

## LEASE PURCHASE AGREEMENT

No. 2012(RCBE)-001

This Lease Purchase Agreement (hereinafter referred to as "Agreement") dated and effective as of \_\_\_\_\_, 2012 (the "Effective Date") by and between **Rutherford County, Tennessee** (hereinafter referred to as "Lessee") (Lessor and Lessee are referred to individually as a "Party" and collectively as the "Parties"). Unless the context otherwise clearly requires, the capitalized terms herein shall have the respective meanings set forth in **Exhibit A** for all purposes of this Agreement.

### RECITALS:

**WHEREAS**, Lessee desires to acquire certain equipment improvements to be installed in buildings and on the property owned and operated by the Rutherford County, Tennessee Board of Education (the "School Board"), as more particularly described in **Exhibit B**, hereto (the "Equipment"); and

**WHEREAS**, the School Board has entered into an agreement with Excel Energy Group, Inc. ("Excel"), whereby Excel shall provide the Equipment and perform engineering design services with respect to the Equipment; and

**WHEREAS**, Lessee desires to enter into this Agreement pursuant to the authority provided by the provisions of Tennessee Code Annotated § 7-51-901 *et seq.* for the purpose of financing the acquisition of the Equipment on behalf of the School Board; and

**WHEREAS**, Lessor desires to lease the Equipment to Lessee and Lessee desires to lease the Equipment from Lessor for the benefit of the School Board subject to the terms and conditions of and for the purposes set forth in this Agreement; and

**WHEREAS**, Lessee is authorized under the constitution and laws of the State of Tennessee to enter into this Agreement for the purposes set forth herein;

**NOW, THEREFORE**, for and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

**1. Agreement to Lease Equipment.** Lessor hereby agrees to lease or cause to be leased to Lessee, and Lessee shall lease from Lessor, the Equipment, all on the terms and conditions set forth in this Agreement, to have and to hold for the Agreement Term. Lessee hereby acknowledges and agrees that Lessor shall retain a perfected first priority security interest in the Equipment in accordance with this Agreement. Lessor shall have no obligation to make any disbursement to a Vendor, reimburse Lessee for any payment made to a Vendor, or consent to any request to release funds from escrow, if applicable, for acquisition of the Equipment until Lessor has received, in form and substance satisfactory to Lessor, executed counterparts of all exhibits, instruments and certificates attached hereto, required by any provision of this Agreement, or incorporated herein by reference.

**2. Term and Payments.** The Agreement Term applicable to this Agreement shall commence on the Effective Date hereof and shall terminate upon the earliest to occur of any of the following events: (a) the payment by Lessee of all Rental Payments, Additional Payments, any rebate payments and any other payments required to be paid by Lessee hereunder; or (b) the exercise by Lessee of the option to prepay the Rental Payments owed hereunder in whole; or (c) Lessor's election to terminate this Agreement under Paragraph 13 due to Lessee's default hereunder. Lessee shall pay to Lessor the Rental Payments in lawful money of the United States of America, in the amounts and on the dates set forth in **Exhibit C**. The Rental Payments shall be payable without notice or demand when due at such place as Lessor shall direct in writing. Notwithstanding any dispute between Lessee, Lessor, any Vendor or any other person, Lessee shall make all Rental Payments when due and shall not withhold any Rental Payments pending final resolution of such dispute. The obligation of Lessee to make the Rental Payments enumerated in **Exhibit C** shall be absolute and unconditional in all events

and shall not be subject to any set-off, defense, counterclaim or recoupment for any reason, including Equipment failure or defect; provided, however, and notwithstanding any provision hereof to the contrary, the obligation of the Lessee to make Rental Payments is subject to annual appropriation by the Lessee and failure to annually appropriate such Rental Payments shall not be an Event of Default under Section 13 hereunder and the Agreement shall be terminated.

Interest on this Agreement shall begin to accrue from June 15, 2012.

Lessee shall pay to Lessor as Additional Payments hereunder, in addition to the Rental Payments payable by Lessee, such amounts as Lessor elects to pay under Paragraph 16 hereof. Such Additional Payments shall be billed to Lessee by Lessor from time to time, together with a statement certifying that the amount so billed has been paid by Lessor for one or more of the items described, or that such amount is then payable by Lessor for such items. Reasonable amounts so billed shall be due and payable to Lessor within thirty (30) calendar days after receipt of the bill by Lessee. Lessee shall also pay any required Gross-Up Rent in the event the interest on this Agreement is or becomes taxable.

**3. Compliance with Tennessee Law.** This Agreement is entered under, and is governed by, the provisions of Tennessee Code Annotated § 7-51-901 *et seq.*, and such provisions shall control to the extent any terms of this Agreement may be contrary. Lessee has full power and authority to enter into this Agreement and perform its obligations hereunder, and Lessee has obtained all necessary approvals with respect to this Agreement.

**4. Taxes and Other Governmental Charges.** Lessee shall keep the Equipment free and clear of all levies, liens and encumbrances, except those created under this Agreement. Lessee shall timely pay when due, all charges and taxes, including but not limited to, assessments, license fees, taxes (including sales, use, excise, personal property, ad valorem, stamp, documentary and other taxes) and all other governmental charges, fees, fines or penalties whatsoever, if any, whether payable by Lessor or Lessee, now or hereafter imposed by any governmental body or agency on or relating to the Equipment, the Rental Payments, or the use, registration, rental shipment, transportation, delivery, ownership or operation of the Equipment and on or relating to this Agreement including Gross-Up Rent in the event interest on this Agreement is or becomes taxable. If Lessor pays any charges or taxes for which Lessee is responsible or liable under this Agreement, Lessee shall promptly reimburse Lessor therefore. Lessee shall be required to maintain adequate and full records relating to the Equipment including but not limited to records concerning payments made under this Paragraph 4, and shall provide Lessor and its assigns evidence of any and all payments made pursuant to this Paragraph 4, immediately upon payment thereof and in any event at least annually.

**5. Lessee's Covenants and Representations.** Lessee covenants and represents as follows:

(a) Lessee is a governmental entity and political subdivision of the State.

(b) Lessee represents, and will provide an opinion of its counsel to the effect that it has full power and authority to enter into this Agreement; that this Agreement has been duly authorized, executed, and delivered by Lessee, and is a valid and binding obligation of Lessee enforceable in accordance with its terms; that Lessee is a political subdivision of the State within the meaning Section 103(c) of the Code, and is duly organized, existing and operating under the Constitution and laws of the State; and all requirements for execution, delivery and performance of this Agreement have been, or will be, complied with in a timely manner;

(c) All Rental Payments hereunder have been, and will be, duly authorized and paid when due out of funds then on hand and legally available for such purposes; Lessee will, to the extent permitted by State law and other terms and conditions of this Agreement, include in its budget for each successive fiscal period during the term of this Agreement a sufficient amount to permit Lessee to

discharge all of its obligations hereunder, and Lessee has budgeted and available for the current fiscal period sufficient funds to comply with its obligations hereunder;

(d) There are no pending or threatened lawsuits or administrative or other proceedings contesting the authority for, authorization of, performance of, or expenditure of funds pursuant to, this Agreement;

(e) Information supplied and statements made by Lessee in any financial statement or current budget prior to or contemporaneously with this Agreement are true and correct in all material respects;

(f) Lessee has an immediate need for, and expects to make immediate use of, substantially all the Equipment, which need is not temporary or expected to diminish in the foreseeable future;

(g) Deleted Intentionally.

(h) During the term of this Agreement, Lessee will annually provide Lessor with current financial statements or budgets, as requested, for the ensuing fiscal year, and such other financial information relating to the ability of Lessee to perform its obligations under this Agreement as may be reasonably requested by Lessor;

(i) Lessee has complied with all State bidding requirements as may be applicable to this Agreement or the acquisition of the Equipment;

(j) The Equipment will have a useful life in the hands of Lessee that is in excess of the term of this Agreement;

(k) Lessee will submit to the U. S. Secretary of the Treasury an information reporting statement and other information relating to this Agreement at the times and in the forms required by the Internal Revenue Code of 1986;

(l) Lessee shall not use any monies advanced by Lessor in connection with a lease to reimburse expenditures previously made by Lessee, except in compliance with the requirements of Section 1.150-2 of the Treasury Regulations; and

(m) Lessee hereby represents and warrants that it has not entered into any, and is not aware of the existence of any contracts, agreements, arrangements or understandings with any person or firm that could give rise to any third-party claim for, and has not been previously paid a broker's, finder's or agent's fee or commission or other similar payment in connection with, the negotiations leading to the consummation of this Agreement.

**6. Use and Licenses.** Lessee shall pay and discharge all utility and other operating expenses and shall cause the Equipment to be used only for or in connection with the operation of its governmental functions. Lessee will not use, operate or maintain the Equipment improperly, carelessly or in violation of any applicable law, ordinance, rule or regulation of any governmental authority and shall, at Lessee's expense, obtain all registrations, permits and licenses, if any, required for the lawful use and occupancy of the Equipment.

**7. Repairs, Alterations and Improvements.** Lessee agrees that Lessor shall not be obligated to rebuild, replace, maintain or make any repairs to the Equipment or to any improvements located thereon during the Agreement Term. Lessee may, at its own expense, install or place in or on, or attach or affix to, the Equipment such other equipment or accessories as may be necessary or convenient to use the Equipment for its intended purposes, provided that such other equipment or accessories do not impair or diminish the value or utility of the Equipment. All such other equipment and accessories shall be removed by Lessee upon termination of this Agreement, provided that any resulting damage shall be repaired at Lessee's expense. Any such other equipment or accessories not

removed shall become the property of Lessor. At the expiration or termination of this Agreement, or any extension or renewal thereof, for any reason except Lessee's exercise of its payment option set forth in Paragraph 12, or Lessee's payment in full of all Rental Payments and Additional Payments, if any due hereunder, Lessee shall surrender the Equipment in good condition, allowance being made for ordinary wear and tear from proper use. Without the written consent of Lessor or Excel Energy Group, Inc., Lessee shall not make any other alterations, modifications or improvements to the Equipment except as required or permitted hereunder. Any other alterations, modifications or improvements to the Equipment shall immediately become part of the Equipment, subject to the provisions hereof.

**8. Liens.** Lessee shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, security interest, pledge, lien, charge, encumbrance or claim on or with respect to the Equipment, title thereto or any interest therein, except the respective rights of Lessor and Lessee hereunder.

**9. Damage to or Destruction of Equipment.** Upon transfer of ownership to Lessee, Lessee shall bear the entire risk of loss, damage, theft or destruction of the Equipment from any and every cause whatsoever, and no loss, damage, destruction or other event shall release Lessee from the obligation to pay the full amount of the Rental Payments or from any other obligation under this Agreement. In the event of damage to the Equipment, Lessee will immediately place the same in good repair, with the proceeds of any insurance recovery (including self insurance) applied to the cost of such repair. If Lessee determines that the Equipment has been damaged or destroyed beyond repair, Lessee may, at Lessee's option, elect to pay Lessor all amounts then owed by Lessee to Lessor under the terms of this Agreement, including the Rental Payment due on the next Payment Date and an amount equal to the remaining outstanding principal component of the Rental Payments, as set forth in **Exhibit C**. Upon payment of said amount, this Agreement shall terminate, Lessor's interest in the Equipment shall vest in Lessee, and neither Party shall have any further obligations to the other.

**10. Insurance.** Lessee is self-insured with respect to equipment such as the Equipment under an actuarially sound self-insurance program as described in **Exhibit H** attached hereto. Lessee shall maintain during the Term of this Agreement such actuarially sound self-insurance program and shall provide evidence thereof in form and substance satisfactory to Lessor upon request.

**11. Quiet Possession.** Lessor covenants and warrants that Lessor has the right to make this Agreement and that Lessee shall, during the Agreement Term, have quiet and peaceful possession of the Equipment as against the lawful acts of third parties.

**12. Prepayment Option.** Except as otherwise provided for in this paragraph, Lessee shall have the option to prepay the Rental Payments owed hereunder (in whole but not in part) at any time, by paying the outstanding principal balance of the Rental Payments then outstanding plus accrued interest to the date of prepayment. In the event Lessee exercises its prepayment option under this Paragraph 12, Lessee shall make every effort to provide written notice to Lessor of its intention to exercise its prepayment option at least thirty (30) calendar days prior to the date on which the option is to be exercised; provided however that failure to comply with this notice provision shall not constitute an Event of Default. The closing shall be on the Payment Date or the first Business Day preceding the Payment Date at the office of Lessor or such other place as Lessor may direct in writing. In the event that there are funds remaining in the Equipment Acquisition Fund (as defined in the Escrow Agreement, attached hereto as **Exhibit F**) on the date on which such funds are to be fully disbursed, such remaining funds shall be applied to prepay (in whole or in part) the Rental Payments owed hereunder on any applicable Payment Date.

**13. Default and Lessor's Remedies.** (a) The occurrence of one or more of the following events shall constitute an Event of Default, whether occurring voluntarily or involuntarily, by operation of law or pursuant to any order of any court or governmental agency:

(1) Lessee fails to make any payment hereunder when due or within ten (10) calendar days thereafter;

(2) Lessee fails to comply with any other covenant, condition or agreement of Lessee hereunder for a period of thirty (30) calendar days after notice thereof; provided, that, if Lessee makes a commercially reasonable effort to cure such default during such thirty (30) calendar day period, but will, in good faith, require additional time to complete such cure, no default will be declared so long as Lessee continues to make good faith, commercially reasonable efforts to cure such default, and such default is in any event cured within sixty (60) calendar days;

(3) Any representation or warranty made by Lessee hereunder shall be untrue in any material respect as of the date made;

(4) Deleted Intentionally.

(5) Lessee becomes insolvent; or admits in writing its inability to pay its debts as they mature; or applies for, consents to or acquiesces in the appointment of a trustee, receiver or custodian for Lessee or a substantial part of its assets, including, but not limited to, the Equipment; or, in the absence of such application, consent or acquiescence, a trustee, receiver or custodian is appointed for Lessee or a substantial part of its property, and is not discharged within sixty (60) calendar days; or any bankruptcy, reorganization, debt arrangement, moratorium, or any proceeding under any bankruptcy or insolvency law; or any dissolution or liquidation proceeding is instituted by or against Lessee and, if instituted against Lessee, is consented to or acquiesced in by Lessee or is not dismissed within sixty (60) calendar days.

(b) Upon the occurrence of any Event of Default specified herein, Lessor may, at its sole discretion, exercise any or all of the following remedies:

(1) Enforce this Agreement by appropriate action to collect amounts due or to become due hereunder, by acceleration or otherwise, or to cause Lessee to perform its other obligations hereunder in which event Lessee shall be liable for all Costs and Expenses incurred by Lessor;

(2) Deleted Intentionally.

(3) Terminate this Agreement and repossess the Equipment, in which event Lessee shall be liable for any amounts payable hereunder through the date of such termination and all Costs and Expenses incurred by Lessor in connection therewith; or

(4) Pursue and exercise any other remedy available at law or in equity, in which event Lessee shall be liable for any and all Costs and Expenses incurred by Lessor in connection therewith.

**14. Termination.** Unless Lessee has paid all Rental Payments and any Additional Payments due hereunder or properly exercised its prepayment option pursuant to Paragraph 12 hereof, Lessee shall, upon any earlier termination hereof pursuant to the terms of this Agreement, surrender the Equipment to Lessor unencumbered and in at least as good condition and repair as when delivered to Lessee, ordinary wear and tear resulting from proper use excepted. Nothing in this paragraph shall be construed to create any right of Lessee to terminate this Agreement, except in those circumstances otherwise set forth in this Agreement.

**15. Assignment.** Lessee will not either: (i) assign, transfer, pledge, hypothecate, grant any security interest in or otherwise dispose of this Agreement or the Equipment or any interest in this Agreement or the Equipment, except as otherwise specifically provided in this Paragraph 15; or (ii) sublet or lend the Equipment or permit it to be used by anyone other than Lessee or Lessee's employees. Lessor may, at any time and from time to time or to the extent permitted by law, without obtaining the consent of Lessee, assign, transfer or otherwise convey all or any part of its interest in

the Equipment, this Agreement, the Escrow Agreement, or the Equipment Acquisition Fund, including Lessor's rights to receive the Rental Payments, Additional Payments or any part thereof (in which event Lessee agrees to make all Rental Payments and Additional Payments thereafter to the assignee(s) designated by Lessor) and to exercise any other rights and remedies of Lessor set forth herein or therein. Lessor is specifically granted the right to: (i) assign, transfer, deposit or otherwise deliver this Agreement to a Custodian pursuant to a Custodial Agreement delivered by Lessor, or its assignees, and (ii) serialize all of the payments to be made by Lessee under this Agreement and sell Certificates representing the right of the holder thereof to receive a portion of the Rental Payments being made by Lessee, to one or more purchasers. Any such assignment, transfer or conveyance may be to such Custodian for the benefit of the owners of the Certificates. No such assignment, transfer or conveyance shall be effective until Lessee's Registration Agent shall have received a written notice of assignment (in substantially the form of **Exhibit E**) that discloses the name and address of each such assignee; provided, however, that if such assignment is made to a Custodian for owners of Certificates, it shall thereafter be sufficient that a copy of the Custodial Agreement shall have been deposited with Lessee's Registration Agent until Lessee's Registration Agent shall have been advised that such Custodial Agreement is no longer in effect. During the term of this Agreement, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149(a) of the Code. For this purpose, Lessee appoints Lessor to act as its Registration Agent. Lessor agrees on Lessee's behalf to maintain such record of all assignments, and to provide a copy of such record to Lessee. Lessee agrees, if so requested, to acknowledge each such assignment in writing within fifteen (15) calendar days after request therefor, but such acknowledgment shall in no way be deemed necessary to make any assignment effective.

Notwithstanding anything herein to the contrary, if the Lessee deems it necessary to sell or otherwise dispose of any item of Equipment, the Lessee may dispose of such Equipment, and the Lessor shall release its lien upon such Equipment if the Lessee provides substitute collateral of equal or greater value to the Equipment to be replaced and provides certification to the Lessor that the substitute collateral is free of all liens and encumbrances.

**16. Lessor's Right to Perform for Lessee.** If Lessee fails to make any payment or perform or comply with any of its covenants or obligations hereunder, Lessor may, but shall not be required to, make such payment or perform or comply with such covenants and obligations on behalf of Lessee, and the amount of any such payment and the expenses (including, but not limited to, reasonable attorneys' fees) incurred by Lessor in performing or complying with such covenants and obligations, as the case may be, together with interest thereon at the highest lawful rate, shall be payable by Lessee upon demand.

**17. Interest on Default.** If Lessee fails to pay any Rental Payment and such failure constitutes an Event of Default according to Section 13(a)(i) above, Lessee shall pay to Lessor interest on such delinquent payment from the due date until paid at the highest legal rate per annum available under State law.

**18. Notices.** Any notices to be given or to be served upon any Party hereto in connection with this Agreement must be in writing and may be given by certified or registered mail, and shall be deemed to have been given and received forty-eight (48) hours after a registered or certified letter containing such notice, postage prepaid, is deposited in the United States mail, and if given otherwise shall be deemed to have been given when delivered to and received by the Party to whom it is addressed. Such notice shall be given to the Parties at their respective addresses designated on the signature page of this Agreement or at such other address as either Party may hereafter designate in writing.

**19. Personal Property.** Lessor and Lessee agree that the Equipment is and will remain personal property. The Equipment will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter

become in any manner physically affixed or attached to real property or permanently rests upon any real property or any improvement thereon.

**20. Tax Exemption; Tax Covenants.** Lessee acknowledges and agrees that Lessor has calculated the Rental Payments assuming that the interest portion of each Rental Payment is exempt from federal income taxation. Lessee represents, warrants and covenants that it will do or refrain from doing all things necessary or appropriate to ensure that the interest portion of the Rental Payments is exempt from federal income taxation, including, but not limited to, executing and filing all information statements required by Section 149(e) of the Code, and timely paying, to the extent of available funds, amounts required to be rebated to the United States pursuant to Section 148(f) of the Internal Revenue Code of 1986, as amended. In addition, Lessee makes the following tax covenants:

(a) It is the intention of the Parties hereto that the interest portion of the Rental Payments received by Lessor and its successors and assigns hereunder be and remain excludable from gross income for purposes of federal income taxation. In furtherance of the foregoing, Lessee, to the best of its ability and knowledge, covenants that it shall, at all times, do and perform all acts and things necessary and within its control so that the interest portion of the Rental Payments received by Lessor shall, for the purposes of federal income taxation, be excluded from gross income of Lessor. Lessee shall not permit the use of the proceeds of this Agreement, nor take or omit to take any action, so as to cause such interest portion to cease to be excluded from gross income of Lessor for the purposes of federal income taxation.

(b) Lessee covenants that it will not use or permit the use of any Equipment in any manner or for any trade or business that would cause the interest portion of the Rental Payments to be taxable.

(c) Lessee hereby covenants that it will not take or permit any action or omit to take any action that would cause this Agreement to be an arbitrage bond within the meaning of Section 148 of the Code. Lessee hereby agrees to execute a Tax Agreement and Arbitrage Certificate, substantially in the form of **Exhibit D**.

(d) Lessee hereby covenants that it will not take or permit any action or omit to take any action that would cause this Agreement to be an arbitrage bond within the meaning of Section 148 of the Code.

(e) The weighted average maturity (defined in accordance with the Code) of the principal component of the Rental Payments under this Agreement will not exceed 120% of the weighted average, reasonably expected economic life in the hands of Lessee of the Equipment leased hereunder.

(f) Lessee agrees to complete and file in a timely manner an information reporting return (Form 8038-G or 8038-GC, as applicable) as required by the Code.

(g) Lessor and Lessee certify and covenant to each other and to the owners from time to time of Lessor's interests in this Agreement that, so long as any Rental Payments remain unpaid hereunder, monies on deposit in the Equipment Acquisition Fund will not be used in a manner that will cause this Agreement to be classified as arbitrage bonds within the meaning of Section 148(a) of the Code.

**21. DISCLAIMER OF WARRANTIES.** LESSOR (AND ANY AND EACH OF ITS SUCCESSORS AND ASSIGNS), NOT BEING THE VENDOR OF ANY OF THE EQUIPMENT, NOR A DEALER IN ANY OF SUCH EQUIPMENT, HAS NOT MADE AND DOES NOT MAKE ANY WARRANTY, REPRESENTATION OR COVENANT, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY LESSEE. LESSEE ACCORDINGLY AGREES NOT TO ASSERT ANY CLAIM WHATSOEVER AGAINST LESSOR

BASED THEREON. LESSEE FURTHER AGREES, REGARDLESS OF CAUSE, NOT TO ASSERT ANY CLAIM WHATSOEVER AGAINST LESSOR FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES OR LOSS, OF ANY CLASSIFICATION IN ANY WAY RELATED TO THE USE OR CONDITION OF THE EQUIPMENT. LESSOR SHALL HAVE NO OBLIGATION TO INSTALL, ERECT, TEST, ADJUST, SERVICE OR MAINTAIN ANY EQUIPMENT. LESSEE SHALL LOOK SOLELY TO THE VENDOR FOR ANY AND ALL CLAIMS RELATED TO THE EQUIPMENT. LESSEE LEASES THE EQUIPMENT "AS IS, WHERE IS" AND "WITH ALL FAULTS." LESSOR AND LESSEE HEREBY ACKNOWLEDGE THAT THE WARRANTIES OF THE VENDOR OF THE EQUIPMENT, IF ANY, ARE FOR THE BENEFIT OF LESSEE.

**22. Delivery and Installation.** Lessee shall select the type, quantity and Vendor of each item of Equipment designated in **Exhibit B**. Lessor shall have no liability for any delay in delivery or failure by the Vendor to deliver any Equipment or to fill any purchase order or meet the conditions thereof. Lessee, at its expense, will pay for all costs and charges in connection with the delivery, installation and use of the Equipment (it being understood that costs associated with delivery and installation of the Equipment are included in the total amount of the Equipment financed hereunder as set forth in **Exhibit C**). Upon receipt of all of the Equipment, Lessee shall furnish Lessor with a Final Acceptance Certificate (in substantially the same form of **Exhibit G**). Execution of the Final Acceptance Certificate by the appropriate individual, as indicated in Lessee's authorizing resolution (attached hereto as **Exhibit J**) and Certificate of Incumbency (in substantially the same form of **Exhibit I**), shall constitute acceptance of the Equipment on behalf of Lessee. Regardless of whether Lessee has furnished a Final Acceptance Certificate pursuant to this Paragraph 22, by making a Rental Payment after its receipt of the Equipment pursuant to this Agreement, Lessee shall be deemed to have accepted the Equipment which has been delivered or installed on such Payment Date on the date of such Rental Payment for purposes of this Agreement. All Rental Payments paid prior to delivery of the Final Acceptance Certificate shall be credited to Rental Payments as they become due. Lessee understands and agrees that neither the Vendor nor any salesman or other agent of any such Vendor, is an agent of Lessor. No salesman or agent of the Vendor is authorized to waive or alter any term or condition of this Agreement, and no representation as to Equipment or any other matter by the Vendor shall in any way affect Lessee's duty to pay the Rental Payments and perform its other obligations as set forth in this Agreement. Lessee hereby acknowledges that it has or will have selected the Equipment identified on **Exhibit B** using its own criteria and not in reliance on any representations of Lessor.

**23. Title to Equipment.** During the term of this Agreement and so long as no Event of Default has occurred, legal title to the Equipment and any and all additions, repairs, replacements or modifications thereof shall be vested in Lessee, subject to the rights of Lessor under this Agreement, including the security interest granted herein. Lessee shall at all times, at its expense, protect and defend Lessee's title to the Equipment and Lessor's rights and interests therein and will keep the Equipment free and clear from any and all claims, liens and encumbrances except those created by this Agreement in favor of Lessor. It is the intent of the Parties hereto that all items of Equipment shall at all times be and remain personal property, notwithstanding that any such Equipment may now or hereafter be affixed to realty. If requested by Lessor, Lessee will, at Lessee's reasonable expense, furnish a waiver of any interest in the Equipment from any party having an interest in any such real estate or building to which the Equipment becomes affixed.

**24. Security Interest.** This Agreement is intended to constitute a security agreement within the meaning of the Uniform Commercial Code of the State (the "UCC"). In order to secure all of its obligations hereunder to Lessor as Lessee's assignee, Lessee hereby: (a) grants to Lessor a first priority security interest constituting a first lien on any and all right, title and interest of Lessee in the Equipment; (b) agrees that Lessor or its Assignee may execute such additional documents, including financing statements, fixture filings, affidavits, notices, and similar instruments, for and on behalf of Lessee, which Lessor deems necessary or appropriate to protect Lessor's security interest in the Equipment; (c) agrees to execute and deliver such additional documents, including financing statements, certificates of title, affidavits, notices and similar instruments, in form satisfactory to Lessor,

necessary or appropriate to perfect and maintain such security interest in the Equipment; and (d) agrees that in the event any portion of the Equipment is covered by a certificate-of-title statute of the State, Lessee shall fully comply with and take all such actions mandated by the requirements of such certificate-of-title statute to perfect Lessor's security interest in the Equipment, including but not limited to indicating Lessor's security interest on any and all certificate-of-title forms covering the Equipment and (at Lessor's discretion) delivering to Lessor the original certificate-of-title to the Equipment, to be held by Lessor throughout the term of this Agreement. If Lessor's security interest in all or some of the Equipment shall terminate in accordance herewith, at the request of Lessee, Lessor shall execute and deliver to Lessee documents which evidence the termination of Lessor's security or other interest in such Equipment. Lessee shall promptly discharge any liens placed on the Equipment, including, without limitation, any mechanics' or materialmen's liens. If requested by Lessor, Lessee shall obtain the waiver of any interest in the Equipment from any owner of, or a secured party with an interest in, equipment on which the Equipment becomes an accession. If requested by Lessor, to the extent that the Equipment would be subject to a lien upon its acquisition by Lessee under any agreement or other instrument to which Lessee or any affiliate of Lessee is a party, Lessee shall obtain a waiver of such lien. Lessee is required to provide written notice to Lessor of any change in its name, corporate structure or principal place of business. Such notice shall be provided thirty (30) calendar days in advance of the date that such change is planned to take effect.

**25. Deleted Intentionally.**

**26. Performance of Lessee's Obligations.** If Lessee shall fail to promptly perform any of its obligations under this Agreement, Lessor may, at its option, perform any act or make any payment that Lessor deems necessary for the maintenance and preservation of the Equipment, including, but not limited to, payments for satisfaction of liens, repairs, taxes, levies and insurance. All expenses incurred by Lessor in performing such acts, including, but not limited to, reasonable legal fees and all such payments made by Lessor together with late charges as provided in Paragraph 17 herein, shall be payable by Lessee to Lessor on demand. The performance of any act or payment by Lessor shall not be deemed a waiver or release of any obligation or default on the part of Lessee. Lessee shall have no liability for any such payments.

**27. Indemnification.** To the extent legally permissible under the laws of the State, Lessee agrees to indemnify, protect and hold harmless Lessor from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including reasonable attorneys' fees), of whatsoever kind and nature, arising out of the use, condition (including, but not limited to, latent and other defects and whether or not discoverable by Lessee or Lessor), operation, ownership, selection, delivery, storage, leasing or return of any item of Equipment, or any failure on the part of Lessee to accept the Equipment or otherwise to perform or comply with any conditions of this Agreement. The indemnities and assumptions of liabilities and obligations herein provided for shall continue in full force and effect, notwithstanding the expiration or termination of the term of this Agreement. In no event, whether as a result of breach of contract, warranty, tort (including negligence or strict liability), indemnity or otherwise, shall Lessor, or its assignees, if any, be liable for any special, consequential, incidental or penal damages, including, but not limited to, loss of profit or revenue, loss of use of the Equipment or any associated equipment, service materials or software, damage to associated equipment, service materials or software, cost of capital, cost of substitute equipment, service materials or software, facilities, services or replacement power, downtime costs or claims of Lessee for such damages or costs and claims associated with any treatment, handling, storage, processing or disposal or related aspect or action incurred with respect to environmental matters, and Lessee shall indemnify and hold harmless Lessor from any such damages.

**28. Costs.** Lessee shall pay Lessor all reasonable Costs and Expenses related to the exercise of remedies with respect to this Agreement, incurred by Lessor in enforcing any of the terms, conditions or provisions of this Agreement.

**29. Escrow Agreement.** In connection with the financing of the costs of the Equipment, if the Parties determine to use an escrow procedure, then Lessor and Lessee hereby agree to execute and deliver the Escrow Agreement, substantially in the form of **Exhibit F**, on the date of execution and delivery of this agreement.

**30. Deleted Intentionally.**

**31. Miscellaneous.**

(a) Upon reasonable prior notice to Lessee, Lessor shall have the right to enter upon Lessee's property during business hours at any time, but without undue disruption or interference with the operations of Lessee's business or any location where the Equipment is located, to inspect the same or to make such repairs as Lessor may deem advisable or to otherwise protect Lessor's right and interest in the Equipment.

(b) Time is of the essence. No covenant or obligations hereunder to be performed by Lessee may be waived except by the written consent of Lessor, and a waiver of any such covenant or obligation or a forbearance to invoke any remedy on any occasion shall not constitute or be treated as a waiver of such covenant or obligation as to any other occasion and shall not preclude Lessor from invoking such remedy at any later time prior to Lessee's cure of the condition giving rise to such remedy. Lessor's rights hereunder are cumulative and not alternative.

(c) This Agreement shall be construed in accordance with, and governed by, the laws of the State of Tennessee, without giving effect to its choice of laws provisions.

(d) This Agreement constitutes the entire agreement between the Parties and shall not be modified, waived, discharged, terminated, amended, altered or changed in any respect except by a written document signed by both Lessor and Lessee.

(e) Any term or provision of this Agreement found to be prohibited by law or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without, to the extent reasonably possible, invalidating the remainder of this Agreement.

(f) Lessor hereunder shall have the right at any time or times, by notice to Lessee, to designate or appoint any person or entity to act as agent or trustee for Lessor for any purposes hereunder.

(g) Lessee will immediately notify Lessor in writing of any loss to or change occurring in or to the Equipment or a change in Lessee's address, or in any fact or circumstance warranted or represented by Lessee to Lessor, or if any Event of Default occurs.

(h) Use of the neutral gender herein is for purposes of convenience only and shall be deemed to mean and include the masculine or feminine gender whenever and wherever appropriate.

(i) The captions set forth herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

(j) Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, where permitted by this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the \_\_\_\_\_ day  
of \_\_\_\_\_ in the year 2012.

**LESSOR: CREES & ASSOCIATES, INC.**

BY: \_\_\_\_\_

ATTEST SIGNATURE: \_\_\_\_\_

PRINTED NAME: Rush F. Harding, III

PRINTED TITLE: CEO

Lessor's Address: 521 President Clinton Avenue  
Suite 800  
Little Rock, Arkansas 72202

**LESSEE: RUTHERFORD COUNTY, TENNESSEE**

BY: \_\_\_\_\_

ATTEST SIGNATURE: \_\_\_\_\_

PRINTED NAME: Ernest G. Burgess

PRINTED TITLE: Chairman

Lessee's Address: County Courthouse, Room 101  
Murfeesboro, TN 37128

## **INDEX OF EXHIBITS TO LEASE PURCHASE AGREEMENT**

1. Exhibit A: Definitions
2. Exhibit B: Equipment Schedule
3. Exhibit C: Payment Schedule
4. Exhibit D: Tax Agreement and Arbitrage Certificate
5. Exhibit E: Notice and Consent to Assignment
6. Exhibit F: Form of Escrow Agreement
7. Exhibit G: Final Certificate of Acceptance
8. Exhibit H: Certificate of Self-Insurance
9. Exhibit I: Certificate of Incumbency and Essential Use Certificate
10. Exhibit J: Lessee's Authorizing Resolution  
Authorizing Resolution of Rutherford County Board of Commissioners

### **ADDITIONAL DOCUMENTS**

1. Form 8038-G
2. UCC-1
3. Form of Lessee's Counsel Opinion Letter

## EXHIBIT A

LEASE PURCHASE AGREEMENT (THE "AGREEMENT") BY AND BETWEEN  
CREWS & ASSOCIATES, INC., Lessor  
COUNTY COMMISSION OF RUTHERFORD COUNTY, Lessee  
Dated as of \_\_\_\_\_, 2012

### DEFINITIONS

**Definitions:** Unless the context otherwise clearly requires, the following terms shall have the respective meanings set forth below for all purposes of the Agreement:

1.01 "*Additional Payments*" means any amounts (other than Rental Payments) required to be paid by Lessee pursuant to the terms of this Agreement.

1.02 "*Agreement*" means this Lease Purchase Agreement, together with each of the exhibits, schedules, or other documents attached to this Agreement or referenced herein, as supplemented and amended from time to time.

1.03 "*Agreement Term*" means the term of this Agreement as specified in Paragraph 2 of this Agreement.

1.04 "*Certificates*" means certificates of participation or other instruments representing the right of the holder thereof to receive a portion of the Payments being made by Lessee to Lessor or its assigns.

1.05 "*Certificate of Incumbency and Essential Use Certificate*" means a certificate in substantially the form of **Exhibit I** and which shall be delivered by Lessee to Lessor prior to Closing, as provided in Paragraph 22 of this Agreement.

1.06 "*Certificate of Self-Insurance*" means a certificate to be attached as **Exhibit H** and which shall be delivered by Lessee to Lessor prior to Closing and the delivery of the Equipment, in satisfaction of Lessee's obligations regarding insurance, as provided in Paragraph 10 of this Agreement.

1.07 "*Closing*" means the latest to occur of: (i) execution of this Agreement by all of the Parties; (ii) the Effective Date of this Agreement as set forth in the beginning paragraph; or (iii) the date on which Lessor acquires the Equipment.

1.08 Reserved.

1.09 "*Code*" means the Internal Revenue Code of 1986, as amended. Each reference to a section of the code herein shall be deemed to include the United States Treasury Regulations proposed or in effect thereunder.

1.10 "*Costs and Expenses*" shall mean, to the extent allowed by law: (i) reasonable attorneys' fees if this Agreement is referred for collection to an attorney other than a salaried employee of Lessor or the holder of this Agreement; (ii) court costs and disbursements, including such costs in the event of any action necessary to secure possession of the Equipment; and (iii) actual and reasonable out-of-pocket expenses incurred in connection with any repossession or foreclosure.

1.11 Reserved.

1.12 Reserved.

1.13 "*Equipment*" means (a) the equipment identified in the Equipment Schedule attached hereto as **Exhibit B**, (b) any property acquired in substitution, renewal, repair or replacement for or as additions, improvements, accessions and accumulations to any of such equipment and (c) any accessories, equipment, parts and appurtenances appertaining or attached to any of such equipment or from time to time incorporated therein or installed thereon.

1.14 "*Equipment Acquisition Fund*" means the fund of that name established and administered pursuant to the Escrow Agreement.

1.15 "*Escrow Agent*" means Bank of the Ozarks, in its capacity as Escrow Agent under the Escrow Agreement, and its successors.

1.15 "*Escrow Agreement*" means the Escrow Agreement, in substantially the same form of **Exhibit F**, dated as of the Effective Date set forth in the first paragraph of this Agreement, among Lessor, Lessee, and Escrow Agent, relating to the Equipment Acquisition Fund.

1.16 "*Event of Default*" is defined in Paragraph 13 of this Agreement.

1.17 "*Final Acceptance Certificate*" means a certificate in substantially the form of **Exhibit G** and which shall be delivered by Lessee to Lessor upon receipt and acceptance of the Equipment, as provided in Paragraph 22 hereof.

1.18 "*Gross-Up Rent*" means, with respect to any Rental Payment, an additional rental payment in an amount sufficient such that the sum of the additional rental payment plus the Rental Payment would, after the two payments were reduced by the amount of any federal, State or local income tax (including any interest or penalties) actually imposed thereon, equal the amount of the Rental Payment.

1.19 "*Lessee*" means the entity referred to as Lessee in the first paragraph of this Agreement.

1.20 "*Lessor*" means (a) the entity referred to as Lessor in the first paragraph of this Agreement or (b) any assignee or transferee of any right, title or interest of Lessor in and to the Equipment or this Agreement (including Rental Payments) pursuant to Paragraph 15 of this Agreement, but does not include any entity solely by reason of that entity retaining or assuming any obligation of Lessor to perform hereunder.

1.21 "*Notice and Consent to Assignment*" means a certificate in substantially the form of **Exhibit E** and which shall be delivered by and between the Parties as provided in Paragraph 15 hereof.

1.22 "*Payments*" means the Rental Payments and the Additional Payments, collectively.

1.23 "*Payment Date*" means the date for payment of Rental Payments as set forth in **Exhibit C**.

1.24 Reserved.

1.25 "*Registration Agent*" shall mean the Lessor, or its assigns, keeping record of the registered owner of the Agreement (and the Certificates, if applicable), for purposes of Section 149(a) of the Code.

1.26 "*Rental Payments*" means the amounts (allocable to a principal component and an interest component) payable by Lessee pursuant to the provisions of this Agreement, as payments for the contract price for the Equipment as set forth in **Exhibit C**. As provided in this Agreement, Rental Payments shall be payable by Lessee directly to Lessor in the amounts and at the times as set forth in **Exhibit C**.

1.27 "*State*" means the State of Tennessee.

1.28 "*Tax Agreement and Arbitrage Certificate*" means that certain separate agreement to be executed by Lessee in substantially the form of **Exhibit D**, ensuring compliance with the Code, including the non-arbitrage provisions thereof.

1.29 "*Vendor*" means any vendor, supplier, manufacturer, distributor or seller of the Equipment.

## EXHIBIT B

LEASE PURCHASE AGREEMENT (THE "AGREEMENT") BY AND BETWEEN  
 CREWS & ASSOCIATES, INC., Lessor  
 BOARD OF COMMISSIONERS OF RUTHERFORD COUNTY, TENNESSEE, Lessee  
 Dated as of \_\_\_\_\_, 2012

### EQUIPMENT SCHEDULE

All goods and equipment to be provided by Excel Energy Group, Inc. ("Excel") to the School Board pursuant to that certain Energy Agreement, dated as of \_\_\_\_\_, between Excel and School Board (the "Contract"), including but not limited to the items of goods and equipment to be installed in various facilities of School Board, as further described below:



**Water/Energy Savings Analysis  
 Rutherford County Schools  
 Scope Summary  
 Total Retrofits per Building**



Building Name	A1	T1	A2	S1	P1	P2	P3
LAVERGNE HIGH	100	79	16	27	2	8	2
SMYRNA HIGH	103	78	16	11	11	5	1
OAKLAND HIGH	92	93	33	51	8	13	1
RIVERDALE HIGH	85	87	30	41	4	5	0
KITTRELL ELEMENTARY	46	50	20	0	2	1	0
DANIEL MCKEE ALTERNATIVE	4	5	3	0	1	1	1
OAKLAND MIDDLE	25	0	5	0	3	2	4
WHITWORTH BUCHANAN MIDDLE	25	0	5	0	3	2	4
LASCASSAS ELEMENTARY	52	56	18	0	4	2	0
HOMER PITTARD CAMPUS	10	6	5	0	3	0	2
HOLLOWAY HIGH	18	16	5	0	2	1	0
MCFADDEN ELEMENTARY	32	35	7	0	3	2	0
CENTRAL ACADEMIC MAGNET	64	0	11	0	3	2	0
BUCHANAN ELEMENTARY	34	38	15	0	2	1	0
CHRISTIANA ELEMENTARY	42	33	19	0	2	3	0
CHRISTIANA MIDDLE	24	0	6	0	2	3	7
BARFIELD ELEMENTARY	68	0	62	0	2	2	1
SMYRNA MIDDLE	40	51	14	0	2	1	1
SMYRNA PRIMARY	45	0	37	0	1	0	0
THURMAN FRANCIS ELEMENTARY	40	50	24	0	2	0	0
DAVID YOUREE ELEMENTARY	30	0	42	0	3	0	0
SMYRNA WEST ALTERNATIVE	4	5	1	0	1	1	0
BROWNS CHAPEL ELEMENTARY	23	0	2	0	2	1	7
LAVERGNE LAKE ELEMENTARY	23	0	2	0	2	1	7
STEWARTS CREEK ELEMENTARY	23	0	2	0	2	1	7
STEWARTS CREEK MIDDLE	23	0	2	0	2	1	7
LAVERGNE MIDDLE	11	0	2	0	1	3	6
STEWARTSBORO ELEMENTARY	63	0	26	0	4	0	0
CEDAR GROVE ELEMENTARY	63	72	26	0	4	0	3
ROCK SPRINGS ELEMENTARY	0	0	0	0	0	0	0
ROCK SPRINGS MIDDLE	11	0	2	0	1	3	6
SIEGEL MIDDLE	11	0	2	0	1	3	6
BLACKMAN MIDDLE	11	0	2	0	1	3	6
ROCKVALE MIDDLE	11	0	2	0	1	3	6
ROY WALDRON ELEMENTARY	21	43	33	0	3	2	1
LAVERGNE PRIMARY	23	34	10	0	3	1	0
JOHN COLEMON ELEMENTARY	16	44	15	0	4	0	1
EAGLEVILLE HIGH	84	86	32	0	6	6	0
BLACKMAN HIGH	106	0	21	0	8	8	2
WALTER HILL ELEMENTARY	42	0	18	0	4	2	0
SMYRNA ELEMENTARY	48	0	36	0	0	0	0
SIEGEL HIGH	125	0	10	0	7	8	11
BLACKMAN ELEMENTARY	64	0	44	0	4	2	2
WILSON ELEMENTARY	64	0	44	0	4	0	2
ROCKVALE ELEMENTARY	52	56	18	0	4	2	0
<b>TOTALS</b>	<b>1901</b>	<b>1017</b>	<b>745</b>	<b>130</b>	<b>134</b>	<b>105</b>	<b>104</b>

Scope Summary Upgrade Legend	
Code	Upgrade Type
A1	Restroom Faucet - Installation of 0.5 GPM flow restrictor and repair or replace faucet as needed
T1	Water Closet - Installation of new 1.6 GPF water closet and flush valve
A2	General Purpose Faucet - Installation of 1.5 GPM flow restrictor and repair or replace faucet as needed
S1	Showers - Replace with new low flow shower heads and repair/replace shower valves as needed
P1	Sinks - Installation of Pedal Valve brand foot pedal on Sink
P2	Sinks - Installation of Pedal Valve brand foot pedal on Sink + 1.5 GPM flow restrictor
P3	Sinks - Installation of Zurn brand foot pedal on Sink + 1.5 GPM flow restrictor

Dele  
Purch

The above-described Equipment described in this Exhibit B also includes all additions, attachments, accessions, and substitutions to the Equipment, and any revenues, profits, or other proceeds from the Equipment.

Lessee hereby certifies that the description of the Equipment set forth above constitutes an accurate description of the "Equipment," to which the attached Payment Schedule to the Agreement is applicable.

**LESSEE: RUTHERFORD COUNTY, TENNESSEE**

Signature: \_\_\_\_\_

Printed Name: Ernest G. Burges

Title: Chairman

Location of Equipment: Various of the School Board's facilities located in Rutherford County,  
Tennessee

**EXHIBIT C**

LEASE PURCHASE AGREEMENT (THE "AGREEMENT") BY AND BETWEEN  
CREWS & ASSOCIATES, INC., Lessor  
RUTHERFORD COUNTY, TENNESSEE, Lessee  
Dated as of \_\_\_\_\_, 2012

**PAYMENT SCHEDULE**

AMORTIZATION SCHEDULE - Normal Amortization, 360 Day Year

	Date	Payment	Interest	Principal	Balance
Loan	6/15/2012				
1	1/15/2013	119,780.40	31,616.87	88,163.53	N/C
2	7/15/2013	119,780.40	25,397.72	94,382.68	N/C
3	1/15/2014	119,780.40	23,651.64	96,128.76	N/C
4	7/15/2014	119,780.40	21,873.25	97,907.15	1,104,636.95
5	1/15/2015	119,780.40	20,061.97	99,718.43	1,001,426.10
6	7/15/2015	119,780.40	18,217.18	101,563.22	896,667.09
7	1/15/2016	119,780.40	16,338.26	103,442.14	790,336.70
8	7/15/2016	119,780.40	14,424.58	105,355.82	682,411.35
9	1/15/2017	119,780.40	12,475.50	107,304.90	572,867.12
10	7/15/2017	119,780.40	10,490.36	109,290.04	461,679.73
11	1/15/2018	119,780.40	8,468.49	111,311.91	348,824.53
12	7/15/2018	119,780.40	6,409.22	113,371.18	234,276.50
13	1/15/2019	119,780.40	4,311.85	115,468.55	118,010.25
14	7/15/2019	119,780.40	2,175.71	117,604.69	0.00
Grand Totals		1,676,925.60	215,912.60	1,461,013.00	

**METHOD OF PAYMENT**

[Select One]

\_\_\_\_\_ Automatic Clearing House (ACH) Debit

\_\_\_\_\_ Wire Transfer

\_\_\_\_\_ Check

Lessee hereby certifies that the Payment Schedule and Method of Payment reflected above are agreed and accurate.

**LESSEE: RUTHERFORD COUNTY, TENNESSEE**

Signature: \_\_\_\_\_

Printed Name: Ernest G. Burgess

Title: Chairman

## EXHIBIT D

### TAX AGREEMENT AND ARBITRAGE CERTIFICATE

LEASE PURCHASE AGREEMENT (THE "AGREEMENT") BY AND BETWEEN  
CREWS & ASSOCIATES, INC., Lessor  
RUTHERFORD COUNTY, TENNESSEE, Lessee  
Dated as of \_\_\_\_\_, 2012

This **TAX AGREEMENT AND ARBITRAGE CERTIFICATE** (this "Certificate") is issued by **Rutherford County, Tennessee** ("Lessee") in favor of **Crews & Associates, Inc.** ("Lessor") in connection with that certain Lease Purchase Agreement dated as of \_\_\_\_\_, 2012 (the "Agreement"), by and between Lessor and Lessee. The terms capitalized herein but not defined herein shall have the meanings assigned to them in the Agreement.

#### **Section 1. In General.**

1.1. This Certificate is executed for the purpose of establishing the reasonable expectations of Lessee as to future events regarding the financing of Equipment to be acquired by Lessor and leased to Lessee, pursuant to and in accordance with the Agreement (together with all related documents executed pursuant thereto and contemporaneously herewith, the "Financing Documents"). As described in the Financing Documents, Lessor shall apply \$\_\_\_\_\_ (the "Principal Amount") toward the acquisition of the Equipment and Lessee shall make Rental Payments under the terms and conditions as set forth in the Financing Documents.

1.2. The individual executing this Certificate on behalf of Lessee is an officer of Lessee delegated with the responsibility of reviewing and executing the Financing Documents, pursuant to the resolution or other official action of Lessee adopted with respect to the Financing Documents, a copy of which has been delivered to Lessor.

1.3. The Financing Documents are being entered into for the purpose of providing funds for financing the cost of acquiring, equipping and installing the Equipment which is essential to the governmental functions of Lessee. The Principal Amount will be deposited in escrow by Lessor on the date of issuance of the Financing Documents and held by the Escrow Agent pending acquisition of the Equipment under the terms of the Escrow Agreement by and among Lessee, Lessor and Escrow Agent.

1.4. Lessee will timely file the Agreement a Form 8038-G (or, if the invoice price of the Equipment under such schedule is less than \$100,000, a Form 8038-GC) relating to such Agreement with the Internal Revenue Service in accordance with Section 149(e) of the Internal Revenue Code of 1986, as amended (the "Code").

#### **Section 2. Non-Arbitrage Certifications.**

2.1. The Rental Payments due under the Financing Documents will be made with monies retained in Lessee's general operating fund of the School Board (or an account or subaccount therein). No sinking, debt service, reserve or similar fund or account will be created or maintained for the payment of the Rental Payments due under the Financing Documents or pledged as security therefor.

2.2. There have been and will be issued no obligations by or on behalf of Lessee that would be deemed to be: (i) issued or sold within fifteen (15) calendar days before or after the date of issuance of the Financing Documents; (ii) issued or sold pursuant to a common plan of financing with the Financing Documents; and (iii) paid out of substantially the same source of funds as, or deemed to have substantially the same claim to be paid out of substantially the same source of funds as, the Financing Documents.

2.3. Other than the Principal Amount held under the Escrow Agreement, Lessee does not and will not have on hand any funds that are or will be restricted, segregated, legally required or otherwise intended to be used, directly or indirectly, as a substitute, replacement or separate source of financing for the Equipment.

2.4. No portion of the Principal Amount is being used by Lessee to acquire investments which produce a yield materially higher than the yield realized by Lessor from Rental Payments received under the Financing Documents.

2.5. The Principal Amount does not exceed the amount necessary for the governmental purpose for which the Financing Documents were entered into. Such funds are expected to be needed and fully expended for payment of the costs of acquiring, equipping and installing the Equipment.

2.6. Lessee does not expect to convey, sublease or otherwise dispose of the Equipment, in whole or in part, at a date which is earlier than the final Payment Date under the Financing Documents.

**Section 3. Disbursement of Funds; Reimbursement to Lessee.**

3.1. It is contemplated that the entire Principal Amount deposited in escrow will be used to pay the acquisition cost of Equipment to the Vendor thereof; provided, that, if applicable, a portion of the principal amount may be paid to Lessee as reimbursement for acquisition cost payments already made by it so long as the conditions set forth in Section 3.2, below, are satisfied.

3.2. Lessee shall not request that it be reimbursed for Equipment acquisition cost payments already made by it unless each of the following conditions have been satisfied:

(a) Lessee adopted a resolution or otherwise declared its official intent in accordance with Treasury Regulation § 1.150-2 (the "Declaration of Official Intent"), wherein Lessee expressed its intent to be reimbursed from the proceeds of a borrowing for all or a portion of the cost of the Equipment, which expenditure was paid to the Vendor not earlier than sixty (60) calendar days before Lessee adopted the Declaration of Official Intent;

(b) The reimbursement being requested will be made by a written allocation before the later of eighteen (18) months after the expenditure was paid or eighteen (18) months after the items of Equipment to which such payment relates were placed in service;

(c) The entire payment with respect to which reimbursement is being sought is a capital expenditure, being a cost of a type properly chargeable to a capital account under general federal income tax principles; and

(d) Lessee will not use any reimbursement payment for general operating expenses and not in a manner which could be construed as an artifice or device under Treasury Regulation § 1.148-10 to avoid, in whole or in part, arbitrage yield restrictions or arbitrage rebate requirements.

**Section 4. Use and Investment of Funds; Temporary Period.**

4.1. Lessee has incurred or will incur, within six (6) months from the date of issuance of the Financing Documents, binding obligations to pay an amount equal to at least five percent (5%) of the Principal Amount toward the costs of the Equipment. An obligation is not binding if it is subject to contingencies within Lessee's control. The ordering and acceptance of the items of Equipment will proceed with due diligence to the date of final acceptance of the Equipment.

4.2. An amount equal to at least eighty-five percent (85%) of the Principal Amount will be expended to pay the cost of the Equipment by the end of the three-year period commencing on the date of this Certificate.

4.3. (a) Lessee covenants and agrees that it will rebate an amount equal to excess earnings on the Principal Amount deposited under the Escrow Agreement to the Internal Revenue Service, if required by, and in accordance with, Section 148(f) of the Code, and make the annual determinations and maintain the records required by and otherwise comply with the regulations applicable thereto. Lessee reasonably expects to cause the Equipment to be acquired by \_\_\_\_\_, 2013.

(b) Lessee will provide evidence to Lessor that the rebate amount has been calculated and paid to the Internal Revenue Service in accordance with Section 148(f) of the Code unless: (i) the entire Principal Amount is expended on the Equipment by the date that is the six-month anniversary of the Financing Documents, or (ii) the Principal Amount is expended on the Equipment in accordance with the following schedule: At least fifteen percent (15%) of the Principal Amount and interest earnings thereon will be applied to the cost of the Equipment within six (6) months from the date of issuance of the Financing Documents; at least sixty percent (60%) of the Principal Amount and interest earnings thereon will be applied to the cost of the Equipment within twelve (12) months from the date of issuance of the Financing Documents; and one hundred percent (100%) of the Principal Amount and interest earnings thereon will be applied to the cost of the Equipment prior to eighteen (18) months from the date of issuance of the Financing Documents.

(c) Lessee hereby covenants that: (i) Lessee is a political subdivision of the State; (ii) the Agreement is not a "private activity bond" under Section 141 of the Code; (iii) at least ninety-five percent (95%) of the Principal Amount is used for the governmental activities of Lessee; and (iv) the aggregate principal amount of all tax-exempt obligations (including

the Agreement) issued by Lessee and its subordinate entities, if any, during the current calendar year is not reasonably expected to exceed \$10,000,000. Accordingly, the rebate requirements of Section 148(f) of the Code are treated as being met, in lieu of the spending exceptions set forth in paragraph (b) above.

**Section 5. Escrow Account.**

The Financing Documents provide that the monies deposited in escrow shall be invested until payments to the Vendor of the Equipment are due. Lessee will ensure that such investment will not result in Lessee's obligations under the Financing Documents being treated as an "arbitrage bond" within the meaning of Section 148(a) of the Code, respectively. Any monies which are earned from the investment of these funds shall be labeled as interest earned. All such monies will be disbursed on or promptly after the date that Lessee accepts the Equipment.

**Section 6. No Private Use; No Consumer Loan.**

6.1. Lessee will not exceed the private use restrictions set forth in Section 141 of the Code. Specifically, Lessee will not permit more than ten percent (10%) of the Principal Amount to be used for a Private Business Use (as defined herein) if, in addition, the payment of more than ten percent (10%) of the Principal Amount plus interest earned thereon is, directly or indirectly, secured by: (i) any interest in property used or to be used for a Private Business Use, or (ii) any interest in payments in respect of such property or derived from any payment in respect of property or borrowed money used or to be used for a Private Business Use.

In addition, if both (A) more than five percent (5%) of the Principal Amount is used as described above with respect to Private Business Use and (B) more than five percent (5%) of the Principal Amount plus interest earned thereon is secured by Private Business Use property or payments as described above, then the excess over such five percent (5%) (the "Excess Private Use Portion") will be used for a Private Business Use related to the governmental use of the Equipment. Any such Excess Private Use Portion of the Principal Amount will not exceed the portion of the Principal Amount used for the governmental use of the particular project to which such Excess Private Use Portion is related. For purposes of this paragraph 6.1, "Private Business Use" means use of bond proceeds or bond financed-property directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and excluding use as a member of the general public.

6.2. No part of the Principal Amount or interest earned thereon will be used, directly or indirectly, to make or finance any loans to non-governmental entities or to any governmental agencies other than Lessee.

**Section 7. No Federal Guarantee.**

7.1. Payment of the principal or interest due under the Financing Documents is not directly or indirectly guaranteed, in whole or in part, by the United States or an agency or instrumentality thereof.

7.2. No portion of the Principal Amount or interest earned thereon shall be: (i) used in making loans the payment of principal or interest of which are to be guaranteed, in whole or in part, by the United States or any agency or instrumentality thereof, or (ii) invested, directly or indirectly, in federally insured deposits or accounts if such investment would cause the financing under the Financing Documents to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

**Section 8. Miscellaneous.**

8.1. Lessee shall keep a complete and accurate record of all owners or assignees of the Financing Documents in form and substance satisfactory to comply with the registration requirements of Section 149(a) of the Code, unless Lessor or its assignee agrees to act as Lessee's agent for such purpose.

8.2. Lessee shall maintain complete and accurate records establishing the expenditure of the Principal Amount and interest earnings thereon for a period of five (5) years after payment in full under the Financing Documents.

8.3. To the best of the undersigned's knowledge, information and belief, the above expectations are reasonable and there are no other facts, estimates or circumstances that would materially change the expectations expressed herein.

**IN WITNESS WHEREOF**, this Tax Agreement and Arbitrage Certificate has been executed on behalf of Lessee as of \_\_\_\_\_, 2012.

**RUTHERFORD COUNTY, TENNESSEE**  
Lessee

By: \_\_\_\_\_  
Name: Ernest G. Burgess  
Title: Chairman  
Date: \_\_\_\_\_

**EXHIBIT E**

LEASE PURCHASE AGREEMENT (the "AGREEMENT") BY AND BETWEEN  
CREWS & ASSOCIATES, INC., Lessor  
RUTHERFORD COUNTY, TENNESSEE, Lessee  
Dated as of \_\_\_\_\_, 2012

**NOTICE AND CONSENT TO ASSIGNMENT**

Rutherford County, Tennessee Board of Commissioners  
Attention: Ernest G. Burgess, Chairman  
County Courthouse, Room 101  
Murfeesboro, TN 37128

Re: Lease Purchase Agreement No. 2012(RCBE)-001, dated as of \_\_\_\_\_

Dear Mr. Burgess:

Please be advised that Crews & Associates, Inc. has assigned all of its right, title and interest in and to the above-mentioned Lease Purchase Agreement (the "Agreement"), the equipment leased thereunder, and the right to receive payments thereunder to \_\_\_\_\_ ("Assignee").

All payments due under the Agreement beginning with the first payment date of \_\_\_\_\_, 20\_\_\_\_ should be made to the Assignee at the following address: \_\_\_\_\_  
\_\_\_\_\_.

Please acknowledge your agreement to make the payments due under the Agreement to the Assignee, by the signature of a duly authorized officer in the space provided below.

**ASSIGNOR: CREWS & ASSOCIATES, INC.**

Signature: \_\_\_\_\_

Name Printed: Rush F. Harding, III

Title: CEO

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

**ACKNOWLEDGED AND ACCEPTED:**

**LESSEE: RUTHERFORD COUNTY, TENNESSEE**

Signature: \_\_\_\_\_

Name Printed: Ernest G. Burgess

Title: Chairman

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

**EXHIBIT F**

**ESCROW AGREEMENT**

LEASE PURCHASE AGREEMENT (THE "AGREEMENT") BY AND BETWEEN  
CREWS & ASSOCIATES, INC., Lessor  
RUTHERFORD COUNTY, TENNESSEE, Lessee  
Dated as of \_\_\_\_\_, 2012

---

This **ESCROW AGREEMENT**, made and entered into as \_\_\_\_\_, 2012, by and among **Crews & Associates, Inc.**, an Arkansas corporation ("Lessor"), and **Rutherford County, Tennessee**, a political subdivision of the State of Tennessee, (Lessee"), and Bank of the Ozarks, an Arkansas banking corporation ("Escrow Agent").

In consideration of the mutual covenants herein contained, the parties hereto agree as follows:

**ARTICLE I. DEFINITIONS AND RECITALS**

**Section 1.1. Definitions.** The terms defined in this Section shall, for all purposes of this Escrow Agreement, have the meanings specified below. The terms capitalized in this Escrow Agreement but not defined herein shall have the meanings assigned to them in the Agreement referred to above.

"Acquisition Costs" means, with respect to the Equipment, the contract price paid or to be paid to a Vendor thereof upon acquisition or delivery of any portion of the Equipment in accordance with the purchase order or contract therefor. Acquisition Costs may include the administrative, engineering, legal, financial and other costs incurred by Lessee in connection with the acquisition, delivery and financing of the Equipment, if approved by Lessor.

"Agreement" means the Lease Purchase Agreement, dated as of \_\_\_\_\_, 2012, by and between Lessee and Lessor, including any Equipment Schedules entered into thereunder and any duly authorized and executed amendment thereto.

"Equipment" means the personal property described in the Acceptance Certificate executed pursuant to the Agreement, together with any and all modifications, additions and alterations thereto, to be acquired from the monies held in the Equipment Acquisition Fund.

"Equipment Acquisition Fund" means the account by that name established and held by Escrow Agent pursuant to Article II of this Escrow Agreement.

"Escrow Agent" means **Bank of the Ozarks**, or any successor thereto acting as Escrow Agent pursuant to this Escrow Agreement.

"Escrow Agent Fee" has the meaning set forth in Section 6.1.

"Escrow Agreement" means this Escrow Agreement and any duly authorized and executed amendment thereto.

"Payment Request Form" means the document substantially in the form attached hereto as Exhibit A to be executed by Lessee and Lessor and submitted to Escrow Agent to authorize payment of Acquisition Costs.

"Qualified Investments" means, in all respects subject to any applicable State laws regarding the investment of public funds: (a) direct obligations of (including Bonds issued or held in book-entry form on the books of) the Department of the Treasury of the United States of America; (b) obligations of any of the following federal agencies which obligations represent the full faith and credit of the United States of America: (i) Export-Import Bank, (ii) Farmers Home Administration, (iii) General Services Administration, (iv) United States Maritime Administration, (v) Government National Mortgage Association (GNMA) (excluding stripped mortgage obligations) and (vi) Federal Housing Administration; (c) senior debt obligations (excluding stripped mortgage obligations) rated "Aaa" by Moody's and "AAA" by S&P issued by Fannie Mae or FHLMC with remaining maturities not exceeding three years; (d) U.S. dollar-denominated deposit accounts (including certificates of deposit), federal funds and banker's acceptances with domestic commercial banks (including Escrow Agent or its affiliates) which have a rating on their short-term certificates of deposit on the date of purchase of "P-1" by Moody's and "A-1" or "A-1+" by S&P or are fully insured by the Federal Deposit Insurance Corporation or are fully collateralized in the

manner required by law for the deposit of public funds and maturing no more than 360 days after the date of purchase; provided, however, that ratings on holding companies are not considered as the rating of the bank; (e) commercial paper which is rated at the time of purchase in the single highest classification, "P-1" by Moody's and "A-1+" by S&P and which matures not more than 270 days after the date of purchase; investments in a money market fund (including funds of Escrow Agent and its affiliates) registered under the Investment Company Act of 1940 whose shares are registered under the Securities Act of 1933 rated "AAAm" or "AAAm-G" or better by S&P and "Aaa" or better by Moody's; (f) pre-refunded municipal obligations defined as follows: any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice and which are rated in the highest rating category of Moody's and S&P. Each Qualified Investment shall have a fixed dollar value at maturity and shall not include an "r" in its rating. Further, if any Qualified Investment bears interest at a rate other than a fixed rate, such rate shall be tied to one and only one rate index, may include a spread over or under such rate index and shall move proportionately with such rate index.

## **ARTICLE II. APPOINTMENT OF ESCROW AGENT; AUTHORITY**

**Section 2.1. Appointment of Escrow Agent.** Lessor and Lessee hereby appoint and employ Escrow Agent to receive, hold, invest and disburse the monies to be paid to Escrow Agent pursuant to this Escrow Agreement and the Agreement and to perform certain other functions, all as hereinafter provided. By executing and delivering this Escrow Agreement, Escrow Agent accepts the duties and obligations of Escrow Agent hereunder; provided, however, that its duties and obligations hereunder shall be limited to those specifically provided herein.

**Section 2.2. Authority.** Each of the parties has authority to enter into this Escrow Agreement, and has taken all actions necessary to authorize the execution of this Escrow Agreement by the officers whose signatures are affixed hereto.

## **ARTICLE III. EQUIPMENT ACQUISITION FUND**

**Section 3.1. Equipment Acquisition Fund.** Escrow Agent shall establish a special escrow account designated as the "Equipment Acquisition Fund" (the "Equipment Acquisition Fund"), shall keep such Fund separate and apart from all other funds and monies held by it and shall administer such Fund as provided in this Escrow Agreement.

**Section 3.2. Deposit.** Upon execution of the Agreement and delivery to Lessor by Lessee of all documents required to be delivered thereunder, Lessor shall deposit or cause to be deposited with Escrow Agent the sum of \$4,041,688.00 Escrow Agent shall credit such amount to the Equipment Acquisition Fund.

**Section 3.3. Disbursements.** Escrow Agent shall use the monies in the Equipment Acquisition Fund to pay the Acquisition Cost of each item of Equipment subject to the Agreement, within a reasonable time of receipt with respect thereto of a Payment Request Form executed by Lessor and Lessee, fully completed and with all supporting documents described therein attached thereto. Upon receipt of a Payment Request Form with respect to any item of Equipment, an amount equal to the Acquisition Cost as shown therein shall be paid directly to the person or entity entitled to payment as specified therein. Notwithstanding the foregoing, no disbursements shall be made from the Equipment Acquisition Fund until Lessee shall have delivered proof that of its receipt of all necessary approvals required by any applicable governmental or administrative agency with jurisdiction over Lessee.

**Section 3.4. Transfers Upon Completion.** Unless all of the funds deposited by Lessor in the Equipment Acquisition Fund have been previously disbursed pursuant to Section 3.3, above, or paid to Lessor pursuant to Section 3.5, below, on \_\_\_\_\_, Escrow Agent shall pay all remaining monies in the Equipment Acquisition Fund to Lessor or its assignee to be applied, at Lessor's option, either (i) to pay the interest component of Rental Payments coming due on the next succeeding Rental Payment date or dates, (ii) to pay on the partial prepayment date a portion of the purchase option price then applicable or (iii) any combination of the actions permitted under clause (i) or (ii) of this Section 3.4.

**Section 3.5. Liquidation.** Upon receipt of written notice from Lessor or Lessee that the Agreement has been terminated pursuant to Sections 3.2 or 12.2 thereof, Escrow Agent shall liquidate all investments held in the Equipment Acquisition Fund and transfer the proceeds thereof and all other monies held in the Equipment Acquisition Fund to Lessor.

## ARTICLE IV. TRUST; INVESTMENT

**Section 4.1. Irrevocable Trust.** The monies and investments held by Escrow Agent under this Escrow Agreement are irrevocably held in trust for the benefit of Lessor and Lessee, and such monies, together with any income or interest earned, shall be expended only as provided in this Escrow Agreement, and shall not be subject to levy or attachment or lien by or for the benefit of any creditor of either Lessor or Lessee (other than Lessor's security interest granted hereunder).

**Section 4.2. Investment.** Monies held by Escrow Agent hereunder shall be invested and reinvested by Escrow Agent upon order of Lessee, in compliance with the provisions of the Tax Agreement and Arbitrage Certificate accompanying the Agreement, only in Qualified Investments. Such investments shall be registered in the name of Escrow Agent and held by Escrow Agent for the benefit of Lessor and Lessee. Escrow Agent may purchase or sell to itself or any affiliate, as principal or agent, investments authorized by this Article. Such investments and re-investments shall be made giving full consideration for the time at which funds are required to be available. Any income received on such investments shall be credited to the Equipment Acquisition Fund. Escrow Agent shall not be responsible or liable for any loss suffered in connection with any investment of monies made by it in Qualified Investments in accordance with this Article.

**Section 4.3. Disposition of Investments.** Escrow Agent shall, without further direction from Lessee, sell such investments as and when required to make any payment from the Equipment Acquisition Fund.

**Section 4.4. Accounting.** Escrow Agent shall keep complete and accurate records of all monies received and disbursed under this Escrow Agreement which shall be available for inspection by Lessor or Lessee, or the agent of either of them, at any time during regular business hours upon prior written request. Escrow Agent shall furnish to Lessor and Lessee no less than quarterly an accounting of all investments and interest and income therefrom.

**Section 4.5. Termination.** This Escrow Agreement shall terminate upon disbursement by Escrow Agent of all monies held by it hereunder.

## ARTICLE V. ESCROW AGENT'S AUTHORITY; INDEMNIFICATION

**Section 5.1. Validity.** Escrow Agent may act upon any writing or instrument or signature which it believes to be genuine, may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instructions in connection with the provisions hereof has been duly authorized to do so, and Escrow Agent shall be under no duty to make any investigation or inquiry as to any of the foregoing. Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner and execution, or validity of any instrument deposited with it, nor as to the identity, authority or right of any person executing the same.

**Section 5.2. Use of Counsel and Agents.** 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 advice of counsel concerning all matters of trust and its duty hereunder. Escrow Agent shall not be answerable for the default or misconduct of any such attorney, agent, or receiver selected by it with reasonable care. Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection acting in compliance with the opinion of such counsel.

**Section 5.3. Interpretation.** If Lessor or Lessee shall be in disagreement about the interpretation of the Agreement or this Escrow Agreement, or about the rights and obligations of, or the propriety of any action contemplated by, Escrow Agent hereunder, Escrow Agent may, but shall not be required to, file an appropriate civil action to resolve the disagreement. Escrow Agent shall be indemnified pursuant to Section 5.5 below for all costs, including reasonable attorneys' fees, 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.

**Section 5.4. Limited Liability of Escrow Agent.** Escrow Agent shall not be liable in connection with the performance or observation of its duties or obligations hereunder except for in the case of its own gross negligence or willful misconduct. Escrow Agent shall have no obligation or liability to any of the other parties under this Escrow Agreement for the failure or refusal of any other party to perform any covenant or agreement made by such party hereunder or under the Agreement, but shall be responsible solely for the performance of the duties and obligations expressly imposed upon it as Escrow Agent hereunder.

**Section 5.5. Indemnification.** To the extent permitted by applicable law and unless Escrow Agent is guilty of gross negligence or willful misconduct with regard to its duties hereunder, Lessee hereby agrees to indemnify Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Escrow Agent under this Escrow Agreement; and in connection therewith, to indemnify Escrow Agent against any and all expenses, including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim. Notwithstanding the foregoing, such indemnification shall not extend to claims, liabilities, losses, actions, suits or proceedings incurred by 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 to claims, liabilities, losses, actions, suits or proceedings incurred by Escrow Agent arising from events solely and directly attributable to acts of Lessor. Escrow Agent shall be vested with a lien on all property deposited hereunder for indemnification, for reasonable attorneys' fees, court costs, for any suit, interpleader or otherwise, or any other expense, fees or charges of any character or nature, which may be incurred by Escrow Agent by reason of disputes arising between Lessor and Lessee as to the correct interpretation of the Agreement or this Escrow Agreement and instructions given to Escrow Agent hereunder, or otherwise, with the right of Escrow Agent, regardless of the instructions aforesaid, to hold such property until and unless said additional expenses, fees and charges shall be fully paid. In the event Lessee is required to indemnify Escrow Agent as herein provided, Lessee shall be subrogated to the rights of Escrow Agent to recover such losses or damages from any other person or entity.

## **ARTICLE VI. COMPENSATION**

**Section 6.1. Escrow Agent Fee.** Escrow Agent shall be paid by Lessor for the services to be rendered hereunder (the "Escrow Agent Fee"), and will be paid and/or reimbursed by Lessor upon request for all expenses, disbursements and advances, including reasonable attorneys' fees, incurred or made by it in connection with carrying out its duties hereunder. Escrow Agent's fee shall be payable upon execution of this Escrow Agreement.

**Section 6.2. Investment Fees.** Escrow Agent shall be entitled to charge reasonable fees and commissions in connection with the investment by it of amounts held in the Equipment Acquisition Fund (the "Investment Fees"). Lessor and Lessee hereby authorize Escrow Agent to periodically deduct the Investment Fees from interest earnings on the Equipment Acquisition Fund.

## **ARTICLE VII. CHANGE OF ESCROW AGENT**

**Section 7.1. Removal of Escrow Agent.** Lessor and Lessee, by written agreement, may by written request, at any time and for any reason, remove Escrow Agent and any successor thereto, and shall thereupon appoint a successor or successors thereto, but any such successor shall have capital (exclusive of borrowed capital) and surplus of at least Fifty Million Dollars (\$50,000,000), 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 statute or the requirements of any federal or state supervising or examining authority, then for the purposes of this Section 7.1, the combined capital and surplus of such bank or trust company may be conclusively established in its most recent report of condition so published.

**Section 7.2. Resignation of Escrow Agent.** Escrow Agent or any successor may at any time resign by giving written notice to Lessor and Lessee of its intention to resign and of the proposed date of resignation, which shall be a date not less than thirty (30) calendar days after such notice, unless an earlier resignation date and the appointment of a successor Escrow Agent shall have been approved by Lessor and Lessee. Upon receiving such notice of resignation, Lessor and Lessee shall promptly appoint a successor Escrow Agent by an instrument in writing; provided, however, that in the event Lessor and Lessee fail to appoint a successor Escrow Agent within thirty (30) days following receipt of such written notice, Lessor may appoint a successor Escrow Agent. Any resignation or removal of Escrow Agent shall become effective only upon acceptance of appointment by the successor Escrow Agent.

**Section 7.3. Merger or Consolidation.** Any entity into which Escrow Agent may be merged or converted, or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which it shall be a party, or any company to which Escrow Agent may sell or transfer all or substantially all of its corporate trust business (provided that such company shall be eligible under Section 7.1 above) shall be the successor to Escrow Agent without the execution or filing or further act.

**ARTICLE VIII. ADMINISTRATIVE PROVISIONS.**

**Section 8.1. Notice.** All written notices to be given under this Escrow Agreement shall be given by mail to the party entitled thereto at its address specified beneath each party's signature, or at such address as the party may provide to the other parties hereto in writing from time to time. Any such notice shall be deemed to have been received seventy-two (72) hours after deposit in the United States mail, in registered or certified form, with postage fully prepaid, or if given by other means, when delivered at the address specified in this Section 8.1.

**Section 8.2. Assignment.** Except as expressly herein provided to the contrary, 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 of the other parties. Notwithstanding the above, Lessor may freely assign all or any part of its interest in this Escrow Agreement and the Equipment Acquisition Fund in connection with an assignment by Lessor of its rights under the Agreement.

**Section 8.3. Binding Effect.** This Escrow Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Specifically, as used herein the term "Lessor" means any person or entity to whom Lessor has assigned its right to receive Rental Payments under the Agreement.

**Section 8.4. Severability.** In the event any provision of this Escrow Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 8.5. Entire Agreement; Amendments.** This Escrow Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous writings, understandings, agreements, solicitation documents and representations, express or implied. This Escrow Agreement may be amended or modified only by written documents duly authorized, executed and delivered by each of the parties hereto.

**Section 8.6. Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions, Articles, Sections or Clauses hereof.

**Section 8.7. Further Assurances and Corrective Instruments.** Lessor and Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may be necessary or proper to carry out the intention or to facilitate the performance of the parties under this Escrow Agreement, and for better assuring and confirming the rights and benefits provided herein.

**Section 8.8. Governing Law.** This Escrow Agreement shall be construed and governed in accordance with the laws of the State of Arkansas.

**Section 8.9. Execution in Counterparts.** This Escrow Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Agreement.

**Section 8.10. Waiver of Jury Trial.** Lessor, Lessee and Escrow Agent hereby waive any right to trial by jury in any action or proceeding with respect to, in connection with or arising out of this Escrow Agreement.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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**EXECUTION PAGE OF ESCROW AGREEMENT**

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

**BANK OF THE OZARKS**

Escrow Agent

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

Name: Sheila Mayden

Title: Sr. Vice President/Trust Officer

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

Address: 17901 Chenal Parkway  
Little Rock, AR 72223

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

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**EXECUTION PAGE OF ESCROW AGREEMENT**

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

**CREWS & ASSOCIATES, INC.**

Lessor

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

Name: Rush F. Harding, III

Title: Chief Executive Officer

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

Address:           521 President Clinton Ave  
                          Suite 800  
                          Little Rock, A

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

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**EXECUTION PAGE OF ESCROW AGREEMENT**

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

**RUTHERFORD COUNTY, TENNESSEE**

Lessee

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

Name: Ernest G. Burgess

Title: Chairman

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

Address: County Courthouse, Room 101  
Murfeesboro, TN 37128

Telephone: (615) 893-5812

Facsimile: (615) 904-3772

E-Mail Address: \_\_\_\_\_

ESCROW AGREEMENT (THE "AGREEMENT") BY AND BETWEEN  
CREWS & ASSOCIATES, INC., Lessor  
RUTHERFORD COUNTY, TENNESSEE, Lessee  
Dated as of \_\_\_\_\_, 2012

PAYMENT REQUEST FORM

\_\_\_\_\_, acting as escrow agent (the "Agent") under the Escrow Agreement dated as of \_\_\_\_\_, 2012 (Escrow Date), by and among the Agent, Lessee, Lessor, and Contractor, is hereby requested to pay to the person or corporation designated below as Payee the sum set forth below in payment of the Equipment costs described below. The amount shown below is due and payable and has not formed the basis any prior request for payment.

PAYEE: \_\_\_\_\_

AMOUNT: \_\_\_\_\_

**DESCRIPTION OF THE EQUIPMENT:**

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

DATED: \_\_\_\_\_

Indicate Method for Payment Disbursement:

\_\_\_\_\_ Overnight Check    \_\_\_\_\_ Regular Mail Check    \_\_\_\_\_ Wire Funds

Mailing Address: \_\_\_\_\_ Wire Instructions: \_\_\_\_\_  
\_\_\_\_\_

**LESSEE: RUTHERFORD COUNTY, TENNESSEE**

BY: \_\_\_\_\_

NAME: Ernes G. Burgess

TITLE: Chairman

**CONTRACTOR: \_\_\_\_\_**

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

**LESSOR: CREWS & ASSOCIATES, INC.**

BY: \_\_\_\_\_

NAME: Rush F. Harding, III

TITLE: Chief Executive Officer

**EXHIBIT G**

LEASE PURCHASE AGREEMENT (THE "AGREEMENT") BY AND BETWEEN  
CREWS & ASSOCIATES, INC., Lessor  
RUTHERFORD COUNTY, TENNESSEE, Lessee  
Dated as of \_\_\_\_\_, 2012

**CERTIFICATE OF ACCEPTANCE**

The undersigned, **RUTHERFORD COUNTY, TENNESSEE** as Lessee under the Lease Purchase Agreement dated \_\_\_\_\_, 2012, ("Agreement"), with **CREWS & ASSOCIATES, INC.** ("Lessor"), hereby certifies:

1. The Equipment, as such term is defined in the Agreement, has been delivered and installed at the following location in the State of Tennessee

\_\_\_\_\_.

2. Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes on the date indicated below. The Equipment has been examined and/or tested and is in good operating order and condition and is in all respects satisfactory to the undersigned and complies with the terms of the Agreement. Consequently, Lessor is hereby authorized to pay for the Equipment in accordance with the terms of any purchase orders for the same.

3. No event of default, as such term is defined in the Agreement, and no event which with the giving of notice or lapse of time, or both, would become an event of default, has occurred and is continuing on the date hereof.

4. Lessee acknowledges that Lessor is not the Vendor of the Equipment and has no control, knowledge or familiarity with the condition, capacity, functioning or other characteristics of the Equipment.

5. In the future, in the event the Equipment fails to perform as expected or represented, we will continue to honor the Agreement in all respects and continue to make our Rental Payments and Additional Payments under the Agreement in the normal course of business, and we will look solely to the Vendor for recourse.

6. Lessee's source of funds for making the Rental Payments under the Agreement is general operating funds. Lessee expects and anticipates adequate funds to be available to make all future Rental Payments.

7. Lessee confirms that the Commencement Date of the Agreement is as of the date set forth in the Agreement, and it will commence payments pursuant to the Agreement, in accordance with Exhibit C to the Agreement.

LESSEE: RUTHERFORD COUNTY, TENNESSEE

BY: \_\_\_\_\_

PRINTED NAME: Ernest G. Burgess

TITLE: Chairman

ACCEPTED AS OF: \_\_\_\_\_, 20\_\_.

**EXHIBIT H**

LEASE PURCHASE AGREEMENT (THE "AGREEMENT") BY AND BETWEEN  
CREWS & ASSOCIATES, INC., Lessor  
RUTHERFORD COUNTY, TENNESSEE, Lessee  
Dated as of \_\_\_\_\_, 2012

**CERTIFICATE OF SELF-INSURANCE**

Crews & Associates, Inc.  
521 President Clinton Avenue, Suite 800  
Little Rock, Arkansas 72201

\_\_\_\_\_, 2012

Re: Lease Purchase Agreement No. 2012(RCBE)-001, dated as of \_\_\_\_\_, 2012

In connection with the above-referenced Lease Purchase Agreement, Rutherford County, Tennessee, as lessee (the "Lessee") certifies that it participates in an actuarially sound self-insurance program for property damage and public liability risks.

The following is attached (check all that apply):

Letter from risk manager describing self-insurance program

Other evidence of Lessee's participation in self-insurance program

Very truly yours,

RUTHERFORD COUNTY, TENNESSEE

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

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

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

**EXHIBIT I**

LEASE PURCHASE AGREEMENT (THE "AGREEMENT") BY AND BETWEEN  
CREWS & ASSOCIATES, INC., Lessor  
RUTHERFORD COUNTY, TENNESSEE, Lessee  
Dated as of \_\_\_\_\_, 2012

**INCUMBENCY AND ESSENTIAL USE CERTIFICATE**

I, \_\_\_\_\_, do hereby certify that I am the duly elected or appointed and acting County Clerk of Rutherford County, Tennessee, a political subdivision or agency duly organized and existing under the laws of the State of Tennessee, that I have custody of the records of such entity, and that, as of the date hereof, the individual(s) named below are the duly elected or appointed officer(s) of such entity holding the office(s) set forth opposite their respective name(s). I further certify that: (i) the signature(s) set opposite their respective name(s) and title(s) are their true and authentic signature(s), and (ii) such officers have the authority on behalf of such entity to enter into that certain Lease Purchase Agreement dated as of \_\_\_\_\_ 2012, between such entity and Crews & Associates, Inc., and that the resolution attached hereto is a complete and true copy of the resolution duly adopted by the Lessee on \_\_\_\_\_, 2012, and that such resolution is in full force and effect, has not been modified, amended, repealed or superceded.

<b>NAME</b>	<b>TITLE</b>	<b>SIGNATURE</b>
Ernest G. Burgess	Chairman	_____

I further hereby certify that the Equipment to be leased to the undersigned under the certain Lease Purchase Agreement, dated as of \_\_\_\_\_, 2012, between such entity and Crews & Associates, Inc., ("Lessor"), will be used by the undersigned Lessee for the following purpose:

Water and Energy efficient upgrades for the Rutherford County Board of Education facilities

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The undersigned hereby represents that the use of the Equipment is essential to its proper, efficient and economic operation.

IN WITNESS WHEREOF, I have set my hand this \_\_\_\_ day of \_\_\_\_\_, 2012.

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_

**[NOTE: CERTIFICATE SIGNOR SHOULD NOT BE THE SAME AS ANY SIGNOR SET OUT IN THE INCUMBENCY SECTION ABOVE]**

## LESSEE'S AUTHORIZING RESOLUTION

A RESOLUTION AUTHORIZING A LEASE PURCHASE AGREEMENT FOR THE PURPOSE OF FINANCING CERTAIN EQUIPMENT FOR THE BENEFIT OF RUTHERFORD COUNTY BOARD OF EDUCATION

**WHEREAS**, the Board of Education of Rutherford County, Tennessee (the "School Board") has approved the acquisition and installation of equipment at certain facilities of the School Board (the "Equipment") and approved engaging Excel Energy Group, Inc. to provide engineering design services for the appropriate installation of said Equipment; and

**WHEREAS**, the Board of Commissioners ("Board") of Rutherford County, Tennessee (the "Lessee") finds that it is in the best interests of the Lessee and the School Board to facilitate the financing of the Equipment by entering into a Lease Purchase Agreement with Crews & Associates, Inc., an Arkansas corporation.

**WHEREAS**, the Lessee is authorized under the Constitution and laws of the State of Tennessee (the "State"), particularly Tennessee Code Annotated § 7-51-901 *et seq.* (the "Authorizing Legislation"), to enter into financing agreements (including lease obligations) to finance capital improvements for the governmental and miscellaneous functions of the Lessee; and

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD**, as follows:

Section 1. Under the authority of the Constitution and laws of the State, including particularly the Authorizing Legislation, there is hereby authorized the execution of the Lease Purchase Agreement with Crews & Associates, Inc. substantially in the same form as that which was presented to this meeting; provided, that, the principal amount financed pursuant to the Lease Purchase Agreement with a principal amount not to exceed \$1,462,000.00, the interest rate on which shall not exceed 3.70% per annum. Interest on the Lease Purchase Agreement began to accrue on June 15, 2012.

Section 2. The Chairman of the Board, for and on behalf of Lessee, is hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Lease Purchase Agreement, and the performance of all other acts of whatever nature necessary to effect and carry out the authority conferred by this Resolution. The Chairman of the Board is hereby authorized and directed, for and on behalf of Lessee, to execute all papers, documents, certificates and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof.

Section 3. The provisions of this Resolution are hereby declared to be severable and, if any such provision shall for any reason be held illegal or invalid, such holding shall not affect the validity of the remainder of this Resolution.

Section 4. All resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. This Resolution shall take effect and be enforced from and after its adoption.

[Certificate Page Follows]

**CERTIFICATE**

I, the undersigned, County Clerk of Rutherford County, Tennessee, hereby certify that the foregoing is a true, correct and compared copy of a Resolution adopted by the Board of Education on the \_\_\_\_ day of \_\_\_\_\_, 2012. The Resolution appears in the official minutes of the meeting which are in my custody. At the time of the meeting the duly elected (or appointed), qualified and serving members of the Board of Education and their respective votes on the adoption of the Resolution were as follows:

<b>Commissioner:</b>	<b>Vote (Aye, Nay, Abstain or Absent)</b>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

I further certify that the meeting of the Board was duly convened and held in all respects according to law; that to the extent required by law due and proper notice of the meeting was given to the members of the Board and to the public; that the meeting was open to the public; that a legal quorum was present throughout the meeting; that all other requirements and proceedings under the law incident to the proper adoption and passage of the Resolution have been duly fulfilled, carried out and otherwise observed; and that I am authorized to execute this Certificate.

IN WITNESS THEREOF, I have hereunto set my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2012

\_\_\_\_\_  
County Clerk

## ADDITIONAL DOCUMENTS

1. Form 8038-G
2. UCC-3
3. Form of Lessee's Counsel Opinion Letter

## FORM OF LESSEE COUNSEL OPINION LETTER

Board of Commissioners of Rutherford County, Tennessee  
County Courthouse, Room 101  
Murfeesboro, TN 37128

**Re: Lease Purchase Agreement dated \_\_\_\_\_, 2012 (the "Agreement") between Rutherford County, Tennessee ("Lessee") and Crews & Associates, Inc. ("Lessor")**

Ladies and Gentlemen:

We have acted as counsel to Lessee with respect to the Agreement described above and various related matters, and in this capacity have reviewed a duplicate original or certified copy thereof and **EXHIBIT B** executed pursuant thereto (the "Agreement"). The terms capitalized in this opinion but not defined herein shall have the meanings assigned to them in the Agreement. Based upon the examination of these and such other documents as we have deemed relevant, it is our opinion that:

1. Lessee is a political subdivision of the State of Tennessee (the "State") within the meaning Section 103 (c) of the Internal Revenue Code of 1986, as amended, and is duly organized, existing and operating under the Constitution and laws of the State.
2. Lessee is authorized and has the power under applicable law to enter into the Agreement, and to carry out its obligations thereunder and the transactions contemplated thereby.
3. The Agreement has been duly authorized, executed and delivered by and on behalf of Lessee, and is a legal, valid and binding obligation of Lessee enforceable in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency and other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles.
4. The authorization and execution of the Agreement and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all applicable open meeting, public records, public bidding and all other laws, rules and regulations of the State.
5. The execution of the Agreement and the appropriation of monies to pay the Rental Payments coming due thereunder do not and will not result in the violation of any constitution, statutory or other limitation relating to the manner, form or amount of indebtedness which may be incurred by Lessee.
6. There is no limitation, action, suit or proceeding pending or before any court, administrative agency, arbitrator or governmental body that challenges the organization or existence of Lessee, the authority of Lessee or its officers or its employees to enter into the Agreement, the proper authorization and/or execution of the Agreement or the documents contemplated thereby, or the ability of Lessee otherwise to perform its obligations under the Agreement and the transactions contemplated thereby. To the best of our knowledge, no such litigation, action, suit or proceeding is threatened.
7. A Resolution of the Lessee was duly and validly adopted by such governing body on \_\_\_\_\_, and such resolution has not been amended, modified, supplemented or repealed, and remains in full force and effect.

This opinion may be relied upon by the addressee hereof and its successors and assignees of interests in the Agreement, but only with regard to matters specifically set forth herein.

Very truly yours,