

## **ESCROW AGREEMENT**

THIS ESCROW AGREEMENT (this “Agreement”), made and entered into as of March 31, 2011, and effective from the date of its execution and delivery among the parties, is by and among THE CITY OF BILLINGS, MONTANA, a municipal corporation organized and existing under the Constitution and laws of the State of Montana and its home rule charter (the “City”), ROCKY MOUNTAIN COLLEGE, a Montana nonprofit corporation (the “Borrower”), PNC EQUIPMENT FINANCE, LLC, an Delaware limited liability company (the “Lender”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association (the “Escrow Agent”).

### **RECITALS**

The City has issued and sold to the Lender its Higher Education Revenue Note (Rocky Mountain College Energy Performance Project), Series 2011, of even date herewith (the “Note”), in the principal amount of \$2,610,868.

The City has entered into a Loan Agreement (the “Loan Agreement”) with the Borrower, of even date herewith, whereby the City will make a loan of the proceeds of the Note to the Borrower to finance all or a portion of the costs of acquisition, construction and installation of energy efficiency improvements to various buildings and facilities located on the Rocky Mountain College campus, and to pay certain costs associated with the sale of the Note and any other eligible costs, and the Borrower will repay said loan upon the terms set forth therein.

Simultaneously with the execution and delivery of the Loan Agreement, the City executed and delivered an Assignment of Agreement, of even date herewith, pursuant to which the City assigned and granted a security interest to the Lender in the City’s entire interest in the Loan Agreement (except as provided therein).

In consideration of the foregoing and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

### **ARTICLE I**

#### **DEFINITIONS; REPRESENTATIONS**

Section 1.01. Terms used in this Agreement but not defined herein shall have the respective meanings given to them in the Loan Agreement. Any reference to a particular Article, Section or Exhibit shall be to such Article, Section or Exhibit of this Agreement unless the context shall otherwise require. In all other respects, the rules set forth in Section 1.02 of the Loan Agreement shall apply to the construction of this Agreement.

Section 1.02. Each of the parties represents to the other parties hereto that it has authority to enter into this Agreement, and has taken all actions necessary to authorize the execution of this Agreement by the officers whose signatures are affixed hereto.

## ARTICLE II

### ESCROW FUND

Section 2.01. The Escrow Agent shall establish a special escrow fund designated “Escrow Fund—Rocky Mountain College Financing” (the “Escrow Fund”), shall keep the Escrow Fund separate and apart from all other funds and moneys held by it and shall administer the Escrow Fund as provided in this Agreement.

Section 2.02. (a) Pursuant to the Loan Agreement, the Lender is depositing or causing to be deposited with the Escrow Agent, the sum of \$2,610,868, to be credited to the Escrow Fund and applied to the payment of the Acquisition and Construction Costs and the Loan and Carrying Charges (each, as defined in the Loan Agreement) in accordance with this Agreement. The Escrow Agent hereby acknowledges receipt of such amount from the City and shall deposit such amount in the Escrow Fund.

(b) The Escrow Agent shall disburse moneys from the Escrow Fund to pay the Acquisition and Construction Costs set forth on Schedule 1 to the Loan Agreement (the “Schedule”) upon receipt of an Acquisition and Construction Costs Payment Request Form substantially in the form attached hereto as Exhibit A and shall disburse moneys from the Escrow Fund to pay the Loan and Carrying Charges upon receipt of a Loan and Carrying Charges Payment Request Form substantially in the form attached hereto as Exhibit B (such forms, the “Payment Request Forms”). The Payment Request Forms shall be executed by Authorized Officers (as hereinafter defined) of the Lender and the Borrower. Each submission of a Payment Request Form by or on behalf of the Borrower shall constitute a representation, warranty and covenant by the Borrower that such Payment Request Form is complete, contains all required supporting documents, and has been duly executed by an Authorized Officer of the Borrower. The Escrow Agent’s sole responsibility with respect to a Payment Request Form is to verify that it bears a signature of the Authorized Officer of the Lender and the Borrower. Upon receipt of a Payment Request Form with respect to Acquisition and Construction Costs or Loan and Carrying Charges, an amount equal thereto as shown therein shall be paid directly to the person or entity entitled to payment as specified therein. The Escrow Agent is hereby directed to disburse a maximum of \$52,000 from the Escrow Fund to pay Loan and Carrying Charges. “Authorized Officers” means, with respect to the Lender, [\_\_\_\_], and with respect to the Borrower, [\_\_\_\_].

Section 2.03. Upon receipt by the City, the Borrower and the Escrow Agent of written direction from the Lender, on or after [December 31, 2012], the Escrow Agent shall pay to the Lender the entire remaining balance on deposit in the Escrow Fund, less the amount equal to all Acquisition and Construction Costs and Loan and Carrying Charges for which the Escrow Agent has received a fully and properly completed Payment Request Form and which have not been paid. The amount so paid to the Lender shall be applied to the prepayment of the Loan Repayments in accordance with the Loan Agreement.

Section 2.04. Upon receipt of written notice from the Lender or the City that an Event of Default has occurred under the Loan Agreement or that the Borrower has determined not to

complete the Project, the Escrow Agent shall pay to the Lender the entire remaining balance on deposit in the Escrow Fund, less the amount equal to all Acquisition and Construction Costs and Loan and Carrying Charges for which the Escrow Agent has received a fully and properly completed Payment Request Form and which have not been paid. The amount so paid to the Lender shall be applied to the prepayment of the Loan Repayments in accordance with the Loan Agreement.

Section 2.05. The Escrow Agent shall only be responsible for the safekeeping and investment of the moneys held in the Escrow Fund, and the disbursement thereof in accordance with this Article II, and shall not be responsible for the authenticity or accuracy of the certifications or documents provided hereunder, the application of amounts paid pursuant to such certifications by the persons or entities to which they are paid, or the sufficiency of the moneys credited to the Escrow Fund to make the payments herein required. The Escrow Agent shall not have any obligation to make payments hereunder from any source other than the Escrow Fund.

### ARTICLE III

#### MONEYS IN ESCROW FUND; INVESTMENT

Section 3.01. The moneys and investments held by the Escrow Agent under this Agreement shall be held in trust for the benefit of the Borrower, the City and the Lender, and such moneys, together with any income or interest earned thereon, shall be expended only as provided in this Agreement, and shall not be subject to levy or attachment or lien by or for the benefit of any creditor of the Borrower, the City or the Lender.

The Lender, the City and the Borrower intend that the Escrow Fund constitute an escrow account in which the Borrower has no legal or equitable right, title or interest until satisfaction in full of all conditions contained herein and in the Loan Agreement for the disbursement of funds by the Escrow Agent therefrom. However, if the Borrower shall be determined to have any legal or equitable right, title or interest in the Escrow Fund in any legal proceeding, then the Borrower hereby pledges and assigns to the Lender, and grants to the Lender a security interest in, the Escrow Fund to secure payment of all sums due to the Lender under the Loan Agreement. For such purpose, the Escrow Agent hereby agrees to act as agent for the Lender in connection with the perfection of such security interest and agrees to note, or cause to be noted, on all books and records relating to the Escrow Fund, the Lender's interest therein.

Section 3.02. Moneys held by the Escrow Agent hereunder shall be invested and reinvested by the Escrow Agent upon the written order of the Borrower so long as no Event of Default has occurred under the Loan Agreement and thereafter by the Lender only in Qualified Investments (as hereinafter defined). Such investments shall be registered in the name of the Escrow Agent and held by the Escrow Agent for the benefit of the Lender, the City and the Borrower. With the approval of the Borrower, the Escrow Agent may purchase from or sell to itself or any affiliate, as principal or agent, investments authorized by this Agreement. Such investments and reinvestments shall be made giving full consideration for the time at which funds are required to be available.

As used herein, “Qualified Investments” means any of the following obligations or securities, to the extent permitted by law: (i) U.S. Government Obligations, (ii) certificates of deposit issued by, or bankers’ acceptances of, or time deposits with, any bank, trust company or national banking association incorporated, having a branch in or doing business under the laws of the United States of America or one of the states thereof having combined capital and surplus and retained earnings of at least \$100,000,000, (iii) commercial paper of any holding company of a bank, trust company or national banking association described in (ii), (iv) commercial paper of companies incorporated or doing business under the laws of the United States of America or one of the states thereof and in each case having a rating assigned to such commercial paper by Moody’s Investors Service, Fitch Inc. or Standard & Poor’s, a division of The McGraw Hill Companies, and their successors and assigns (each, a “Rating Agency”), equal to the highest rating assigned by such Rating Agency, (v) U.S. dollar-denominated certificates of deposits issued by, or time deposits with, the European subsidiaries of any bank, trust company or national banking association incorporated or doing business under the laws of the United States of America or one of the states thereof having combined capital and surplus and retained earnings of at least \$100,000,000 and in each case having a rating assigned to its senior debt securities by a Rating Agency equal to an investment grade rating assigned by such organization, (vi) repurchase agreements with any bank, broker, dealer or other financial institution having combined capital and surplus and retained earnings of at least \$50,000,000 secured by any of the obligations described in clauses (i) through (v) above, (vii) money market funds registered as investment companies under the federal Investment Company Act of 1940, as amended, whose investment policies include seeking to maintain a constant share price and which invest exclusively in the investments or securities referred to in (i) through (v) above, or (viii) any other investment permitted by the Lender.

Section 3.03. Income earned, profits realized and losses suffered on any investment of the Escrow Fund shall be credited or charged, as the case may be, to the Escrow Fund.

Section 3.04. The Escrow Agent shall furnish to the Borrower and the Lender monthly statements setting forth (a) amounts withdrawn from and deposited in the Escrow Fund during the period for which such statement is prepared, (b) the balance on deposit in the Escrow Fund at the end of each period for which such statement is prepared, (c) the interest on investments on deposit in the Escrow Fund during the period for which such statement is prepared and (d) a brief description of all obligations held as investments in the Escrow Fund. The Escrow Agent shall furnish to the City statements described above upon request.

None of the Lender, the City or the Escrow Agent shall be responsible or liable for any loss suffered in connection with any investment of moneys made by the Escrow Agent in accordance with this Agreement. In the event funds in the Escrow Fund are insufficient to pay the Acquisition and Construction Costs and Loan and Carrying Charges, the Borrower shall pay any Acquisition and Construction Costs and Loan and Carrying Charges, as the case may be, in excess of the amount held in the Escrow Fund.

## ARTICLE IV

### ESCROW AGENT'S AUTHORITY; INDEMNIFICATION

Section 4.01. The Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, 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 Authorized Officer purporting to give any writing, notice, advice or instructions in connection with the provisions hereof has been duly authorized to do so. The 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 Authorized Officer executing the same; and its duties hereunder shall be limited to those specifically provided herein. Without limiting the generality of the foregoing, the Escrow Agent shall have no liability or obligation to the Lender, the City, the Borrower or any person claiming by or through any of them: (i) to review or examine the Loan Agreement or any instrument, agreement or document other than this Agreement and any notice provided for in this Agreement; (ii) to evaluate or determine the validity, legality or veracity of any action or omission by any person other than the Escrow Agent; (iii) for any action or omission of any third party, including the Lender, the City or the Borrower or any federal or state banking regulator; and (iv) for incidental, indirect, consequential or punitive damages in any event.

Section 4.02. Unless the Escrow Agent is guilty of negligence or reckless misconduct with regard to its duties hereunder, the Borrower hereby agrees to indemnify the 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 the Escrow Agent under this Agreement.

Section 4.03. If the Borrower, the City or the Lender shall be in disagreement about the interpretation of the Loan Agreement or this Agreement, about the rights and obligations of the Escrow Agent hereunder or about the propriety of any action contemplated by the Escrow Agent hereunder, the Escrow Agent may, but shall not be required to, file an appropriate civil action to resolve the disagreement. The Escrow Agent shall be indemnified by the Borrower 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 Agreement until a final judgment in such action is received.

Section 4.04. The Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection with the opinion of such counsel. The Escrow Agent shall not be liable for any mistakes of fact or errors of judgment or for any acts or omissions of any kind unless caused by its negligence or reckless misconduct.

## ARTICLE V

### ESCROW AGENT'S COMPENSATION

The Borrower hereby agrees to pay the Escrow Agent \$[\_\_\_\_\_] (the "Escrow Fee") as compensation for the services to be rendered hereunder, and will pay and/or reimburse the Escrow Agent 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. The Escrow Fee shall be payable upon execution of this Escrow Agreement.

## ARTICLE VI

### RESIGNATION OR REMOVAL OF ESCROW AGENT

Section 6.01. The Lender may remove the Escrow Agent at any time by notice to the Escrow Agent, the Borrower and the City.

Section 6.02. The Escrow Agent or any successor may at any time resign upon 30 days written notice to the City, the Borrower and the Lender, which resignation shall take effect upon the appointment of a successor to the Escrow Agent.

Section 6.03. Upon the resignation or removal of the Escrow Agent or any successor, the Lender shall appoint a successor Escrow Agent, which shall be a commercial bank, trust company or national banking association qualified as a depository of public funds. Upon any such appointment, the Escrow Agent agrees to assign to such successor its rights under this Agreement.

## ARTICLE VII

### ADMINISTRATIVE PROVISIONS

Section 7.01. The Escrow Agent shall keep complete and accurate records of all moneys received and disbursed under this Agreement, which shall be available for inspection by the Borrower, the City or the Lender, or the agent of any of them, at any time during regular business hours.

Section 7.02. All notices, certificates, requests, demands and other communications provided for hereunder shall be in writing and shall be (a) personally delivered or (b) sent by registered or certified mail, postage prepaid to the appropriate notice address set forth below or at such other address as any party hereto may have furnished to the other parties in writing by registered mail return receipt requested:

If to the City: City of Billings, Montana  
210 North 27th Street  
Billings, Montana 59103  
Attention: Financial Services Manager  
Fax: (406) 247-8608

If to the Borrower: Rocky Mountain College  
1511 Poly Drive  
Billings, Montana 59102  
Attn: Chief Financial Officer  
Tel: (406) 657-1022  
Fax: (406) 238-7352

If to the Lender: PNC Equipment Finance, LLC  
155 East Broad Street, B4-B230-05-7  
Columbus, Ohio 43215  
Attention: Sandra Thomas  
Tel: (614) 463-6578  
Fax: (614) 463-6570

If to the Escrow Agent: U.S. Bank National Association  
10 West Broad Street, 12th Floor  
Columbus, Ohio 43215  
Attention: Scott Miller, Vice President  
Tel: (614) 849-3402  
Fax: (614) 232-8109

All such notices, requests, demands and other communications shall be deemed to have been given on the date received.

Section 7.03. This Escrow Agreement, together with the Exhibits hereto, constitutes the entire agreement of the parties relative to the Escrow Fund.

Section 7.04. Any provisions of this Agreement found to be prohibited by law shall be ineffective only to the extent of such prohibition, and shall not invalidate the remainder of this Agreement.

Section 7.05. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

Section 7.06. This 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 7.07. This Agreement shall terminate upon disbursement by the Escrow Agent of all moneys held by it hereunder.

Section 7.08. The terms of this Agreement may not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written instrument signed by the parties hereto. Any such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.

Section 7.09. This Agreement shall be governed exclusively by and construed in accordance with the internal laws of the State of Montana applicable to contracts to be wholly performed therein.

*[Remainder of page intentionally blank]*

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

ROCKY MOUNTAIN COLLEGE

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Name: Carol Jensen  
Title: Chief Financial Officer

PNC EQUIPMENT FINANCE, LLC

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Name:  
Title:

U.S. BANK NATIONAL ASSOCIATION

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Name:  
Title:

CITY OF BILLINGS, MONTANA

By \_\_\_\_\_  
Mayor

By \_\_\_\_\_  
Financial Services Manager

Attest: \_\_\_\_\_  
City Clerk

(SEAL)

**EXHIBIT A**

**ACQUISITION AND CONSTRUCTION COSTS  
PAYMENT REQUEST FORM**

Pursuant to the Escrow Agreement (the “Escrow Agreement”) dated as of March 31, 2011 (the “Escrow Agreement”), by and among the City of Billings, Montana (the “City”), Rocky Mountain College (the “Borrower”), PNC Equipment Finance, LLC (the “Lender”) and U.S. Bank National Association, as escrow agent (the “Escrow Agent”), the Borrower hereby requests that the Escrow Agent make payment from the Escrow Fund created by the Escrow Agreement to the following party or parties, at the addresses set forth below.

Payee	Address	Amount to Be Paid	Description of Acquisition and Construction Costs
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In connection therewith, the undersigned officer of the Borrower hereby certifies as follows:

1. The Project items with respect to which amounts are requested under this Acquisition and Construction Costs Payment Request Form comprise Acquisition and Construction Costs set forth on Schedule 1 to the Loan Agreement, or reimbursement to the Borrower therefor. Such items constitute valid costs under the Act and the Code.

2. The payments have not been paid or reimbursed pursuant to a prior Acquisition and Construction Costs Payment Request Form or any other tax-exempt indebtedness.

3. The amount remaining in the Escrow Fund is sufficient to pay the remaining Acquisition and Construction Costs.

4. All of the Borrower’s representations, covenants and warranties contained in the Loan Agreement and the other documents delivered by Borrower in connection therewith were true and accurate in all respects as of the date made, and remain true and accurate in all respects as of the date of delivery of this Acquisition and Construction Costs Payment Request Form, and the Borrower has fully and satisfactorily performed all of its covenants and obligations to date required under the Loan Agreement. No Event of Default has occurred and is continuing under the Loan Agreement.

5. The withdrawal or transfer and use of the Escrow Fund moneys for the purpose intended, as described in this Acquisition and Construction Costs Payment Request Form, will

not cause any of the representations or certifications contained in the Loan Agreement or other documents delivered by Borrower in connection therewith to be untrue or result in a violation of any covenant in the Loan Agreement.

6. Any necessary permits and approvals required for the portion of the Project for which this Acquisition and Construction Costs Payment Request Form is submitted have been issued and are in full force and effect.

7. No mechanics' liens have been filed of record against the Project (unless a title indemnity, bond or other security reasonably satisfactory to the Lender has been posted to insure against such lien) and, where applicable, proper lien waivers have been received with respect to work for which payment is sought pursuant to such Acquisition and Construction Costs Payment Request Form.

8. The Borrower understands that the Lender is relying on the certifications herein with regard to and in connection with approving the disbursement requested hereby.

9. This Acquisition and Construction Costs Payment Request Form (check one) \_\_\_\_\_ does OR \_\_\_\_\_ does not relate to the final disbursement from the Escrow Fund.

If this Acquisition Cost Payment Request Form relates to the final disbursement from the Escrow Fund, the Borrower and the Lender hereby instruct the Escrow Agent to disburse to the Lender the remaining moneys held in the Escrow Fund to be applied to prepay the Loan Repayments as set forth in the Loan Agreement.

10. This Acquisition and Construction Costs Payment Request Form (check one) \_\_\_\_\_ includes OR \_\_\_\_\_ does not include reimbursement to the Borrower for any payment previously made by the Borrower.

If this Acquisition and Construction Costs Payment Request Form requests such a reimbursement, the payment to be reimbursed was originally paid by the Borrower on or after December 31, 2010.

11. Attached hereto are the following items:

(a) invoices and/or bills of sale relating to the applicable Acquisition and Construction Costs and, if such invoices have been paid by the Borrower, evidence of payment thereof;

(b) information showing the relationship between the applicable Acquisition and Construction Costs and Schedule 1 to the Loan Agreement; and

(c) an insurance certificate in the form required by the Loan Agreement, if such insurance certificate has not been previously provided by the Borrower to the Lender.

Capitalized terms used herein and not defined shall have the meanings assigned to them in the Loan Agreement and the Escrow Agreement.

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

ROCKY MOUNTAIN COLLEGE

\_\_\_\_\_  
Name: Carol Jensen  
Title: Chief Financial Officer

Approved:

PNC EQUIPMENT FINANCE, LLC

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

**EXHIBIT B**

**LOAN AND CARRYING CHARGES  
PAYMENT REQUEST FORM**

Pursuant to the Escrow Agreement (the “Escrow Agreement”) dated as of March 31, 2011 (the “Escrow Agreement”), by and among the City of Billings, Montana (the “City”), Rocky Mountain College (the “Borrower”), PNC Equipment Finance, LLC (the “Lender”) and U.S. Bank National Association, as escrow agent (the “Escrow Agent”), the Borrower hereby requests that the Escrow Agent make payment from the Escrow Fund created by the Escrow Agreement to the following party or parties, at the addresses set forth below.

Payee	Address	Amount to Be Paid	Description of Loan and Carrying Charges
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In connection therewith, the undersigned officer of the Borrower hereby certifies as follows:

1. The payments to be made to the payees in accordance herewith are for justly due and owing Costs of Issuance, or reimbursement to the Borrower therefor, and the payments have not been paid or reimbursed pursuant a prior Cost of Issuance Payment Request Form or any other tax-exempt indebtedness.

2. The total amount of the payments requested from the Escrow Fund herein together with all prior payments requested from the Escrow Fund to pay Costs of Issuance does not exceed the Maximum Cost of Issuance Disbursement Amount.

3. All of the Borrower’s representations, covenants and warranties contained in the Loan Agreement and the other documents delivered by Borrower in connection therewith were true and accurate in all respects as of the date made, and remain true and accurate in all respects as of the date of delivery of this Cost of Issuance Payment Request Form, and the Borrower has fully and satisfactorily performed all of its covenants and obligations to date required under the Loan Agreement. No Event of Default has occurred and is continuing under the Loan Agreement.

4. The Borrower understands that the Lender is relying on the certifications herein with regard to and in connection with approving the disbursement requested hereby.

5. This Payment Request Form (check one) \_\_\_\_\_ does OR \_\_\_\_\_ does not relate to the final disbursement from the Escrow Fund.

If this Cost of Issuance Payment Request Form relates to the final disbursement from the Escrow Fund, the Borrower and the Lender hereby instruct the Escrow Agent to disburse to the Lender the remaining moneys held in the Escrow Fund to be applied to prepay the Loan Repayments as set forth in the Loan Agreement.

6. Attached hereto are invoices relating to the Loan and Carrying Charges and, if such invoices have been paid by the Borrower, evidence of payment thereof.

Capitalized terms used herein and not defined shall have the meanings assigned to them in the Loan Agreement and the Escrow Agreement.

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

ROCKY MOUNTAIN COLLEGE

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Name: Carol Jensen  
Title: Chief Financial Officer

Approved:

PNC EQUIPMENT FINANCE, LLC

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Name:  
Title: