT BE OBLIGATED OR LIABLE FOR ANY ACTUAL, INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES OF OR TO LESSEE OR ANY OTHER PERSON OR ENTITY ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE EQUIPMENT AND THE MAINTENANCE THEREOF.**
- (b) Lessor hereby assigns to Lessee during the EPC Lease Term, so long as no Event of Default (as hereinafter defined) has occurred and is continuing, all manufacturers' warranties, if any, express or implied, with respect to the Equipment, and Lessor authorizes Lessee to obtain the customary services furnished in connection with such warranties at Lessee's expense, and shall cooperate fully with Lessee with respect to the resolution of any claims against such warranties.

7. Representations and Warranties.

- (a) Lessee represents and warrants as of the date hereof, as of the date of acceptance under each Equipment Schedule, and at all times during the respective EPC Lease Term that: (i) Lessee is a "state" within the meaning of Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), and will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as such; (ii) the execution, delivery, and performance by the Lessee of this EPC Lease, all Equipment Schedules, and all other documents executed in connection herewith by Lessee (all such documents shall be collectively referred to herein as the "EPC Lease Documents"), have been duly authorized by all necessary action on the part of the

Lessee; (iii) the EPC Lease Documents constitute legal, valid, and binding obligation of the Lessee enforceable in accordance with their respective terms; (iv) the execution and performance of the EPC Lease Documents will not violate any judgment, order, law, or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest, or other encumbrance upon the Equipment (other than as contemplated by this EPC Lease), or any assets of the Lessee pursuant to any indenture, mortgage, deed of trust, bank loan, credit agreement, or other instrument to which Lessee is a party or by which it or its assets may be bound; (v) there are no actions, suits, or proceedings pending or, to the knowledge of the Lessee, threatened against or affecting Lessee's in any court or before any governmental commission, board, or authority, which, if adversely determined, will have a material, adverse effect on the ability of Lessee to perform its obligations under the EPC Lease Documents; (vi) no governmental orders, permissions, consents, approvals, or authorizations are required to be obtained, and no registrations or declarations are required to be filed in connection with the execution and delivery of the EPC Lease Documents; (vii) for tax-exempt lease-financings, without the prior consent of the Lessor, no portion of the Equipment will be used directly or indirectly in any trade or business carried on by any person other than Lessee; and (viii) for tax-exempt lease-financings, no more than 10% of the total use of any portion of the Equipment leased on behalf of any State agency shall be used, on an average yearly basis, directly or indirectly in any trade or business carried on by any person other than Lessee or be used by an organization described in Section 501(c)(3) of the Code, provided that such private business use, if any, that is not related or disproportionate to the governmental use shall not exceed 5% of the total use of such Equipment on an average yearly basis.

- (b) In connection with each Equipment Schedule and as a condition precedent to the funding thereof by Lessor, Lessee shall deliver to Lessor: (1) an opinion of Lessee's counsel in form and substance reasonably acceptable to Lessor as to the validity of the statements made in subsections (i) through (vi), above; and (2) such other documents and certificates as shall be reasonably requested by the Lessor. In addition, for tax-exempt lease-financings, Lessee shall deliver to Lessor: (3) a certificate of a duly authorized officer of Lessee respecting the validity of the statements made in subsections (vii) and (viii) above; and (4) an opinion of nationally recognized bond counsel in form and substance reasonably acceptable to Lessor as to the excludability from gross income of the interest component of the EPC Lease Payments under the laws of the United States and the State and other related matters.

8. **Title.** Upon Lessee's acceptance of the Equipment under an Equipment Schedule, title to the Equipment will vest in Lessee; provided, however, that (i) in the event of termination pursuant to Section 5 hereof; or (ii) upon the occurrence of an Event of Default hereunder, as long as such Event of Default is continuing, title to the Equipment will immediately vest in Lessor or its assignee of the Equipment Schedule on which the Equipment is described.

9. **Security Interest.** In order to secure all of its obligations hereunder, Lessee hereby (i) grants to Lessor a first priority security interest in any and all right, title, and interest of Lessee in: (a) Lessee's Energy Performance Contract with EP Contractors; (b) the funds deposited by Lessor in an Escrow Account during the Acquisition Period, if any; (c) the Equipment, and in all additions, attachments, and accessions thereto and substitutions thereof; and (d) any proceeds (including the Net Proceeds as defined in Section 16 below of any commercial insurance policy) of the foregoing; (ii) agrees that this EPC Lease, and as appropriate, the Assignment(s) and the Escrow Agreement, may be filed, by Lessor at its expense as a financing statement evidencing such security interest; and (iii) agrees to execute and deliver all financing statements, certificates of title, and other instruments necessary or appropriate to evidence such security interest.
10. **Personal Property.** The Equipment is and will remain personal property and will not be deemed to be affixed to, or be a part of, the real estate on which it may be situated notwithstanding that the Equipment or any part thereof may be or hereafter may become in any manner physically affixed or attached to real estate or any building thereon. If requested by Lessor, Lessee will, at Lessee's expense, furnish a landlord or mortgagee waiver with respect to the Equipment.
11. **Use; Repairs.** Lessee will use the Equipment in a careful manner consistent with the use generally contemplated by the manufacturer of the Equipment and will comply with all laws, ordinances, insurance policies, and regulations relating to, and will pay all valid costs, claims, damages, fees, and charges arising out of, the possession, use, or maintenance of the Equipment. Lessee, at its expense, will keep the Equipment in good repair, ordinary wear and tear excepted and will furnish all parts, mechanisms, and devices required therefor.
12. **Alterations.** Lessee will not make any alterations or additions to the Equipment that will result in a reduction in its value without Lessor's prior written consent or unless such alteration or addition may be readily removed without damage to the Equipment.
13. **Location; Inspection.** The Equipment will not be removed from, or if the Equipment consists of rolling stock, its permanent base will not be changed from, the Equipment Location without Lessor's prior written consent, which consent will not be unreasonably withheld. Lessor will be entitled to enter upon the Equipment Location or elsewhere during normal business hours to inspect the Equipment or observe its use and operation.
14. **Liens and Taxes.** Lessee shall keep the Equipment free and clear of all levies, liens, and encumbrances except those created under this EPC Lease. The parties contemplate that the Equipment will be used for a governmental purpose of Lessee and that the Equipment will be exempt from all taxes presently assessed and levied with respect to personal property. In the event that the use, possession, or acquisition of the Equipment is found to be subject to taxation, Lessee shall pay when due during the EPC Lease Term, to the extent of available appropriated funds, all charges and taxes (local, State, and federal), that now or hereafter may be imposed upon the ownership, leasing, rental, sale, purchase, possession, or use of the Equipment, excluding, however, all federal and State taxes on or measured by Lessor's or its

assignee's income. If Lessee fails to pay said charges and taxes when due, and after delivery of written notice to Lessee, Lessor shall have the right, but shall not be obligated, to pay said charges and taxes. If Lessor pays any charges or taxes for which Lessee is liable under this EPC Lease, Lessee shall reimburse Lessor therefor, subject only to the availability of appropriated funds.

15. Risk of Loss; Damage, Destruction, and Condemnation; Use of Net Proceeds.

- (a) Lessee assumes all risk of loss of, or damage to, the Equipment from any cause whatsoever, and no such loss of, or damage to, the Equipment, defect therein, or unfitness or obsolescence thereof shall relieve Lessee of its obligation to make EPC Lease Payments or to perform any other obligation hereunder.
- (b) If, prior to the termination of the EPC Lease Term, (i) the Equipment or any portion thereof is destroyed (in whole or in part), or is damaged by fire or other casualty; (ii) title to, or the temporary use of, the Equipment or any part thereof or the estate of Lessee or Lessor in the Equipment or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm, or corporation acting under governmental authority; or (iii) for any reason, the Equipment or any portion thereof is no longer in the possession or control of Lessee, Lessee shall, at its option, repair, restore, or replace the affected Equipment with equipment of equivalent value, or purchase the affected Equipment on the Due Date (as set forth in the applicable Equipment Schedule) next succeeding the date of such loss at the Principal Outstanding amount applicable on such Due Date, plus the EPC Lease Payment due on such date, plus any past due amounts then payable by Lessee hereunder with respect to such items of Equipment. Upon any such payment, the EPC Lease Term with respect to such items of Equipment shall terminate, and Lessee will acquire full and unencumbered title to such items of Equipment. Within forty-five (45) days of the happening of any events described in clauses (i), (ii) or (iii) of the first sentence of this paragraph, Lessee shall give notice to the Lessor and any assignee with respect to such Equipment of such event and how Lessee proposes to comply with the provisions of the first sentence of this paragraph.
- (c) If appropriated funds are not available to permit Lessee to repair, restore, replace, or purchase such Equipment in accordance with subsection (b) of the Section 14, Lessee shall cause the Net Proceeds, as defined in Section 16 hereof, of any insurance claim or condemnation award to be applied to the payment of Lessee's obligations under this EPC Lease. Any portion of the Net Proceeds in excess of the amount required to pay in full Lessee's obligations as set forth in this subsection shall be for the account of Lessee. Lessee agrees that if the Net Proceeds are insufficient to pay in full Lessee's obligations hereunder, Lessee shall, to the extent of appropriated funds, make such payments to the extent of any deficiency.

16. **Insurance.** At its own expense, subject to appropriated funds, Lessee shall self-insure, or at its option, commercially insure, the Equipment against loss or damage for not less than the full replacement value of the Equipment. In the event of a covered loss, commercial insurance typically includes the costs of removal of debris and installation of the replacement equipment. In the event that the Equipment suffering a covered loss or damage is not repaired, restored, replaced, or purchased pursuant to Section 15 hereof, the Net Proceeds of commercial insurance, if any, shall be applied as provided in Section 15 hereof. As used herein, "Net Proceeds" means the amount remaining from the gross proceeds of any commercial insurance claim or condemnation award after deduction of expenses (including attorneys' fees) incurred in the collection of such claim or award. At the request of Lessor, Lessee shall provide written evidence of insurance.
17. **Indemnification.** To the extent allowed by applicable law and subject to available appropriations, Lessee shall indemnify Lessor against, and hold Lessor harmless from, any and all claims, actions, proceedings, expenses, damages, or liabilities, including attorneys' fees and court costs, arising in connection with the Equipment, including, but not limited to, its selection, purchase, delivery, possession, use, operation, rejection, or return, and the recovery of claims under insurance policies thereon, unless any such action is based upon the negligence, illegal act, breach of duty, or intentional tort committed by the Lessor.
18. **Assignment.**
- (a) Without Lessor's prior written consent, Lessee will neither: (i) assign, transfer, pledge, hypothecate, grant any security interest in, or otherwise dispose of this EPC Lease, any Equipment, or any interest in this EPC Lease or the Equipment; nor (ii) sublet or lend the Equipment.
- (b) Lessor may assign, in whole, or in part, its rights, title, and interest in and to this EPC Lease, including all Equipment Schedules, the Equipment, and any other documents executed with respect to this EPC Lease, and/or grant or assign a security interest in this EPC Lease and the Equipment after giving prior written notice to the Office. Any assignment in part may be only with respect to one or more Equipment Schedules and not to any portion of a single Equipment Schedule. Any such assignee shall have all of the rights but none of the obligations of Lessor under this EPC Lease other than the obligation to provide funds to Lessee in the aggregate amount specified on the Equipment Schedule assigned to such Assignee as contemplated hereunder. Subject to the preceding sentence, the term Lessor as used herein shall include any such assignees. Subject to the foregoing, this EPC Lease and the Equipment Schedules shall inure to the benefit of, and be binding upon, the successors and assigns of the parties hereto. Before assignment of any portion of Lessor's interest in this EPC Lease, Lessor will cause written notice of such assignment to be sent to Lessee which will be sufficient if it discloses the name of the assignee and the address to which further payments hereunder should be made. No further action will be required by Lessor or by Lessee to evidence the assignment of rights hereunder, but Lessee will acknowledge any such permitted assignment in

writing if so requested. Lessee shall retain notice of such assignment and maintain a record that identifies the owner of Lessor's interest in this EPC Lease. Upon Lessee's receipt of written notice of Lessor's assignment of any portion of its interest in this EPC Lease, Lessee agrees to attorn to and recognize such assignee as the owner of such portion of Lessor's interest in this EPC Lease, and Lessee thereafter shall make such payments, including without limitation, such EPC Lease Payments as are indicated in the notice of assignment, directly to such assignee; provided, however, that any such permitted assignment of a right to receive payment hereunder shall be accomplished in accordance with Lessee's instructions, if any, regarding invoicing or other processing of EPC Lease Payments.

- (c) Lessor or its assignee may not sell or distribute, in fractionalized interests or participations, its interest in its rights to receive payment of the aggregate amount of all Equipment Schedules for any given draw hereunder without the prior written consent of the Lessee. If Lessee gives its consent to such sale or distribution of such fractionalized interests or participations, Lessor or its assignee (i) shall limit the number of holders of such interests or participations to thirty-five (35) or fewer "sophisticated investors"; (ii) shall issue any such interest or participation in the amount of \$100,000 or more; (iii) shall maintain, on behalf of the Lessee, registration books or a book entry system with respect to the ownership and transfer of such participations or interests that complies with the requirements of Section 149(a) of the Code; (iv) shall not establish any such participations or interests in a manner that would cause interest payments on this EPC Lease received by owners of such participations or interests to be includable in gross income for federal income tax purposes; and (v) shall provide the Office's Counsel with a copy of all offering materials thirty (30) days prior to the time any such interests or participations are offered for sale or distribution. Lessor (i) shall be solely responsible for the allocation of payments received from Lessee in accordance with subsection (b) hereof among any such participants as their interests may appear; and (ii) shall be solely responsible for the costs and other financial or other liabilities attendant to the establishment, maintenance, and operation of the aforesaid registration books or book entry system. Lessee shall be given notice of the establishment of any such registration books or book entry system and a full written explanation of how such books or system works, including the right to inspect the same during normal business hours, or, if Lessor is not conveniently located for such inspection, Lessee shall be furnished, upon request, with photocopies of such books and records and/or book entry system. The foregoing to the contrary notwithstanding, Lessee may, at its option and expense, appoint another agent to establish, maintain, and operate the registration books or book entry system contemplated hereunder.

- (d) The Lessee has not prepared an Official Statement or other offering materials in connection with this EPC Lease and does not intend to prepare such materials. The Lessor shall not use Certificates of Participation in connection with the Lease.

19. Events of Default. With respect to each Equipment Schedule, an Event of Default (herein so called) shall occur upon the happening of an event hereinafter described, but in the case of events described in paragraphs (b) and (c) below, only if the Lessor shall have given the Office thirty (30) days' prior written notice of the default, unless the Lessor and Lessee shall agree to an extension of such time prior to its expiration:

- (a) Lessee fails to make any EPC Lease Payment as it becomes due in accordance with the terms of this EPC Lease and the respective Equipment Schedules (except as such failure results from nonappropriation by the Lessee of funds for such purposes);
- (b) Lessee fails to perform or observe any other covenant, condition, or agreement to be performed or observed by it hereunder or under the respective Equipment Schedules; or
- (c) The discovery by Lessor that any statement, representation, or warranty made by Lessee in this EPC Lease or in any writing delivered by Lessee pursuant hereto or in connection herewith was false, misleading, or erroneous in any material respect at the time such statement, representation, or warranty was made.

20. Remedies. Upon the occurrence of an Event of Default and as long as such Event of Default is continuing, Lessor, at its option, may declare this EPC Lease to be in default by written notice to such effect to the Office, and thereafter Lessor may exercise any one or more of the following remedies:

- (a) by written notice to Lessee, declare an amount equal to all amounts then due or to become due during the then current fiscal year of Lessee under this EPC Lease and the Equipment Schedules to which the Event of Default applies to be immediately due and payable, whereupon the same shall become immediately due and payable;
- (b) by written notice to Lessee, request Lessee to (and Lessee agrees that it will), promptly return the Equipment described on the Equipment Schedules to which the Event of Default applies to Lessor, and Lessor may enter upon the premises where the Equipment is located and take immediate possession of and remove all or any portion of the same;
- (c) sell or lease the Equipment or sublease it for the account of Lessee holding Lessee liable, only for the fiscal year for which appropriated funds are available and only to the extent of those appropriated funds, for all EPC Lease Payments and other payments due on or before the effective date of such selling, leasing, or subleasing, and for the difference between the purchase price, rental, and other amounts paid by the purchaser, lessee, or sublessee pursuant to such sale, lease, or sublease and the

amount payable by Lessee hereunder; and

- (d) exercise any other right, remedy, or privilege that may be available to it under applicable laws of the State of Maryland or any other applicable law, or proceed by appropriate legal action to enforce the terms of this EPC Lease or to recover damages for the breach of this EPC Lease, or to rescind this EPC Lease as to the Equipment.

Any assignee of Lessor shall only have the right to declare the Lease in default and exercise the remedies described in paragraphs (a) through (d) above to the extent of the Equipment Schedules which Lessor has assigned to such assignee and the EPC Lease Payments and Equipment described thereon.

In addition, Lessee will remain liable, to the extent permitted by law and to the extent of then currently available appropriated funds, for all covenants and indemnities under this EPC Lease and for all reasonable legal fees and other costs and expenses, including court costs, incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this EPC Lease or now or hereafter existing at law or in equity. Lessor's remedies hereunder may be exercised separately with respect to items of Equipment. No delay or omission to exercise any right or power accruing upon the occurrence of 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.

- 21. **Lessor's Right To Perform for Lessee.** Except as provided in Sections 5, 25 and 26, if Lessee fails to perform or comply with any of its covenants contained herein, Lessor shall have the right, but shall not be obligated, to effect such performance or compliance, and the amount of any out-of-pocket expenses or other reasonable expenses of Lessor incurred in connection with the performance of, or compliance with, such covenant, together with interest thereon at the lesser of (i) the highest lawful rate permitted by applicable State law on the date of payment by Lessor; or (ii) the same rate as the underlying EPC Lease Payments shall be payable by Lessee to the extent of then currently available appropriated funds, upon demand. Lessee shall execute, endorse, and deliver to Lessor any conveyance, assignment, or other instrument in writing as may be required to vest in Lessor any right, title, or power that by the terms hereof is intended to be conveyed or conferred upon Lessor, including without limitation: (a) Uniform Commercial Code Financing Statements (including continuation statements); (b) documents and checks or drafts relating to or received in payment for any loss or damage on the insurance required hereunder, but only to the extent that same relates to the Equipment; and (c) at such time of default or nonappropriation, upon any bill of sale, document, instrument, invoice, freight bill, bill of lading, or similar document relating to the Equipment in order to vest title in Lessor and to transfer possession to Lessor within ten (10) days upon receipt of same.

22. **Quiet Enjoyment of Equipment.** Lessor hereby covenants to provide to Lessee during the term of this EPC Lease quiet use and enjoyment of the Equipment, and Lessee shall during the term of this EPC Lease peaceably and quietly have and hold and enjoy the Equipment without suit, trouble, or hindrance from Lessor except upon the occurrence of an Event of Default.
23. **Delivery of Related Documents.** Lessee will execute or provide, as requested by Lessor, such other documents and information as are reasonably necessary with respect to the transactions contemplated by this EPC Lease. At the request of the Lessor, Lessee will furnish current financial statements of Lessee within thirty (30) days after the date such statements become available to the public. During the EPC Lease Term and upon annual request of the Lessor, Lessee will provide to Lessor the applicable budget, or relevant portions thereof at Lessee's election, with proof of appropriation for the ensuing fiscal year, and such other financial information relating to the ability of Lessee to continue this EPC Lease as reasonably may be requested by Lessor.
24. **Lessee's Covenants.** Lessee specifically covenants that it shall comply with the provisions of the Code, including, without limitation, compliance with any provisions of such law regarding the timing of the expenditure of the proceeds of this EPC Lease, the use of such proceeds, the restriction of investment yields, the filing of information with the Internal Revenue Service, and the rebate of certain earnings resulting from the investment of the proceeds of this EPC Lease. Lessee further covenants that it shall make such use of the proceeds of this EPC Lease, regulate the investment of the proceeds thereof, and take such other and further actions as may be required to maintain exclusion from gross income for federal tax purposes of the interest portion of the EPC Lease Payments. The Lessee shall provide such certification of facts and estimates regarding the amount and use of the proceeds of this EPC Lease as may be necessary or appropriate from time to time to comply with, or to evidence Lessee's compliance with, the covenants set forth in this Section.
25. **Termination for Cause.** If Lessor: (a) fails to fulfill its obligation under this EPC Lease to provide funds sufficient to pay the Equipment Cost as described in Section 3 hereof properly and on time, Lessee may terminate this EPC Lease with respect to any Equipment Schedule for which Lessor has failed to fulfill such payment obligation by written notice to Lessor or (b) otherwise violates any provision of the EPC Lease, Lessee may terminate this EPC Lease with respect to any or all pending or future Equipment Schedules by written notice to Lessor; provided, however, that clauses (a) and (b) shall not be deemed to permit termination by Lessee with respect to EPC Lease terms for existing previously financed Equipment Schedules. The notice shall specify the acts or omissions relied upon as cause for termination Lessor shall pay Lessee the actual amount of damages caused by Lessor's breach. Lessor will remain liable after termination and Lessee can affirmatively collect damages.

26. **Termination for Convenience.** The performance of this EPC Lease may be terminated by Lessee in accordance with this clause, in whole or in part, whenever the Lessee shall determine that such termination is in the best interest of Lessee; provided, however, that this clause shall not be deemed to permit termination by Lessee of any EPC Lease Term of existing Equipment Schedules.
27. **Contingent Fee Prohibition.** Lessor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for Lessor, to solicit or secure this EPC Lease, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or other consideration contingent on the making of this EPC Lease.
28. **Financial Disclosure.** Lessor shall comply with the provisions of Section 13-221, State Finance and Procurement Article, Annotated Code of Maryland, as from time to time amended, which requires that every business that enters into contracts, leases, or other agreements with the Lessee or its agencies during a calendar year under which it is to receive in the aggregate \$100,000 or more, shall, within 30 days of the time when the aggregate value of these contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.
29. **Political Contribution Disclosure.** Lessor shall comply with Election Law Article, §§14-101—14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.
30. **Retention of Records.** If requested by Lessee, Lessor shall deliver to the Lessee background material prepared or obtained by Lessor incident to the performance of this EPC Lease. "Background Material" shall include, but not be limited to, work papers, notes, completed questionnaires, other printed materials, pamphlets, maps, drawings, and books acquired by Lessor during the term of this EPC Lease and directly related to the services provided under this EPC Lease. Any proprietary computer programs of Lessor are expressly excluded from the definition of "Background Material" as used in this Section. Lessor shall maintain records and documents relating to the performance of this EPC Lease for three years following final payment under any EPC Lease Term or any applicable statute of limitations, whichever is longer, and shall make such records available for inspection and audit by the authorized representatives of Lessee.

31. **Nondiscrimination in Employment.** Lessor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract for standard commercial supplies or raw materials; and, (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

32. **Commercial Nondiscrimination Clause.**

- (a) As a condition of entering into this EPC Lease, Lessor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Lessor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Lessor retaliate against any person for reporting instances of such discrimination. Lessor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Lessor understands that a material violation of this clause shall be considered a material breach of this EPC Lease and may result in termination of this Agreement, disqualification of Lessor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- (b) As a condition of entering into this EPC Lease, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against Lessor under Title 19 of the State Finance and Procurement Article, as amended from time to time, Lessor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Lessor has used in the past 4 years on any of its contracts that were undertaken within the state of Maryland, including the total dollar amount paid by Lessor on each subcontract or supply contract. Lessor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that is requested by the State. Lessor understands that violation of this clause is a material breach of this EPC Lease and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

33. **Non-Hiring of Employees.** No employee of the State of Maryland or any unit thereof, whose duties as such employee include matters relating to or affecting the subject matter of this EPC Lease, shall, while so employed, become or be an employee of the party or parties hereby contracting with the State of Maryland or any unit thereof.
34. **Compliance with Laws.** Lessor hereby represents and warrants that:
- (a) it is qualified to do business in the State of Maryland and that it will take such action as, from time to time, may be necessary to remain so qualified;
 - (b) it is not in arrears with respect to the payment of any moneys due and owing the State of Maryland, or any department or unit thereof, including, but not limited to, the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this EPC Lease;
 - (c) it shall comply with all federal, State, and local laws applicable to its activities and obligations under this EPC Lease; and
 - (d) it shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this EPC Lease.
35. **Living Wage Requirements.** A solicitation for services under a State contract valued at \$100,000 or more may be subject to Title 18, State Finance and Procurement (SFP) Article, Annotated Code of Maryland.

Contractors and subcontractors subject to the Living Wage Law shall pay each covered employee at least \$12.28 per hour, if State contract services valued at 50% or more of the total value of the contract are performed in the Tier 1 Area. If State contract services valued at 50% or more of the total contract value are performed in the Tier 2 Area, an offeror shall pay each covered employee at least \$9.23 per hour. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel, and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State contract pursuant to §18-102 (d) shall assign the tier based upon where the recipients of the services are located.

The EPC Lease resulting from this solicitation has been deemed to be a Tier 1 contract.

36. **Administration.** This EPC Lease shall be performed under the direction of the Maryland State Treasurer, or the Treasurer's designee (the "Contract Officer"). All matters relating to administration and performance of this EPC Lease shall be referred to the Contract Officer for determination.
37. **Governing Law.** This EPC Lease shall be construed, interpreted, and enforced in accordance with the laws of the State of Maryland, including without limitation the applicable provisions of COMAR Title 21, State Procurement Regulations.
38. **Notices.** All notices (excluding invoices and communications in the ordinary course of business) to be given under this EPC Lease shall be in writing and mailed by certified mail, return receipt requested, to the other party at its address set forth in the introduction to this EPC Lease, or at such address as the party may provide in writing from time to time.
39. **Section Headings.** All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this EPC Lease.
40. **Entire Agreement; Modification; Severability.** This EPC Lease, including the Office's Invitation for Bids and Lessor's Bid, together with all other EPC Lease Documents, constitutes the entire agreement between the parties with respect to the lease of the Equipment, and neither the EPC Lease nor any of the EPC Lease Documents shall be modified, amended, altered, or changed except with the written consent of Lessor and Lessee subject to any additional approvals required by State law. If any terms contained in any earlier writing, agreement, or proposal conflict with the terms and conditions of this EPC Lease, the terms and conditions of this EPC Lease shall control. Any provision of this EPC Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this EPC Lease. This EPC Lease may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement. This EPC Lease shall become effective when each of the Lessor and the Lessee shall have received counterparts thereof signed by the other party. The exchange of copies of this EPC Lease and of signature pages by electronic or facsimile transmission shall constitute effective execution and delivery of this EPC Lease. Signatures of the parties transmitted by electronic or facsimile transmission shall be deemed to be original signatures for all purposes.

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41. **Representations.** Each party to this EPC Lease represents and warrants to the other that it has full right, power, and authority to execute this EPC Lease.

IN WITNESS WHEREOF, the parties hereto have caused this EPC Lease to be executed as of the day and year first above written.

ATTEST:

LESSOR:

By: _____

WITNESS:

LESSEE:

**STATE OF MARYLAND, acting by
and through the State Treasurer's Office**

By: _____

Bernadette T. Benik
Chief Deputy Treasurer

ACKNOWLEDGED AND ACCEPTED:

**DEPARTMENT OF BUDGET AND
MANAGEMENT**

**MARYLAND ENERGY
ADMINISTRATION**

By: _____

T. Eloise Foster
Secretary

By: _____

Malcolm D. Woolf
Director

**Approved for form and legal sufficiency
for the State of Maryland:**

Counsel to the State Treasurer

ESCROW AGREEMENT

THIS ESCROW AGREEMENT, made and entered into as of the ___ day of _____ 2011, by and among _____ (the “Escrow Agent”), _____ (the “Lessor”), and the **MARYLAND STATE TREASURER** (the “Treasurer” or the “Lessee”) on behalf of the State Highway Administration (“SHA”) and the Maryland Transit Administration (“MTA”) of the Maryland Department of Transportation.

RECITALS

A. The Lessor and the Lessee have entered into that certain January 2011 Energy Performance Contract Lease-Purchase Agreement dated as of January 20, 2011 (the “EPC Lease”), a duplicate of which has been furnished to each of the parties, and Equipment Schedules No. _____ dated as of _____ (the “Equipment Schedules”), whereby the Lessor has agreed to acquire certain Equipment (defined in the Equipment Schedules), and to lease the Equipment to the Lessee, and the Lessee has agreed to lease the Equipment from the Lessor, in the manner and on the terms set forth in the EPC Lease.

B. In order to secure the obligations of the Lessor under the EPC Lease, Lessee has requested the Lessor to set aside in escrow with the Escrow Agent, pursuant to the terms hereof, funds to permit the purchase of the Equipment.

C. The Lessee, as agent for the Lessor, will cause the Equipment to be acquired in accordance with the purchase orders or contracts therefor, and neither the Lessor nor the Escrow Agent shall be obligated to assume or perform any obligation of the Lessee with respect thereto.

AGREEMENTS

NOW, THEREFORE, IN CONSIDERATION OF the premises and the mutual covenants contained herein, the parties agree as follows:

ARTICLE I APPOINTMENT OF ESCROW AGENT; DEFINITIONS

Section 1.01 Appointment of Escrow Agent. The Lessor and the Lessee hereby appoint and employ the Escrow Agent, upon direction of the Lessee, to receive, hold, invest, and disburse the moneys to be paid to it pursuant to this Escrow Agreement and the EPC Lease and the Equipment Schedule for credit to the Acquisition Fund established by this Escrow Agreement, and to perform certain other functions, all as hereinafter provided. By executing and delivering this Escrow Agreement, the Escrow Agent accepts the duties and obligations of the Escrow Agent provided herein, but only upon terms and conditions herein set forth.

Section 1.02. Definitions. Certain terms used in this Escrow Agreement are defined in the EPC Lease and the Recitals to this Escrow Agreement. When and if used herein, such terms shall have the meanings given to them by the language employed in the EPC Lease or the Recitals to this Escrow Agreement (as the case may be) defining such terms, unless the context clearly indicates otherwise. In addition, unless the context otherwise requires, the terms defined in this Section 1.02 shall, for all purposes of the Escrow Agreement, have the meanings herein specified.

“Acquisition Fund” means the Equipment Acquisition Fund, with a sub-account for each of the SHA and the MTA, established and held by the Escrow Agent pursuant to Article II of this Escrow Agreement.

“Commencement Date” means the day when the Lessor deposits with the Escrow Agent the moneys required to be deposited pursuant to Article II.

“Lessee Representative” means the representative of the Lessee or a person authorized by the Lessee to act on its behalf under or with respect to this Escrow Agreement, as evidenced by a certificate conferring such authorization executed by the Treasurer or a Deputy Treasurer.

ARTICLE II ACQUISITION FUND

Section 2.01. Deposit of Moneys by Lessor. On the Commencement Date, Lessor shall deposit with the Escrow Agent \$_____ as authorized by Section 3(d) of the EPC Lease and by the Equipment Schedule. The Escrow Agent shall deposit said money in the Acquisition Fund to be held, applied, and disbursed as hereinafter provided.

Section 2.02. Collateral. All escrowed lease funds on deposit in cash or money market accounts with the Escrow Agent selected by the Lessor are required to be secured by collateral as provided in Section 6-202 of the State Finance and Procurement Article of the Annotated Code of Maryland. To perfect the security interest of the Lessor in the collateral pledged by the Escrow Agent, a Federal Reserve Bank or a third party financial institution, acceptable to both parties, will hold the collateral in a custody account for the benefit of the Lessor. The Escrow Agent will provide a monthly collateral report to the Lessor and the Lessee at no charge. The report shall include the market value and description of each security pledged as of the last business day of the month.

Section 2.03. Acquisition Fund. The Escrow Agent shall establish a special fund designated as the “Equipment Acquisition Fund” (hereinafter referred to as the “Acquisition Fund”); shall establish a sub-account for each of the SHA and MTA; shall keep such Acquisition Fund separate and apart from all other funds and moneys held by it; and shall administer such Acquisition Fund as provided in this Section and Article III hereof. Except as otherwise permitted by Section 2.05 below, the Acquisition Fund shall be expended for Equipment Costs.

Section 2.04. Payment of Acquisition Costs. The Escrow Agent shall pay from the applicable sub-account of the Acquisition Fund any Equipment Costs, as hereinafter provided, upon receipt from the Lessee and the Lessor of a duly executed Payment Request Form in substantially the form attached hereto as Exhibit A. No disbursement from the Acquisition Fund shall be made unless and until the Lessor has approved such payment, stating each amount to be paid, the sub-account from which the payment shall be made, and the name of the person, firm or corporation to whom payment is due. Each such Payment Request Form shall be signed by the Lessee Representative and by the Lessor, and shall be subject to the following:

- (a) Delivery to Lessor of a certificate of Lessee to the effect that:
 - (i) an obligation in the stated amount has been incurred by Lessee, and that the same is a proper charge against the application sub-account of the Acquisition Fund for Equipment Costs identified in the EPC Lease and has not been paid; (ii) the Lessee Representative has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made; (iii) such requisition contains no item representing payment on account, or any retained percentages which Lessee is, at the date of such certificate, entitled to retain; and (iv) the Equipment is insured in accordance with the Lease.
- (b) Delivery to Lessor of a duplicate original invoice;
- (c) Delivery to Lessor of an appropriate Acceptance Certificate if such disbursement is the final disbursement hereunder for Equipment Costs;
- (d) The disbursement shall occur during the Acquisition Period set forth in the applicable Equipment Schedule; and
- (e) There shall exist no Event of Default under the EPC Lease (nor any event which, with notice or lapse of time or both, would become an Event of Default under the EPC lease).

Section 2.05. Transfers from Acquisition Fund; Termination

- (a) If at the conclusion of the Acquisition Period under the Equipment Schedule, all of the moneys on deposit in the Acquisition Fund have not been paid out, the parties agree and direct that the Escrow Agent shall disburse such remaining moneys, when and as directed by the Treasurer: (i) to complete the acquisition of the Equipment in accordance with the procedures set forth in Section 2.04 above, provided that the Acquisition Period has been extended by mutual agreement of the Lessor and the Lessee; (ii) if applicable, to pay, or reimburse the Lessee for the payment made by the Lessee of, any rebate amount to the United States pursuant to the requirements of Section 148(f) of the Internal Revenue Code of 1986, as amended; or (iii) on the next succeeding Lease Payment date(s) to and including _____, to apply against the principal or interest portion of the Lease Payment due on such dates. After such

disbursements of such remaining moneys, the balance, if any, of remaining moneys in the Acquisition Fund shall be used, no later than _____, to make a mandatory partial prepayment of principal to Lessor.

- (b) If this Escrow Agreement is terminated by Lessor as authorized under Article VII, or if Lessee terminates the EPC Lease in the event of nonappropriation as provided in Section 5 of the EPC Lease, all or a portion of the moneys and/or investments in the Acquisition Fund shall be paid and/or transferred to the Lessor or its assignee by the Escrow Agent, upon receipt by the Escrow Agent of a written demand for such payment from the Lessor, accompanied by such proof of such termination as the Escrow Agent may reasonably request. Such moneys shall be credited against amounts, if any, due to the Lessor under the EPC Lease or which would have been due to the Lessor if the EPC Lease had not been terminated in the event of non-appropriation.

ARTICLE III MONEYS IN FUND; INVESTMENT; TERMINATION

Section 3.01. Held in Trust. The moneys and investments held by the Escrow Agent under this Escrow Agreement are irrevocably held in trust for the benefit of the Lessor and the Lessee and for the purposes herein specified, and such moneys and any income or interest earned thereon shall be expended only as provided in this Escrow Agreement, and shall not, to the extent permitted by applicable law, be subject to levy or attachment or lien by or for the benefit of any creditor of either Lessor or Lessee.

Section 3.02. Security Interest. The Escrow Agent and the Lessee acknowledge and agree that the Acquisition Fund and all proceeds thereof are being held by the Escrow Agent for disbursement or return as set forth herein. The Lessee hereby grants to the Lessor a first priority perfected security interest in the Acquisition Fund, and all proceeds thereof, and all investments made with any amounts in the Acquisition Fund. If the Acquisition Fund, or any part thereof, is converted to investments as set forth in this Escrow Agreement, such investments shall be made in the name of the Escrow Agent, and the Escrow Agent hereby agrees to hold such investments as bailee for the Lessor so that the Lessor is deemed to have possession of such investments for the purpose of perfecting its security interest.

Section 3.03. Investments Authorized. Moneys held by the Escrow Agent hereunder shall be invested by the Escrow Agent upon order of the Lessee Representative in Qualified Investments (as defined in Section 3.04 hereof) and in investments that do not cause the Lessee to violate its covenants and representations in the EPC Lease and in each of the Lessee's Tax Certificate and Compliance Agreements of even date herewith executed in connection with the EPC Lease and each of the Equipment Schedules. Such investments shall be registered in the name of the Escrow Agent and held by the Escrow Agent. The Escrow Agent may purchase or sell to itself or any affiliate, as principal or agent, investments authorized by this Section. Such investments and reinvestments shall be made giving full consideration for the time at which funds are required to be available, based upon estimated cash flow requirements to be provided by the Lessee Representative. The Escrow

Agent may act as purchaser or agent in the making or disposing of any investment.

Section 3.04. Qualified Investments. “Qualified Investments” are those investments authorized by Sections 6-222 and 6-223 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, and generally consist of: (i) direct general obligations of the United States of America; (ii) general obligations of the agencies and instrumentalities of the United States; (iii) certificates of deposit, time deposits, or demand deposits with any bank or savings institution qualified as a depository of public funds in the State of Maryland, provided that such certificates of deposit, time deposits, or demand deposits, if not insured by the Federal Deposit Insurance Corporation, are fully collateralized by obligations described in Section 6-202 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time; (iv) repurchase agreements collateralized at 102% by obligations described in Clauses (i) and (ii); and (v) certain money market mutual funds that have received the highest possible rating from at least one nationally recognized statistical rating organization. In no event shall “Qualified Investments” include any investments other than those permitted by Sections 6-222 and 6-223 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time.

Section 3.05. Disposition of Investments. Any income received on the investment of moneys held by the Escrow Agent hereunder shall be credited to the Acquisition Fund.

Section 3.06. Accounting. The Escrow Agent shall furnish to the Lessee and the Lessor or their respective assignees, no less often than quarterly, an accounting of all investments made by the Escrow Agent. The Escrow Agent shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with this Escrow Agreement, except only for its own willful misconduct or negligence.

Section 3.07. Valuation and Disposition of Investments. For the purpose of determining the amount in the Acquisition Fund, all Qualified Investments credited to such fund shall be valued at cost (exclusive of accrued interest after the first interest payments following purchase). The Escrow Agent may sell at the best price obtainable, or present for redemption, any Qualified Investment so purchased by the Escrow Agent, whenever it shall be necessary in order to provide moneys to meet any required payment, transfer, withdrawal, or disbursement from the Acquisition Fund to which any Qualified Investment is credited, and the Escrow Agent shall not be liable or responsible for any loss resulting from such investment, except only for its own willful misconduct or negligence.

Section 3.08. Termination. This Escrow Agreement shall terminate upon the occurrence of the final distribution of all moneys in the Acquisition Fund.

ARTICLE IV THE ESCROW AGENT

Section 4.01. Compensation of Escrow Agent. The Lessor shall pay, from its own funds and not from any fund created hereunder, an annual fee of \$_____ to the Escrow Agent for its services under this Escrow Agreement.

Section 4.02. Removal of Escrow Agent. The Lessee and the Lessor, by written agreement between themselves, may by written request, at any time and for any reason, remove the Escrow Agent and any successor thereto, and shall thereupon appoint a successor or successors thereto, but any such successor shall be a bank or trust company having a combined capital (exclusive of borrowed capital) and surplus of at least Ten Million Dollars (\$10,000,000), and be subject to supervision or examination by federal or state authority. If such bank or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purposes of this Section the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus set forth in its most recent report of condition so published.

Section 4.03. Resignation of Escrow Agent. The Escrow Agent or any successor may at any time resign by giving written notice to the Lessee or Lessor of its intention to resign and of the proposed date of resignation, which shall be a date not less than 60 days after such notice, unless an earlier resignation date and the appointment of a successor Escrow Agent shall have been or are approved by Lessee and Lessor. Upon receiving such notice of resignation, the Lessee and Lessor shall promptly appoint a successor Escrow Agent by an instrument in writing; provided, however, that in the event the Lessee and Lessor fail to appoint a successor Escrow Agent within 30 days following receipt of such written notice of resignation, the Lessee may appoint a successor Escrow Agent, and in the event the Lessee fails to appoint a successor Escrow Agent within 30 days following the expiration of such initial 30-day period, the resigning Escrow Agent may petition the appropriate court having jurisdiction to appoint a successor Escrow Agent. Any resignation or removal of the Escrow Agent shall become effective upon acceptance of appointment by the successor Escrow Agent.

Section 4.04. Merger or Consolidation. Any company into which the Escrow Agent may be merged or converted, or with which it may be consolidated, or any company resulting from any merger, conversion or consolidation to which it shall be a party, or any company to which the Escrow Agent may sell or transfer all or substantially all of its corporate trust business (provided that such company shall be eligible under Section 4.02), shall be the successor to the Escrow Agent without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding. The Escrow Agent shall promptly give notice to the Lessee and the Lessor or their respective assignees of any such merger, conversion or consolidation.

Section 4.05. Protection and Rights of the Escrow Agent.

(a) The Escrow Agent shall be protected and shall incur no liability in acting or proceeding in good faith upon any resolution, notice, telegram, request, consent, waiver, certificate, statement, affidavit, voucher, bond, requisition, or other paper or document that it shall, in good faith, believe to be genuine and to have been passed or signed by the proper person or to have been prepared and furnished pursuant to any of the provisions of this Escrow Agreement and the Escrow Agent shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements. The Escrow Agent may consult with counsel, who may be counsel to the Lessor or the Lessee, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith in accordance therewith.

(b) Whenever in the administration of its duties under this Escrow Agreement, the Escrow Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed), shall be deemed to be conclusively proved and established by the certificate of the Lessee Representative or the Lessor, and such certificate shall be full warranty to the Escrow Agent for any action taken or suffered under the provisions of this Escrow Agreement upon the faith thereof, but in its discretion the Escrow Agent may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

(c) The recitals, statements, and representations by the Lessee and the Lessor continued in this Escrow Agreement shall be taken and construed as made by and on the part of the Lessee and the Lessor, as the case may be, and not by the Escrow Agent, and the Escrow Agent does not assume, and shall not have, any responsibility or obligation for the correctness of any thereof.

(d) The Escrow Agent may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers, and shall be entitled to rely on the advice of counsel concerning all matters of trust and its duty hereunder, and the Escrow Agent shall not be answerable for default or misconduct of any such attorney, agent, or receiver selected by it with reasonable care. The Escrow Agent shall not be answerable for the exercise of any discretion or power under this Escrow Agreement or for anything whatsoever in connection with the funds and accounts established hereunder, except only for its own willful misconduct or negligence.

ARTICLE V
ASSIGNMENT; AMENDMENTS

Section 5.01. Assignment. Except as provided in Article IV hereof and below, the rights and duties of each of the parties under this Escrow Agreement shall not be assignable to any person or entity without the written consent of all the other parties. Notwithstanding the above, the Lessor may freely assign all or any part of its interest in this Escrow Agreement and the Acquisition Fund established hereunder in connection with an assignment by Lessor of the EPC Lease, subject to the

provisions contained therein.

Section 5.02. Amendments. This Escrow Agreement may be amended only in writing by agreement among all of the parties.

ARTICLE VI COVENANTS; FURTHER ASSURANCES

Section 6.01. Compliance with and Enforcement of Escrow Agreement. The Lessee covenants and agrees to perform all obligations and duties imposed on it under this Escrow Agreement.

Section 6.02. Lease. The Lessor and the Lessee covenant and agree to perform all their respective obligations and duties under the EPC Lease.

Section 6.03. Further Assurances. The Lessor and the Lessee will make, execute, and deliver any and all such further resolutions, instruments, and assurances as reasonably may be necessary or proper to carry out the intention or to facilitate the performance of this Escrow Agreement, and for better assuring and confirming the rights and benefits provided herein.

ARTICLE VII DEFAULT AND TERMINATION

Section 7.01. Default and Termination.

(a) The Lessor shall have the right to terminate this Escrow Agreement upon an Event of Default under the EPC Lease. Upon written notice and direction from Lessor or its assignee to the Escrow Agent of such occurrence, the Escrow Agent shall pay and/or transfer to the Lessor or its assignee all moneys and/or investments in the Acquisition Fund in accordance with Section 2.05(b).

(b) In the event of failure by the Lessee or the Escrow Agent to observe and perform any covenant, condition, or agreement on its part to be observed or performed under this Escrow Agreement, any non-defaulting party hereto shall have all of the rights and remedies now or hereafter existing at law or in equity against the defaulting party.

(c) No delay or omission to exercise any such right or power accruing upon any default hereunder 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.

ARTICLE VIII LIMITATION OF LIABILITY

Section 8.01. Limited Liability of Escrow Agent. The Escrow Agent shall have no obligation or liability to any of the other parties with respect to this Escrow Agreement or the failure or refusal of any other party to perform any covenant or agreement made by any of them under this Escrow Agreement or the EPC Lease, but shall be responsible solely for the business-like performance of the duties expressly imposed upon the Escrow Agent hereunder. The recitals of facts, covenants, and agreements herein contained pertaining to the Lessee and the Lessor shall be taken as statements, covenants, and agreements of the Lessee or the Lessor (as the case may be), and the Escrow Agent assumes no responsibility for the correctness of the same, and makes no representations as to the validity or sufficiency of this Escrow Agreement, and shall incur no responsibility in respect thereof, other than in connection with the duties or obligations herein imposed upon it. The Escrow Agent shall not be liable in connection with the performance of its duties hereunder except for its own negligence or willful misconduct.

Section 8.02. Indemnification. To the extent permitted by applicable law and subject to appropriations and the general requirements of public policy, the Lessee agrees to indemnify and save the Escrow Agent harmless from and against all claims, suits, and actions brought against it, or to which it is made a party, and from all losses and damages suffered by it as a result thereof, where and to the extent of such claim, suit, or action arises in connection with this Escrow Agreement, the transactions described herein and in the EPC Lease, or the Escrow Agent's employment as an escrow agent by Lessee and Lessor, including but not limited to claims, suits, or actions arising out of the ownership, use, or operation of the Equipment by Lessee, and excluding claims, suits, or actions arising from events solely and directly attributable to acts of the Lessor. Such indemnification shall not extend to claims, suits, and actions brought against the Escrow Agent for failure to perform and carry out the duties specifically imposed upon and to be performed by it pursuant to this Escrow Agreement or for any claims, suits and actions arising against the Escrow Agent due to its own negligence or willful misconduct. The indemnification arising under this paragraph shall end upon the termination of this Escrow Agreement, except for any matters that arise prior to the date of termination.

Section 8.03. Discretion of Escrow Agent to File Civil Action in the Event of Dispute. If the Lessor or the Lessee are in disagreement about the interpretation of this Escrow Agreement, or about the rights and obligations, or the propriety of any action contemplated by the Escrow Agent hereunder, the Escrow Agent may, but shall not be required to, file an appropriate civil action to resolve the disagreement. The Escrow Agent shall be indemnified by Lessee in accordance with Section 8.02 for all costs in connection with such civil action, and shall be fully protected in suspending all or part of its activities under this Escrow Agreement until a final judgment in such action is received. The indemnification arising under this paragraph shall end upon the termination of this Escrow Agreement, except for any matters that arise prior to the date of termination.

Section 8.04. Opinion of Counsel. Before being required to take any action, the Escrow Agent may require (i) an opinion of counsel acceptable to the Escrow Agent, which counsel may be counsel to any of the parties hereto, and which opinion shall be made available to the other parties hereto upon request, or (ii) a verified certificate of any party hereto, or (iii) both (i) and (ii) concerning the proposed action. If it does so in good faith, the Escrow Agent shall be absolutely protected in relying thereon.

Section 8.05. Limitation of Rights to Parties. Nothing in this Escrow Agreement, expressed or implied, is intended or shall be construed to give any person other than the Lessee, Lessor, or the Escrow Agent any legal or equitable right, remedy, or claim under or in respect of this Escrow Agreement or any covenant, condition, or provision hereof; and all such covenants, conditions, and provisions are and shall be for the sole and exclusive benefit of the Lessee, the Lessor and the Escrow Agent.

ARTICLE IX MISCELLANEOUS

Section 9.01. Records. The Escrow Agent shall keep complete and accurate records of all moneys received and disbursed under this Escrow Agreement, which shall be available for inspection by the Lessee, the Lessor, or the agent of either of them, at any time during regular business hours.

Section 9.02. Notices. All written notices to be given under this Escrow Agreement shall be given by mail to the party entitled thereto at its address set forth in the attached Exhibit B, or at such address as the party may provide to the other parties in writing from time to time. Any such notice shall be deemed to have been received 72 hours after its deposit in the United States mail in registered or certified form, with postage fully prepaid.

Section 9.03. Governing Law. This Escrow Agreement shall be construed and governed in accordance with the laws of the State of Maryland.

Section 9.04. Partial Invalidity. Any provision of this Escrow Agreement found to be prohibited by law shall be ineffective only to the extent of such prohibition, and shall not invalidate the remainder of this Escrow Agreement.

Section 9.05. Binding Effect; Successors. This Escrow Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Whenever in this Escrow Agreement any party hereto is named or referred to, such references shall be deemed to include the successors or assigns thereof, and all covenants and agreements contained in this Escrow Agreement by or on behalf of any party hereto shall bind and inure to the benefit of the successors and assigns thereof whether so expressed or not.

Section 9.06. Execution in Counterparts. This Escrow Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

Section 9.07. Headings. The headings or titles of the several Articles and Sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction, or effect of this Escrow Agreement. All references herein to “Articles”, “Sections”, and other subdivisions are to the corresponding Articles, Sections, or subdivisions of this Escrow Agreement; and the words “herein,” “hereof,” “hereunder,” and other words of similar import refer to this Escrow Agreement as a whole and not to any particular Article, Section, or subdivision.

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement as of the date and year first above written.

as Escrow Agent

By:_____

Name:_____

Title:_____

as Lessor

By:_____

Name:

Title:

MARYLAND STATE TREASURER
as Lessee

By:_____

Bernadette T. Benik

Chief Deputy Treasurer

Approved for form and legal sufficiency
for the State of Maryland:

Counsel to the State Treasurer

Agency Name:
Request No.

Payment Request Form

Re: January 2011 Energy Performance Contract Lease-Purchase Agreement dated as of January 20, 2011, by and between _____, as Lessor and the State of Maryland, acting by and through the Maryland State Treasurer’s Office, as Lessee (the “EPC Lease”)

In accordance with the terms of the Escrow Agreement dated as of _____ (the “Escrow Agreement”) by and among _____ (“Lessor”), the State of Maryland (“Lessee”) and _____ (the “Escrow Agent”), the undersigned hereby requests the Escrow Agent to pay the following persons the following amounts from the sub-account of the Equipment Acquisition Fund created under the Escrow Agreement (the “Acquisition Fund”) for the following purposes.

Payee’s Name and Address	Invoice Number	Dollar Amount	Purpose

The undersigned hereby certifies as follows:

(i) An obligation in the stated amount has been incurred by Lessee, and the same is a proper charge against the Acquisition Fund for costs relating to the Equipment identified in the EPC Lease, and has not been paid. Attached hereto is a duplicate original invoice with respect to such obligation.

(ii) The undersigned, as Lessee Representative, has no notice of any vendor’s, mechanic’s or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made.

(iii) This requisition contains no item representing payment on account, or any retained percentages which Lessee is, at the date hereof, entitled to retain.

(iv) The Equipment is insured in accordance with the EPC Lease.

(v) No Event of Default, and no event which with notice or lapse of time, or both, would become an Event of Default, under the EPC Lease has occurred and is continuing as of the date hereof.

(vi) The disbursement is being requested during the Acquisition Period set forth in the applicable Equipment Schedule.

Dated: _____

LESSEE:

Maryland State Treasurer's Office

By: _____

Name: _____

Title: _____

Disbursement of funds from the sub-account of the Acquisition Fund in accordance with the foregoing Payment Request Form hereby is authorized.

_____,
as Lessor under the EPC Lease

By: _____

Name: _____

Title: _____

**JANUARY 2011 ENERGY PERFORMANCE CONTRACT
LEASE-PURCHASE AGREEMENT**

CERTIFICATE OF THE STATE OF MARYLAND

I HEREBY CERTIFY as of the __ day of _____ 2011, that I am the Chief Deputy Treasurer of Maryland (the “Treasurer”), acting on behalf of the various departments or agencies (the “Agencies”) of the State of Maryland (the “State”) using the Equipment identified in the hereinafter defined Equipment Schedule (the “Equipment”); that I hold the office set forth below, and that I hereby execute and deliver this Certificate for the benefit of all persons interested in the execution and delivery of that certain January 2011 Energy Performance Lease-Purchase Agreement (the “EPC Lease”) dated as of January 20, 2011, and Equipment Schedule Nos. 11-01-#1 and 11-01-#2 (the “Equipment Schedules”) thereto, each dated as of _____ __, 2011, by and between _____ and the State. Terms defined in the EPC Lease and the Equipment Schedules are used in this Certificate with the same meanings as used therein. I do further certify as follows:

1. I am the Chief Deputy Treasurer of the State, and in such capacity, I am familiar with and have personal knowledge of the matters hereinafter stated.
2. The signature appearing opposite my name is my true and genuine signature:

<u>OFFICE</u>	<u>NAME</u>	<u>SIGNATURE</u>
Chief Deputy Treasurer	Bernadette T. Benik	

3. The EPC Lease, the Equipment Schedules, and all certificates and other documents relating to the lease and purchase of the Equipment (collectively, the “Financing Documents”), to which the State is a party, as executed and delivered or as approved, as appropriate, are in compliance with the State’s operating budget as proposed for the fiscal year 2011, which was previously validly adopted and is in full force and effect as of July 1, 2010, subject to such changes and revisions therein as may be approved by the representatives of the State executing the same. In making this certification, I have relied upon the representations of the appropriate official or officials of the Department of Budget and Management (the “Department”), and I am personally aware of no fact or other matter that would make my reliance upon the representations of the Department unreasonable.

4. To the best of my knowledge, (i) the representations and warranties of the State in the Financing Documents are true and correct on and as of the date hereof as though made on and as of the date hereof, and (ii) the State has complied with all terms on its part to be performed or satisfied by it under the EPC Lease at or prior to the date hereof.

5. To the best of my knowledge no litigation is pending or, to my knowledge, threatened in any court to restrain or enjoin the execution or delivery of the Financing Documents or the payment of the Lease Payments, or in any way contesting or affecting the Financing Documents, the operating budget, or the Lease, or contesting the powers of the State or contesting the authorization of the Financing Documents.

6. The officials of the Department, the Treasurer, and the Agencies will take all actions necessary to appropriate or otherwise provide for all amounts required to be paid under the Lease during the State's fiscal period ending June 30, 2011, and to the best knowledge and belief of the Department, the Treasurer, and the Agencies, there is no reason to believe that the State will not make such appropriation or have sufficient unexhausted funds to make such payments as the same become due.

7. The Equipment will be used by the State only for the purpose of performing one or more of its governmental or proprietary functions consistent with the permissible scope of its authority. No more than 10% of the total use of any portion of the Equipment leased on behalf of any State agency shall be used, on an average yearly basis, directly or indirectly in any trade or business carried on by any person other than Lessee or be used by an organization described in Section 501(c)(3) of the Code, provided that any such use by a nongovernmental trade or business is not related or disproportionate to the governmental use shall not exceed 5% of the total use of such Equipment on an average yearly basis.

8. The Equipment is essential to the proper, efficient, and economic functioning of the State and to the services that the State provides. The State has an immediate need for and expects to make immediate use of substantially all the Equipment, which use is not temporary or expected to diminish in the foreseeable future.

9. The State will prepare or cause to be prepared and will file or cause to be filed a Form 8038-G, if applicable, in the manner and within the time provided by Section 149(e) of the Internal Revenue Code of 1986, as amended.

10. The Federal Taxpayer Identification Number of the State is 35-2384634.

IN WITNESS WHEREOF, I have executed this Certificate as of the day and year first above written.

WITNESS:

Kina Johnson-Malcolm
Debt and Lease Administrator

By: _____
Bernadette T. Benik
Chief Deputy Treasurer

EQUIPMENT SCHEDULE NO. _____-#_____

TO

**JANUARY 2011 ENERGY PERFORMANCE CONTRACT
LEASE-PURCHASE AGREEMENT**

[AGENCY NAME]

THIS EQUIPMENT SCHEDULE NO. _____, dated as of _____, 2011 (the “Equipment Schedule”), is executed by and between _____ (“Lessor”), and the **STATE OF MARYLAND** (“Lessee”), acting by and through the **STATE TREASURER’S OFFICE** (the “Office”), on behalf of the _____.

WITNESSETH:

WHEREAS, Lessor and Lessee have previously entered into that certain January 2011 Energy Performance Lease-Purchase Agreement dated as of January 20, 2011, (the “EPC Lease”) (unless otherwise defined herein all terms having a defined meaning in the EPC Lease shall have the same meaning when used herein), which EPC Lease provides for the execution and delivery of one or more Equipment Schedules for the purpose of identifying the Equipment to be leased and purchased pursuant to the EPC Lease and specifying certain terms and conditions applicable to the EPC Lease and purchase of such Equipment; and,

WHEREAS, Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, the items of Equipment in Exhibit A described in the terms and conditions of the EPC Lease and as herein provided.

NOW, THEREFORE, in consideration of the premises, Lessor and Lessee hereby agree as follows:

1. EQUIPMENT. The items of Equipment described in Exhibit A shall be subject to the terms and conditions of the EPC Lease, the terms of which EPC Lease are incorporated by reference herein and made a part of this Equipment Schedule. In the event of a conflict between the terms of the EPC Lease and of this Equipment Schedule, the terms of this Equipment Schedule shall prevail.

2. LOCATION OF EQUIPMENT. The Equipment shall be kept at the Equipment Location (herein so called) set forth on Exhibit A.

3. EPC LEASE TERM. The EPC Lease Term (herein so called) with respect to the Equipment described in Exhibit A shall commence on the date of acceptance (the “Acceptance Date”) as set forth in the Acceptance Certificate (Ex. C attached hereto), and shall continue for an

initial term ending on July 1, 2011. Unless earlier terminated pursuant to the terms of the Lease, the EPC Lease Term hereunder shall automatically renew for 14 additional terms commencing on July 2 of each year and ending on the following July 1.

4. LEASE PAYMENTS. (a) Lessee hereby agrees to make the Lease Payments (herein so called) to Lessor in such amounts and at such times as set forth on Exhibit B.

(b) Upon the exercise by Lessee of any right granted under the Lease to terminate the EPC Lease or this Equipment Schedule prior to the expiration of the term thereof and hereof, Lessee agrees to pay to Lessor the applicable Principal Outstanding balances as shown on Exhibit B for the lease and purchase of the Equipment.

(c) In the event of a termination or nonrenewal of the EPC Lease Term pursuant to Section 5, Section 25, or Section 26 of the EPC Lease, moneys shall be applied first to the payment of all obligations of Lessee then due and owing hereunder, and then to the payment of the Principal Outstanding balance as set forth in Exhibit B applicable at the time of such termination or nonrenewal.

(d) The principal components of the Lease Payments bear interest at the total interest cost of _____% per annum.

5. REPRESENTATIONS AND WARRANTIES. By execution and delivery of this Equipment Schedule, Lessee confirms that all representations and warranties contained in Section 7 of the Lease are true and correct as of the date hereof. Further, Lessee represents and warrants as of the date hereof that: (i) Lessee reasonably has sufficient appropriations or other funds legally available to pay all Lease Payments and other amounts due hereunder for the fiscal period ending on June 30, 2011; and, (ii) the use of the Equipment by Lessee is essential to the Lessee's proper, efficient, and economic operation and will be used for the purposes set forth on Exhibit C.

6. LIMITATIONS ON WARRANTIES. Lessee represents, warrants, acknowledges, and agrees that the Equipment is of a size, design, and capability selected by Lessee; that Lessee is satisfied that the Equipment is suitable for its purpose; that Lessor is neither a manufacturer nor a vendor of the Equipment; and that **LESSOR HAS NOT MADE, AND DOES NOT HEREBY MAKE, ANY REPRESENTATION, WARRANTY, OR COVENANT, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, QUALITY, DURABILITY, DESIGN, OPERATION, FITNESS FOR USE, OR SUITABILITY OF THE EQUIPMENT IN ANY RESPECT WHATSOEVER OR IN CONNECTION WITH OR FOR THE PURPOSES AND USES OF LESSEE, OR ANY OTHER REPRESENTATION, WARRANTY, OR COVENANT OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT THERETO, AND LESSOR SHALL NOT BE OBLIGATED OR LIABLE FOR ACTUAL, INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES OF OR TO LESSEE OR ANY OTHER PERSON OR ENTITY ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE EQUIPMENT AND THE MAINTENANCE THEREOF.**

7. EQUIPMENT COST. The cost of the improvements and Equipment described on

Exhibit A shall not exceed \$_____ of which the Equipment Cost (herein so called) of \$_____ is financed hereunder. At the closing date, Lessor shall deposit \$_____ in an Equipment Acquisition Fund created under that certain Escrow Agreement established by and among Lessor, and Lessee dated _____, 2011 (the "Escrow Agreement") for payment of Equipment Costs. Disbursements from the Equipment Acquisition Fund shall be made as provided in the Escrow Agreement beginning on the Commencement Date and continuing through _____ (the "Acquisition Period"). To the extent the cost of the improvements and Equipment exceed the amount of the Equipment Cost financed hereunder plus accrued interest, Lessee shall pay such excess costs to the energy performance contractor (the "EP Contractor") from other available funds on the corresponding Acquisition Date(s).

8. COVENANTS, DELIVERY, AND ACCEPTANCE. (a) Lessee agrees to use its best efforts, and as of the date hereof, reasonably expects, to acquire the Equipment on or before _____.

(b) Lessee will cause the Equipment to be delivered and installed at the Equipment Location. Lessee will accept the Equipment as soon as it has been delivered, installed and is operational, or in the event that the manufacturer or vendor allows a pre-acceptance test period, as soon as the test period has expired.

9. REQUEST FOR PAYMENT. Immediately following acceptance, Lessee will request that payment be made to the EP Contractor by executing, if required, and delivering to Lessor the following:

- (a) a request that payment be made to the EP Contractor;
- (b) a true copy of the applicable purchase order and, where applicable, a duplicate original of any change order approved by Lessee increasing the Equipment Cost in an amount in excess of the original purchase order price;
- (c) bills of sale for any component of the Equipment for which a bill of sale may be delivered;
- (d) a true copy of the EP Contractor's statement or invoice;
- (e) a duly executed Uniform Commercial Code Financing Statement with respect to the Equipment; and
- (f) an Acceptance Certificate and an Equipment Use Certificate as set forth in Exhibits C and D, respectively.

10. PAYMENT. Upon receipt of the items required by Section 9 hereof in a form acceptable to Lessor, Lessor shall make payment to the EP Contractor and shall certify the fact of such payment to Lessee.

IN WITNESS WHEREOF, Lessee and Lessor have executed this Equipment Schedule as of the date and year first above written.

**STATE OF MARYLAND
acting by and through
the State Treasurer's Office**

By: _____
Bernadette T. Benik
Chief Deputy Treasurer

Lessor Name

By: _____
Name:
Title:

EXHIBIT A

TO

EQUIPMENT SCHEDULE NO. ____-#__

**JANUARY 2011 ENERGY PERFORMANCE CONTRACT
LEASE-PURCHASE AGREEMENT**

Equipment List

EXHIBIT B
EQUIPMENT SCHEDULE NO. _____
JANUARY 2011 ENERGY PERFORMANCE CONTRACT
LEASE-PURCHASE AGREEMENT

Exhibit B

Days	142
Financing Amount	0.00
Highest Balance	0.00
Closing Date	2/9/2011
Payment Frequency	2 times a year
Convention	30/360
Interest Rate	0.000%
Term	28
Interest during construction	0.00

DUE DATE		LEASE PAYMENT	PRINCIPAL	INTEREST ACCRUED	PRINCIPAL OUTSTANDING
					0.00
01-Jul-11	Cap. Interest			0.00	0.00
01-Jan-12	Cap. Interest.			0.00	0.00
01-Jul-12	Amtz. Starts	0.00	0.00	0.00	0.00
01-Jan-13		0.00	0.00	0.00	0.00
01-Jul-13		0.00	0.00	0.00	0.00
01-Jan-14		0.00	0.00	0.00	0.00
01-Jul-14		0.00	0.00	0.00	0.00
01-Jan-15		0.00	0.00	0.00	0.00
01-Jul-15		0.00	0.00	0.00	0.00
01-Jan-16		0.00	0.00	0.00	0.00
01-Jul-16		0.00	0.00	0.00	0.00
01-Jan-17		0.00	0.00	0.00	0.00
01-Jul-17		0.00	0.00	0.00	0.00
01-Jan-18		0.00	0.00	0.00	0.00
01-Jul-18		0.00	0.00	0.00	0.00
01-Jan-19		0.00	0.00	0.00	0.00
01-Jul-19		0.00	0.00	0.00	0.00
01-Jan-20		0.00	0.00	0.00	0.00
01-Jul-20		0.00	0.00	0.00	0.00
01-Jan-21		0.00	0.00	0.00	0.00
01-Jul-21		0.00	0.00	0.00	0.00
01-Jan-22		0.00	0.00	0.00	0.00
01-Jul-22		0.00	0.00	0.00	0.00
01-Jan-23		0.00	0.00	0.00	0.00
01-Jul-23		0.00	0.00	0.00	0.00
01-Jan-24		0.00	0.00	0.00	0.00
01-Jul-24		0.00	0.00	0.00	0.00
01-Jan-25		0.00	0.00	0.00	0.00
01-Jul-25		0.00	0.00	0.00	0.00
01-Jan-26		0.00	0.00	0.00	0.00
Total		<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>

EXHIBIT C

TO

EQUIPMENT SCHEDULE NO. _____

**TO JANUARY 2011 ENERGY PERFORMANCE CONTRACT LEASE-PURCHASE
AGREEMENT**

[PLACE YOUR AGENCY NAME HERE]

ACCEPTANCE CERTIFICATE

In accordance with the terms of the Equipment Schedule referenced above, the undersigned official, on behalf of the Lessee, hereby certifies and represents to, and agrees with, Lessor as follows:

A. An obligation has been incurred in connection with the Equipment described on Exhibit A, which is a proper charge against the Equipment Acquisition Fund for costs relating to the Equipment, and has not been paid. A duplicate original invoice for such obligation is attached hereto.

B. Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the work reflected on the attached invoice effective the date hereof.

C. The Equipment described in Exhibit A is essential to the proper, efficient, and economic operations of the above-referenced department or agency of the State of Maryland. The Equipment will be used by Lessee for the purpose of performing one or more of Lessee's governmental functions consistent with the permissible scope of Lessee's authority.

[PLACE YOUR AGENCY NAME HERE]

By: _____

(Name) _____

(Title) _____

(Phone) _____

Date: _____, 20__

EXHIBIT D

TO

EQUIPMENT SCHEDULE NO. _____

**JANUARY 2011 ENERGY PERFORMANCE CONTRACT LEASE-PURCHASE
AGREEMENT**

[PLACE YOUR AGENCY NAME HERE]

EQUIPMENT USE CERTIFICATE

1. Will all proceeds of this financing of your Agency's Equipment be used to make payment to the vendor(s) of that Equipment?

Yes _____ No _____

If your answer to Question 1 is "no", please complete parts (a) and (b); if your answer to Question 1 is "yes", please go to Question 2.

1.(a) What is the amount of proceeds of this financing that will not be used to make payment to the Equipment vendor(s)?

1.(b) What is the intended use of financing proceeds that will not be paid to the Equipment vendor(s)? _____

_____.

(Total amount must equal amount identified in response to Question 1.(a)).

2. Will any item(s) of Equipment to be financed be used by any person or organization other than the State or the Agency? (For purposes of this question, property should be considered "used by any person or organization" if such person or organization owns, leases, occupies, manages, or in any other way uses or receives benefits from the Equipment).

Yes _____ No _____

If your answer to Question 2 is "yes", please complete parts (a) through (f); if your answer to Question 2 is "no", please go to Question 3.

2.(a) Please indicate the item(s) of Equipment and cost thereof that will be used by any person or organization other than the State or the Agency: _____

2.(b) Please describe the use: _____

2.(c) Will the person or organization use the item(s) of Equipment on an equal basis with the general public? (For purposes of this question, "general public" would include an Agency's clients, students, and other similar user classes that are granted use of the Equipment on a nondiscriminatory basis such as first-come-first-served, lottery, etc.)

Yes _____ No _____

2.(d) If "yes" to Question 2.(c), please describe:

(i) The user class: _____

(ii) The basis for user selection: _____

2.(e) Will there be any direct or indirect payments by any person or organization (other than the State or the Agency) back to the State, any of its agencies, or any other governmental unit with respect to the use of any item(s) of Equipment to be financed? (Direct or indirect payments may take the form of loan repayments, rental payments for the use of the Equipment, commissions, profit sharing, etc.).

Yes _____ No _____

2.(f) If yes to Question 2.(e), please describe the payments: _____

3. Will any proceeds of this financing be used to provide temporary financing in anticipation of the receipt of other moneys (for example, a federal grant) that are expected to be received for the lease or purchase of item(s) of Equipment to be financed by this financing?

Yes _____ No _____

3.(a) If yes to Question 3., please describe the other funds that are anticipated,

including the expected amount and date of their receipt: _____

_____.

4. Will any of the proceeds of this Equipment financing be used to pay the principal of, or interest on, any prior issue of governmental obligations such as bonds, equipment leases, installment sales agreements, or the like?

Yes _____ No _____

4.(a) If yes to Question 4, please describe the prior issue(s) governmental obligations: _____

_____.

5. Will any of the proceeds of this Equipment financing be used to replace any proceeds of an earlier issue of governmental obligations, including an earlier equipment lease, that (i) was issued to finance the same item(s) of Equipment, and (ii) the proceeds of which were not expended on the item(s) of Equipment?

Yes _____ No _____

5.(a) If yes to Question 5, please describe the prior proceeds to be replaced, the item(s) of Equipment affected, and the cost thereof: _____

_____.

I HEREBY CERTIFY that I am responsible for approving or authorizing payments for the items to be financed by this Equipment Schedule.

[PLACE YOUR AGENCY NAME HERE]

By: _____

(Name)
(Title)
(Phone)

Date: _____, 20__

**ACKNOWLEDGMENT
and
CERTIFICATION AS TO APPROPRIATION**

THIS ACKNOWLEDGMENT is executed by the _____ (the "Agency") for the purpose of acknowledging that the STATE OF MARYLAND, acting by the and through the STATE TREASURER OF MARYLAND (the "Treasurer") and the DEPARTMENT OF BUDGET AND MANAGEMENT, has entered into this Equipment Schedule and the Lease described herein and that the Agency will be responsible for transferring funds to the Treasurer, and hereby agrees to transfer funds, sufficient to make the Lease Payment set forth on Exhibit "B" in the amounts and at such times as are set forth therein. The Treasurer, moreover, is hereby authorized to charge such Lease Payments to the Agency's account indicated below.

FURTHERMORE, the Agency certifies that funds are included in the budget in an amount sufficient to cover the lease payments as set forth on Exhibit "B" for the current fiscal year, funds are or will be requested to be appropriated for the following fiscal year(s), and appropriations committees of the General Assembly have not disapproved of the procurement of the equipment described in Exhibit "A".

AGENCY _____

By: _____

(Signature)

(Typed name and title)

DATE: _____ Phone _____

Agency Charge Account:

_ _ _ _ Financial Agency	_ - - - - PCA	_ - - - - Object	_ - - - - Index
--------------------------------	------------------	---------------------	--------------------

Appropriation Account:

_ _ _ _ Financial Agency	_ - - - - Appropriation Code	_ - - - - Comptroller's Object	_ - - - - Appropriated Fund
		If applicable: _ _ _ _	
		Agency Object	_ - - - - Agency Fund

Budget submission document page number _____

Not in budget - explanation attached _____ (check if attached)

DBM Use Only

Reviewed by: _____
(Budget Analyst)

STO Use Only

Amount _____

Date: _____

JANUARY 2011 ENERGY PERFORMANCE CONTRACT ASSIGNMENT

This **JANUARY 2011 ENERGY PERFORMANCE CONTRACT ASSIGNMENT** by and between _____ (“Assignee”), having a principal place of business at _____, and the **STATE OF MARYLAND** (the "State"), acting by and through the **STATE TREASURER'S OFFICE** (the "Office") on behalf of the **BOARD OF PUBLIC WORKS**, the **MARYLAND ENERGY ADMINISTRATION**, and the _____ (“Assignor”), is dated as of _____, 2011.

RECITALS

Assignor has entered into an energy performance (“EP”) contract for the benefit of the _____, dated as of _____, 2011 (the “EPC”) with _____ (“EP Contractor”), a copy of which is attached hereto, providing for the delivery of energy-related services to Assignor with respect to certain energy equipment to be financed by Assignor (the “Units”), under that certain January 2011 Energy Performance Contract Lease-Purchase Agreement dated as of January 20, 2011 as amended, between the Office and Assignee (the “EPC Lease”; defined terms in the EPC Lease that are not otherwise defined herein are used herein as defined in the EPC Lease.)

NOW, THEREFORE, the parties hereto agree as follows:

1. Assignor hereby collaterally assigns to Assignee all of Assignor’s right, title and interest in and to the EPC. Assignee hereby accepts such assignment. Assignee hereby appoints Assignor as its agent solely for the purpose of enforcing the EP Contractor’s obligations under the EPC. Assignee does not hereby assume any of Assignor’s liabilities, duties and obligations required on its part under the EPC.
2. Neither Assignor nor the EP Contractor may amend, modify, rescind, or terminate the EPC without the prior express written consent of Assignee, provided, however, that Assignor, consistent with its procurement authority and in the normal course of contract management, without the prior written consent of Assignee, may approve contract modifications that: (a) do not materially change the scope of the EPC; and (2) individually do not change the amount of the EPC or any cost component of the EPC by more than \$50,000.
3. Notwithstanding this assignment, (a) Assignor shall at all times remain liable to the EP Contractor under the EPC to perform all the duties and obligations of the purchaser thereunder to the same extent as if this January 2011 Energy Performance Contract Assignment had not been executed, (b) the exercise by Assignee of any of the rights assigned hereunder shall not release Assignor from its duties or obligations to the EP Contractor under the EPC, and (c) Assignee shall not be obligated to make any payment to the EP Contractor except as provided in the EPC Lease and any related Escrow Agreement.

4. Assignor represents and warrants that (a) Assignor has the right to assign the EPC without the EP Contractor's consent or, if not assignable, consent has been obtained and a copy of which is attached hereto, (b) the right, title and interest of Assignor in the EPC so assigned is and shall be free from all claims, liens, security interests and encumbrances, (c) Assignor will warrant and defend the assignment against claims and demands of all persons, (d) the EPC contains no conditions under which EP Contractor may reclaim title to any Unit after delivery, acceptance and payment therefor, and (e) the EPC is and when this January 2011 Energy Performance Contract Assignment is executed and delivered will be in full force and effect and enforceable in accordance with its terms, and Assignor is not and will not then be in default thereunder.

5. At any time and from time to time, upon the written request of Assignee, Assignor agrees to promptly and duly execute and deliver any and all such further documents and take such further actions as Assignee may reasonably request in order to obtain the full benefits of this January 2011 Energy Performance Contract Assignment and of the rights and powers herein granted.

6. This January 2011 Energy Performance Contract Assignment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties hereto have caused this January 2011 Energy Performance Contract Assignment to be duly executed as of the day and year first written above.

Attest:

Assignee:

LESSOR NAME

By: _____

Name: _____

Title: _____

Witness:

Assignor:

AGENCY NAME

By: _____

Name: _____

Title: _____

Witness:

Approved By:

State of Maryland

**Acting by and through the
State Treasurer's Office**

By: _____

Bernadette T. Benik

Chief Deputy Treasurer

Acknowledged and Accepted:

CONTRACTOR NAME

By: _____

Name: _____

Title: _____

Approved for form and legal
sufficiency for the State of Maryland:

Counsel to the State Treasurer

APPENDIX H

Date

Ladies & Gentlemen:

I have examined an original of a State of Maryland _____ 2011 Energy Performance Contract Lease-Purchase Agreement dated as of _____ (the "Lease"), Equipment Schedules Nos. _____ dated as of _____, between the State of Maryland ("Lessee") and _____ ("Lessor") (collectively, "Equipment Schedule"), and certain other documents executed by Lessee in connection with the Lease (the Lease, the Equipment Schedule, and such other documents are collectively referred to herein as the "Lease Documents").

Based upon such examination and upon such other examination of law and fact as I have deemed necessary or appropriate for purposes of the opinions set forth below, and assuming due execution, as appropriate, of the Lease Documents by Lessor, I am of the opinion, that:

1. Lessee is a "State" within the meaning of Section 103 of the Internal Revenue Code of 1986, as amended;
2. Lessee has full legal right, power and authority to authorize, enter into, execute and deliver the Lease Documents and to perform its duties, covenants, obligations and agreements thereunder;
3. Execution and delivery of the Lease Documents by the State Treasurer and Lessee's performance of the Lease Documents in accordance with their terms have been duly authorized by all necessary action on the part of Lessee and the State Treasurer;
4. The Lease Documents are legal, valid, and binding deferred payment obligations of Lessee enforceable against Lessee in accordance with their terms except as such enforceability may be limited by nonappropriation of funds or by applicable bankruptcy, insolvency, moratorium, reorganization, or similar laws from time to time in effect and equitable principles. In the event Lessor obtains a judgment against Lessee for money damages as a result of an event of default under the Lease, Lessee would be obligated to pay such judgment subject to any budget and appropriation limitations imposed pursuant to Article III, § 52 of the Constitution of Maryland and its implementing statutes;
5. The execution and performance of the Lease Documents does not, to the best of my knowledge, violate any judgment, order, law, or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest, or other encumbrance upon, the Equipment (other than as contemplated by the Lease), or any assets of Lessee pursuant to any indenture, mortgage, deed of trust, bank loan, credit agreement, or other instrument to which Lessee is a party or by which it or its assets may be bound;

6. To the best of my knowledge, there are no actions or proceedings pending or threatened against or affecting Lessee in any court or before any governmental commission, board, or authority, which, if adversely determined, would have a material, adverse effect upon the ability of Lessee to perform its obligations under the Lease Documents;

7. To the best of my knowledge, no further governmental orders, permission, consents, approvals, or authorizations are required to be obtained, and no registrations or declarations are required to be filed in connection with the execution and delivery of the Lease Documents; and

8. To the best of my knowledge, Lessee has complied with all requirements applicable to any of the Lease Documents under the State Finance and Procurement Article of the Annotated Code of Maryland.

This opinion may be relied upon by Lessor's assignees and by _____, special tax counsel retained by the State to render an opinion with respect to the federal income tax consequences of this transaction. Except as expressly provided herein, however, I express no opinion as to any Federal or State tax or securities law matters.

Sincerely,

Counsel to the Treasurer